

**BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY, MUMBAI, CAMP AT PUNE.**

Complaint No.CC006000000022221

1. Sarang Joshi

2. Naresh Joshi

Both R/at 508, Frangipani,
Nahar Amrit Shakti,
Chandiwali, Andheri (E),
Mumbai-400072.

.. Complainants

Versus

Nahar Homes LLP

Having it's Office at B-1,
Mahalaxmi Chambers,
22, Bhulabal Desai Road,
Mumbai 400 026.

.. Respondent

**Coram : Shri M.V. Kulkarni
Hon'ble Adjudicating Officer**

Appearance :-

Complainant : In person.

Respondent : Adv. Vijay Kumbre & Shah

**FINAL ORDER
(03.04.2019)**

1. The Complainants son and father, who had booked a flat with the Respondent/Builder, initially sought

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directions to the Respondent to hand over possession of the flat and to pay compensation as Respondent is not complying with the terms and conditions. When the matter came up before the Hon'ble Chairperson on 22.11.2018, the Complainants sought to withdraw from the project and sought compensation and interest from the Respondent.

2. The Complainants have alleged that they booked flat No. B-1/803 in the project of Respondents "f Residences" at Survey No.44 and 45 at Balewadi, Pune vide agreement, dated 31st March, 2015. The Respondent had promised possession by 31st March, 2018. Complainants sought loan from India Bulls under 10:80:10 subvention scheme and bullder was to pay interest till possession with a specific tripartite agreement signed for 24 months. The Respondent has not extended tripartite agreement. Since last 3 months, Respondent has stopped paying Interest to India Bulls though building is not ready for possession. The Respondent has not received occupancy certificate and is only offering furniture possession. Initially possession was promised in March, 2017 and thereafter May, 2017, thereafter July, 2017, thereafter Nov. 2017 and then Jan. 2018. Complainants have suffered substantial financial loss because of this reason. The Respondent is refusing to pay compensation in that respect. There was a High Court order directing the

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Respondent to again submit application for approval. The Respondent has not kept 3 meter margin as per D.C. Rules while constructing parking and has kept only one meter margin. Already an order has been passed by MahaRERA in Complaint CC No.10762 in that respect. The Complainants therefore, claim compensation of Rs. 5,00,000/-. By filing amendment application, dated 25.01.2019 Complainants are seeking withdrawal from the project. It is alleged that booking money of Rs. 10,16,587/- was paid. Rs. 10,00,000/- were paid extra due to subvention scheme. The Respondent has changed location of swimming pool and has reduced garden space drastically. Instead of robotic car parking, Respondent is constructing puzzle car park.

3. As stated earlier, on 22.11.2018 matter came up before Hon'ble Chairperson and as the Complainants sought withdrawal from the project, the matter came to be transferred to Adjudicating Officer. The matter came up before me on 22.01.2019. The Complainants filed amendment application. On 25.01.2019 said application came to be allowed. The Respondent also filed his reply. On 27.02.2019 plea of the Respondent was recorded as well as arguments for both parties were heard. As I am working at Pune and Mumbai office in alternative weeks, this matter is being decided now.

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4. The Respondent has alleged that the contentions raised by the Complainants are not admitted. There is no deliberate delay or latches on the part of Respondent. The Respondent has completed the construction on time. Respondent applied for O.C. to the concerned local authority. The Respondent has constructed the project as per sanctioned plan and there is no any deviation. Without proper reasons, the P.M.C. denied O.C. to the Respondent. The Respondent approached the Hon'ble High Court in Writ Petition and the order passed by P.M.C. was set aside and matter was remanded back for fresh consideration. As per order of Hon'ble Court, Respondent has immediately filed representation before City Engineer. The Respondent had agreed to pay pre-EMIs for certain period, but the Respondent continued to pay pre-EMIs beyond that period. The Respondent has applied for O.C. and therefore stopped paying pre-EMIs. There is no fault on the part of the Respondent. The Complainants have not suffered actual loss. There is no evidence about Complainants paying rent of Rs.46,000/- p.m. The facts of the case cited by Complainants were different. However, the Respondent is ready to refund entire amount paid by Complainants on execution of cancellation deed. The total amount received towards price of the flat is Rs. 79,95,422/-, out of which Rs. 3,71,523/- were the tax, stamp duty and registration

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amount was Rs. 5,70,500/-. The Respondent has paid Rs. 19,94,126/- to bank on behalf of Complainants.

