

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

COMPLAINT NO: CC006000000023201

Rajesh Rajagopalan

....

Complainant.

Verses

Housing Development Infrastructure Ltd.
MahaRERA. Regn. No.: P5180007283

....

Respondent.

Coram: Shri Madhav Kulkarni,
Hon'ble Adjudicating Officer.

**27th September, 2018.
Final Order**

- 1) The Complainant who had booked a flat with Respondent Builder seeks to withdraw from the project and refund of the amount paid along with interest and compensation.
- 2) The Complainant has alleged that he had booked Flat 'A' 801 admeasuring 80.12 sq.mt. in 'A' wing of the project of the Respondent known as Majestic Towers, Subhash Nagar, Nahur Village. Price agreed was Rs. 82,78,355/-. The Complainant has made payment of Rs. 52,05,430/- inclusive of service tax. The Respondent had agreed to deliver possession of the flat in December, 2013. The Respondent failed to deliver the possession on the agreed date. The Complainant is forced to pay interest on loan of Rs. 13 lakhs sought for making payment to Respondents. The Complainant is forced to bear and pay rent burden for last 4 years at Rs. 35,000/- per month. The Complainant

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seeks this amount along with the interest at 25% per annum for 49 months and compensation of Rs. 25 lakhs. The Complainant has approached this Authority for the said relief.

3. The Respondent's representative appeared before me on 11, June 2018. Respondent filed written explanation on 19 June, 2018 and the plea of the Respondent also came to be recorded on that date. Arguments from both sides were heard on 19th June 2018, 20th June 2018, 17th July, 18th July 2018, 31st July 2018. Since I am working at Mumbai Office and Pune in alternative weeks and since Steno was on leave, this matter is being decided now.

4. The Respondent averred that he is the Developer of 'Majestic Tower' a residential cum commercial building at Village Nahur, Bhandup. The Complainant approached the Respondent on 15 May 2011 and booked the said flat by paying Rs.6,50,000/-. Agreement for sale was executed on 8 July 2011 and was registered with the Sub-Registrar. The Complainant has made payment of Rs. 44,61,695/- out of the total consideration of Rs. 82,78,335/-, last payment being made on 13 June 2015. Date of delivery of possession mentioned in the agreement was subject to the conditions stipulated therein. Due to the policy of the Govt. of Maharashtra, there were restrictions on sand mining which resulted in shortage of sand and delay in construction projects. This fact has been admitted by Mr. Khadse, the Minister with Maharashtra Government in his statement on 1 October 2016 where he admitted that there were no sand mining activities in Konkan area and Jalgaon due to litigation since 16 years. The National Green Tribunal had banned Govt. of Maharashtra from granting permits for sand mining on river beds. There was scarcity of building material and shortage of construction labour which caused delay. Effective from

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November, 2016, due to the economic downtrend in the country, the Real Estate Industry is depressed. The Respondent is therefore entitled to extension of time due to the above reasons as per clause 10 of the agreement. The Complainant was well aware of these factors and had acquiesced. The Respondent has done and is doing whatever possible to mitigate the situation. Delay was caused due to the factors beyond its control. There was no failure or default on the part of the Respondent.

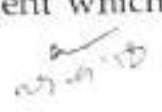
5) On the basis of rival contentions of the parties following points arise for my determination. I have noted my findings against them for the reasons stated below:

Points	Findings
1) Has the respondent committed default in Handing over possession of the flat to the Complainant without there being circumstances Beyond his control?	Affirmative
2) Is the complainant entitled to the reliefs claimed?	Affirmative
3) What Order	As per final order

