

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.**

COMPLAINT NO: CC006000000057576

Sureshkumar Singh

... Complainant.

Versus

Lodha Developers Limited
(Lodha Amara - Tower 1 - 5, 7 - 19)

... Respondents.

MahaRERA Regn: P51700001065.

Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

Appearance:

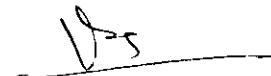
Complainant: Adv. Anil S. Dhanwani.

Respondent: Adv. Akshay Pare.

FINAL ORDER.

24th April 2019.

The complainant contends that respondent issued allotment letters of two units bearing nos. 2101 & 2102 in building W-13 of their project which was named 'Big Bang' and subsequently re-named as 'Lodha Amara' situated at Village Balkumbh, Kolshet, District Thane. The booked flats are 1BHK flats as mentioned in allotment letters and agreements for sale. He received possession offer letter from the respondents on 18.08.2018 wherein the respondents directed him to pay Rs. 9,15,945/- for flat no. 2102 and Rs. 9,14,189/- for flat no. 2101. The complainant made the payment of Rs. 9,15,945/- for flat no. 2102. Thereafter the respondents called the complainant for key handing over ceremony (for taking possession) on 08.12.2018. The complainant came for the same from Muscat, Oman. When he visited the flat, he found that two units of 1 BHK flats were amalgamated by the respondents to convert them into one single 3 BHK flat that too without his consent and knowledge. When he brought this fact



to the notice of the officials of the respondents, they did not respond him. Therefore, he has filed the complaint for seeking refund of his amount with interest and/or compensation under Section 18 of RERA.

2. The respondents have pleaded not guilty. The respondents have admitted that the complainant booked two 1BHK flats and they agreed to give fit out possession on 30.11.2018 with grace period of one year for obtaining O.C. They further contend that grace period of one more year was agreed upon from the receipt of O.C. and therefore, the possession of the flats is to be given till 30.11.2021. They received the O.C. of the flats on 24.01.2018 and they offered the possession thereof on 08.08.2018 i.e. much before the agreed date of possession. The complainant visited the units on 08.12.2018 and made the grievance regarding certain material changes about the configuration of units being offered to him in combined form. Thereafter the respondents made all necessary alterations for separating the units and offered the complainant to visit them by sending email on 19.03.2019. The respondents have contended that now there are two separate 1BHK flats constructed in accordance with the terms of the agreements and hence, they request to dismiss the complainant.

4. Following points arise for my determination and my findings recorded thereon are as under:


POINTS

FINDINGS

- | | |
|---|------------------------|
| 1. Whether the respondents have failed to construct the flats in terms of the agreements for sale? | Affirmative. |
| 2. Whether the complainant is entitled to get refund of his amount with interest and/or compensation? | No, only compensation. |

REASONS

5. There is no denial of the fact that the complainant has booked 1BHK flats bearing nos. 2101 & 2102 of the project. The allotment letters, the agreements for sale and the copies of the approved plan contained in the



agreements for sale are sufficient to show that the respondents agreed to construct 1 BHK flats. It is also admitted before me by the learned advocate of the respondents and impliedly admitted by the respondents in their reply that both the flats were amalgamated and instead of two separate 1 BHK flats, one 3 BHK flat was constructed which was noticed by the complainant on 08.12.2018. Now, the respondents' learned advocate has made the statement that after the grievance made by the complainant, the said flat of 3 BHK is converted into two flats of 1 BHK as agreed.

6. After considering these admitted facts the attempt was made to settle the matter but it failed.

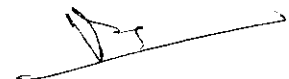
7. I have gone through the agreements for sale and find that the agreed date for fit out possession is 30.11.2018 with grace period of one year. It is mentioned in Clause 11.2 that 'the date on which the occupation certificate is issued (or deemed to be issued as per relevant provisions of legislature) shall be deemed to be the date of handing over of the possession.' In view of this Clause, I find that the date of possession is the date of the occupation certificate. The respondents have received the occupation certificate on 24.01.2018 and therefore, the agreed date of possession is 24.01.2018. I record my finding to this effect. This date is material to ascertain the rights and liabilities of the parties.

8. The respondents offered the possession by their letter dated 18.08.2018 after almost seven months from the receipt of the occupation certificate i.e. the agreed date of possession. Thereafter on 08.12.2018 when the complainant visited the flats he found that instead of two separate 1 BHK flats one 3 BHK flat was constructed. So on the day of agreed possession the units were not separated but two units were amalgamated to make 3 BHK flat. The date of possession i.e. 24.01.2018 is the crucial date to find out whether the flats were constructed/completed as on that day in accordance with the terms of the agreements or not. So I find that on the said crucial date of possession, the flats were not constructed as per the

terms and conditions of the agreements. However, the respondents have separated the two units each of 1 BHK. This fact is covered by Section 18(3) of RERA. It makes the promoter liable to compensate the allottee on his failure to discharge any obligation imposed by him under the Act and in accordance with terms and conditions of the agreement. I find, in the facts and circumstances of the case, that on the date of possession the units/flats were not constructed/completed in accordance with the terms of the agreements for sale. In view of Section 18 (3) of RERA, the complainant is entitled to get the compensation only. He does not get right to withdraw from the project under Sub-Clause(3) of section 18 of RERA.

9. The learned advocate of the complainant has made an attempt to submit that the possession of the flats has not been given on the agreed date of possession but he has not made out the case to that effect. Even he has not raised this issue when the plea under Section 18 (3) was recorded in his presence. He allows the complainant's case to be confined to Section 18(3). Hence, the complainant cannot travel beyond Section 18(3) of RERA and claim relief of refund under Section 18(1) of RERA.

10. Now this takes me to recapitulate the facts. On 08.12.2018, there was only one amalgamated flat of 3BHK. Thereafter the respondents have converted the same into two 1 BHK flats and therefore, the possession is delayed. In my opinion, the complainant is entitled to get the interest by way of compensation on his investment at prescribed rate that is, 2% above the SBI's highest MCLR which is currently 8.75%, from the date of default till getting the possession of the flats. The complainant has produced the statement showing the payment made by him towards the consideration of the flats. He paid Rs. 66,00,736/- for flat no. 2101 and Rs. 75,34,992/- for flat no. 2102. Moreover, he had to come to Bombay from Muscat for taking possession on 08.12.2018 and had to go back without taking possession. Hence, he is entitled to get reasonable compensation of Rs. 5,00,000/- for his travelling expenses, his stay in India and for the mental harassment and



inconvenience faced by him. He is entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the order.

ORDER

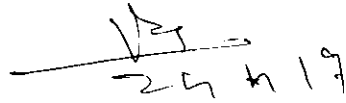
The respondents shall pay the interest at the rate of 10.75 % per annum on Rs. 66,00,736/-paid for flat no. 2101 and on Rs. 45,34,992/- paid for flat no. 2102 from 24.01.2018 till handing over the possession of the flats on 14.05.2019.

The complainant shall take the possession of the flat on or before 14.05.2019.

The respondents shall pay the complainant Rs. 5,00,000/- towards the compensation and Rs. 20,000/- towards the cost of the complaint.

The parties are at liberty to adjust their claims and pay the balance.

Mumbai.
Date: 24.04.2019.



(B. D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.