5. On the basis of rival contentions of the parties, following points arise for my determination. I have recorded my findings against them for the reasons stated below.

POINTS

FINDINGS

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|-----|--|---------------------|
| (1) | Has the Respondent failed to Deliver possession of the flat as per agreement, without there being circumstances beyond his control ? | In the Affirmative |
| (2) | Are the Complainants entitled to the reliefs claimed ?.. .. | In the Affirmative |
| (3) | What order ? | As per final order. |

REASONS

6. **POINT Nos. 1 and 2** :- Copy of the Agreement, dated 31.03.2015 has been placed on record in respect of Flat No. B-1/803. Price agreed was Rs. 89,90,200/- + service tax of Rs. 3,67,699/-. Further Rs. 8,98,908/- and VAT and Service Tax of Rs. 1,17,678/- were also payable. Thus total amount was Rs. 93,57,899/-. As per clause 11, possession was to be delivered tentatively within 36 months from the date of agreement after payment of entire consideration

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amount. Usual circumstances under which Respondent was entitled for extension of time are also mentioned. In this manner, ordinarily the possession was required to be delivered before 31st March, 2018. Admittedly, possession has not been delivered till today.

7. It is the contention of the Respondent that he has completed the construction and applied for O.C. Some issues cropped up like parking space. The Respondent contended that he has not deviated from approved sanctioned plan. He has kept the margins as per rules. On the other hand, it is the contention of the Complainants that instead of 3 meters, only 1 meter margin has been kept. The Respondent contended that construction was completed in March, 2018 and he applied for O.C. in April, 2018, but it has been withheld by Municipal Corporation. It appears that Writ Petition No.8053/2018 was filed before Hon'ble High Court. The order, dated 31.09.2018 reads that Corporation issued show cause notice to the present Respondent on 31.05.2018 and finally denied occupancy certificate to Respondent on 13.07.2018. Hon'ble High Court directed City Engineer to consider comprehensive representation if made by Respondent by adopting fresh view. The City Engineer has been directed to pass a brief reasoned order within 2 weeks from the date of order of Hon'ble High Court. It appears that occupancy certificate has been issued by the

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Corporation on 31.01.2019 and it has been placed on record. What order was passed by City Engineer has not been placed on record and therefore, whether the Respondent was found to have contravened rules or otherwise, has not become clear. That order was required to be passed by 14th Oct. 2018. But there is some substance in the defence of the Respondent that he was fighting for genuine cause. However, Respondent is having no objection to the Complainants' withdrawal from the project and refund of their amount. I therefore, answer point No.1 in the affirmative.

8. It appears that there was a tripartite agreement between the Complainants, Respondent and India Bulls, the financier. Said agreement is not placed on record. There is no dispute that Respondent had undertaken to pay pre-EMIs. The Respondent has also paid pre-EMIs till Jan. 2018. The Respondent agreed having received Rs. 76,23,899/-. The Complainants will be entitled to refund this amount and interest as per Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosure of Website) Rules, 2017 from the expiry of two weeks from the date of order passed by Hon'ble High Court in Writ Petition No. 8053/2018, till final realization i.e.

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from 15th Oct. 2018. I therefore, answer Point No.2 in the affirmative and proceed to pass following order.

ORDER

- (1) The Complainants are allowed to withdraw from the project.
- (2) Subject to repayment of outstanding loan amount of India Bulls, the Respondent to pay Rs. 76,23,899/- to the Complainants, together with Interest @ 10.75% p.a. from 15.10.2018 till final realization.
- (3) The Respondent to pay Rs.20,000/- to the Complainants as costs of this complaint.
- (4) The Complainants to execute cancellation deed at the cost of the Respondent.
- (5) The Respondent to pay the aforesaid amounts within 30 days from the date of this order.

Mumbai (Camp at Pune)
Dated :-3/04/2019

10/15-4-2019
(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA, Pune