REASONS

Point No. 1 & 2

6) As stated earlier the parties have advanced their arguments at length. It is submitted on behalf of complainant that respondent executed agreement in his favour on 08th July 2011 and promised to hand over the possession by the end of December 2013. Since last 3-4 years there has been absolutely no progress in construction. My attention is drawn to clause 6 of the agreement which



provides for payment of interest @ 21% p.a. by the allottee to the promoter in case of default in payment of instalment. It is therefore submitted that complainant should be entitled to receive interest on the amount paid by him at the same rate. My attention is also drawn to Section 2 (z) (a) of Real Estate (Regulation & Development) Act, 2016 which provides that the rate of interest chargeable from the allottee by promoter in case of default shall be equal to the rate of interest which the promoter shall be liable to pay the allottee in case of default. It is submitted that the complainant sought loan from India Bulls for making payment to the respondent and paid interest to India Bulls and the complainant is entitled to get the interest amount paid to India Bulls. It is further submitted that the complainant contacted the respondent many times and even sent mails. The respondent never pleaded unavailability of sand. It is further submitted that including registration charges complainant has paid Rs.56,44,953/- to the respondent. My attention is also solicited to copy of emails at Exhibit 'G' annexed to written notes of argument. There is a report of the meeting dated December 5, 2012. Then a mail dated August 2012 informing about inordinate delay in construction. There is reply to the mail dated 26th August 2012 and accordingly work had begun in full swing in Kurla (W) and Andheri sites and was expected to begin soon at Kurla (E) site. Work at the Majestic was expected to start within couple of months. Then there is a mail dated February 7, 2017 informing about minutes of meeting held on 4th February 2017. It is submitted that what was banned was illegal sand mining and not the legal activities.

7) It is submitted by respondent on the other hand that the complainant has not paid anything in cash. 60% work at the site is completed. It is further

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submitted that there was ban on sand mining since the year 2011 and construction activities had come to stand still till the year 2015. Further there was an impact of demonetisation. The complainant was informed about these difficulties from time to time. The respondent has placed reliance on clause 10 of the agreement which provides that the possession of the premises is subject to the fact that the construction of the building is not delayed on account of non-availability of steel, cement and other building materials, water or electricity supply -----, notice, order, Rule, Notification of the Govt. or any other public body or Competent Authority. It is submitted that respondent is entitled to extension of time due to intervening events under clause 10. It is submitted that the respondent is not unduly benefitted from the money received from the complainant. Initially, the complainant did not pray for withdrawal from the project and therefore there is bar of estoppel by conduct. It is submitted that the cheque issued by the complainant bounced. Reliance is placed on the judgement of National Consumer Disputes Redressal Commission in Anshu

Shrivastava Versus Unitech. Attention is also drawn for Section 37 of RERA which confers powers on the authority to issue directions. Reliance is also placed on the Judgment of Bombay High Court in Neelkamal case.

8) The main thrust of the defence of the respondent is that due to the ban on sand mining all the construction activities had come to stand still especially in the state of Maharashtra. The respondent is not denying that the complainant booked the flat in question on 15th May 2011 by making payment of Rs.6,50,000/-. A registered agreement came to be executed on 8th July 2011. It is contended by respondent that various approvals were obtained by the respondent in the year 2010. The policy of the Govt. putting ban on sand mining

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was upheld by Hon'ble High Court in its judgement dated 12th Jan. 2011. By the policy of Oct. 2011. The Govt. had banned sand mining unless requisite permissions were obtained. Those restrictions came to be upheld by all fora and that resulted in shortage of sand which was recognised by then Maharashtra Minister Mr. Eknath Kadse as well as Union Minister Shri Nitin Gadkari. There were moves to import sand from foreign countries.

9) As rightly pointed out by the complainant what was banned was illegal sand mining. Sand mining after obtaining due permissions was not prohibited. No doubt illegal sand mining became a menace and was causing environmental imbalance. However, there was no total ban on sand mining. Legal activities were not stopped. May be that illegal sand mining had contributed to the boom in construction industry. However, legal supplies had continued as ever. Again such matters had come to light in 2010-2011 that is exactly when present agreement was executed. The respondent is a big company, professionally dealing with construction activities. It was required to know the impact of illegal sand mining and consequent restrictions that were expected. Then there were alternative sources to make sand available for construction activities including import of sand and use of alternative materials. This cannot be a justification for putting stop on the construction activity by the respondent. Date of delivery of possession and price of the flats were at the discretion of the respondent. The respondent was required to decide on those points by taking into consideration of these circumstances. Ban on illegal sand mining cannot be pleaded by the respondent as justification for delay in completing the project.

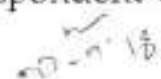
10) The respondent is alleging that as on today 60% work is completed. In the RERA registration respondent has given date of delivery of possession as

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2020. It is well settled that the parties are bound by the terms of agreement. Extending the date of possession to 2020 is a unilateral act on the part of the respondent and therefore not binding on the complainant. The justification sought to be given by the respondent in delivery of possession is not acceptable. Demonetisation effected in Nov. 2016 is also sought to be given as a reason for delay in delivery of possession. When the agreed date of delivery of possession was December 2013 such reason cannot be pleaded by the respondent to justify delay.

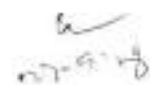
11) I am of the opinion that the respondent has committed breach of the terms of agreement regarding the date of delivery of possession. The respondent has failed to prove that the delay has occurred due to the reasons beyond his control. The respondent was aware of all those circumstances while giving the date of delivery of possession. I am therefore having no hesitation in answering point No.1 in affirmative.

12) It is true that in the proforma complaint the complainant prayed for interest @ 25% p.a. on the amount of Rs.52,05,430/- for a period of 49 months and further till delivery of the flat and also prayed for rent @ Rs. 35,000/- per month and also compensation of Rs. 25 lakhs for mental agony and hardship. On 20th April 2018 before Hon'ble Chairperson the complainant stated that he does not want to continue in the project and wants to withdraw and seeks interest and compensation under Section 18 of RERA. No formal amendment has been carried out in the complaint for reasons best known to the complainant. As discussed above, the prospect of the respondent handing over possession of flat to the complainant are bleak. It is alleged that the construction activity has come to a sand still. If that is the case it is he respondent who has



to blame himself. The complainant claims that he sought loan from India Bulls for making payment to the respondent. Agreement with India Bulls is not placed on record. Vide annexure 'B' to the written explanation the respondent has given the chart of payments received from complainant. Vide annexure 'C' it is shown that a total amount of Rs.50,78,175/- was received. It includes Rs. 4 lakhs for extra work, Rs. 1,25,342/- towards Service Tax and Rs. 82,783/- towards VAT. It may be noted that in the proforma complaint, the complainant claimed to have paid Rs.52,05,430/-. In the statement of claim produced thereafter complainant claimed to have paid Rs.72,54,825/-. The reason appears to be further payment of interest to India Bulls. The rate of interest charged by India Bulls has nowhere been explained. Only the gross amount of interest is being claimed by the complainant. He is also claiming interest from the respondent, in view of clause 10 in the agreement. Such double benefit cannot be claimed by the complainant. He will be entitled to claim interest under Rule 18 of the Maharashtra Rules which is State Bank of India's Highest Marginal Lending rate, i.e. 8.65% plus 2% = 10.65% on amount of Rs.52,05,430/- except stamp duty amount if included which can be refunded.

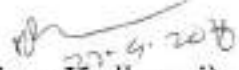
13) The complainant has also claimed rent @ Rs. 35,000/- per month. He has not adduced any evidences about paying such rent. There is no evidence that the complainant was required to hire alternate accommodation for want of accommodation. The complainant has also claimed extravagant amount for mental agony and pain. In my opinion compensation of Rs.5,00,000/- will meet the end of justice. I therefore answer point No.2 in the affirmative and proceed to pass following order.



ORDER

- 1) The complainant is permitted to withdraw from the project.
- 2) Respondent to refund Rs.52,05,430/- except stamp duty amount if included and which can be refunded.
- 2) to the complainant together with interest @ 10.65% p.a. from the date of payment till final realisation.
- 3) Respondent to pay Rs. 5,00,000/- to the complainant as compensation.
- 4) The respondent to pay Rs. 20,000/- to complainant as the cost of this complaint.
- 5) The respondent to pay the above said amount within 30 days from the date of this order.
- 6) Complainant to execute cancellation deed at the cost of the respondent.

Mumbai.
Date:27.09.2018


(Madhav Kulkarni)
Member & Adjudicating Officer
MahaRERA