

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.

COMPLAINT NO: CC0060000000044245.

Ram Prakash Joukani

... Complainant.

Versus

Man Global Limited

... Respondents.

COMPLAINT NO: CC0060000000044246.

Bharat Prakash Joukani

... Complainant.

Versus

Man Global Limited

... Respondents.

(Shanti Sadan)

MahaRERA Regn: P51800008793

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

Appearance:

Complainant: Adv.K.K.Ramani
Adv.Raina Bhagatwala.
Respondents: Adv.Ketan Vaidya, DGM-
Legal
Suraj Kulkarni,CEO.

FINAL ORDER

24th September 2018.

Mr. Bharat Prakash Joukani booked flat no. 1201 and Mr. Ram Prakash Joukani booked flat no.1202 both having carpet area of 1110 sq.ft. along with butting / affiliated / connecting area of 118 sq.ft. with two covered automated car parking in respondents' registered project Shanti Sadan, Bandra (West). The respondents agreed to deliver the possession of



the flats on or before 30th June 2016. However, they failed to hand over the possession on the agreed date. Hence, the complainants seek interest on their investment under Section 18 of the Real Estate (Regulation & Development) Act, 2016 (RERA).

2. The complainants allege that the respondents have reduced the area of their flats by 55 sq. feet and thus failed to adhere to sanctioned plans and project specifications and thereby contravened Section 14 of RERA. They also illegally sold lift lobby.

3. The respondents have pleaded not guilty but they have not filed their reply. They have simply made oral submissions during the hearing of the matters.

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

POINTS

FINDINGS

1. Whether the respondents have failed to hand over the possession of the flats on the agreed dates?	Affirmative.
2. Whether the respondents have reduced the area of the flats?	Negative.
3. Whether the respondents are entitled to recover the price of 118 sq.ft. connected/affiliated area of lift lobby from complainants?	Negative.

REASONS

5. The respondents have not disputed the fact that the complainants booked the flat nos. 1202 & 1201 respectively, both of 1110 sq.ft. in area with abutting/connecting area of 118 sq.ft. They have not disputed the fact that they agreed to hand over the possession of the flats on or before 30th June 2016 in habitable conditions and with all amenities as per Annexure-III for further fit outs. The complainants have placed the possession letter issued by the respondents dated 24.08.2017 on record which shows that

respondents received the part occupancy certificate of the flats on 23.08.2017. Therefore, it is clear that till 23.08.2017, the flats were not ready. Mr. Ramani, submits that the occupancy certificate is conditional one, the respondents were required to obtain the certificate under Section 270 A of MMC Act. Section 270A requires the water connection of pure water and therefore, he submits that even on 23.08.2017 the flats were not ready and in habitable conditions as they did not have water connection. He further submits that the complainants have purchased these costly flats with two automated car parking. The respondents also admit the fact that the provision for automated car parking was not in place at the time of date of possession letter. Therefore, it appears that even after receiving the occupancy certificate all the agreed amenities were not provided. The respondents have tried to make out the point that to make the flats habitable, it was not necessary to make the car parking facility operational. It is but natural that one who purchases the costly flat and when the respondents call upon him to clear all the dues, the purchaser will expect to have all the agreed facilities in place. To conclude, I hold that even on 24.08.2017, the date of possession letter, the flats were not ready with all amenities. Respondents have not disputed the fact that they have received Rs. 5,14,00,000/- from each complainant. Therefore, complainants claim interest at prescribed rate on their investment from 01.07.2016 till handing over the possession with all agreed amenities. The complainants are entitled to get interest which is 2% above the SBI's highest MCLR which is currently 8.5%. I hold the complainants are entitled to get this relief.

6. The complainants allege that while making the construction, the area of the flats has been reduced by 55 sq.ft. There is serious dispute about this issue between the parties. Ultimately, Advocate Mr. Ramani has agreed not to dispute the contents of the plan approved by the Bombay Municipal Corporation and go by it. It shows that the area of flat numbers 1201 & 1202



is 104.24 sq. mtrs. which is equivalent to 1122 sq.ft. each. Therefore, I do not find that the area of the flats is reduced.

7. It appears from the agreement of sale that the respondents have agreed to sell the area of lift lobby and the area occupied by the ducts. They at the time of the agreement calculated its area as 118 sq.ft. After perusing the approved plan, I find that the staircase rests at one side of the lobby. There are lifts at two sides and lobby having the area of 18.70 sq.mtrs.(198 sq. ft.) excluding the area of ducts lying in between. The respondents submit that they are going to move the corporation for acquisition of its FSI by paying its charges and then they shall recover its price from the complainants because it will be in exclusive use of complainants. I do not agree with them, because RERA defines common area which includes staircases, lifts, lift lobbies, common entrances and exits of the buildings. Mr. Ramani has relied upon Nahalchand Laloochand Pvt.Ltd.-V/s- Panchali Co-operative Housing Society Ltd.-2010 STPL(web) 673. The Supreme Court in this case decided under the Maharashtra Ownership Flats Act 1963 has held that the promoter has no right to sell any portion of the building which is not a flat. In short, the Apex Court has held that the area of common amenities cannot be sold. Hence, I find that the respondents cannot recover the money for the affiliating/connected area of 118 sq.ft. from the complaints. These were the main issues upon which the parties were at dispute. Other issues have not been pressed.

8. Complainants are entitled to get Rs. 20,000/- towards the cost of their respective complaint. Hence, the following order.

ORDER

The respondents shall pay to each complainant simple interest at the rate of 10.5% per annum on Rs. 5,14,00,000/- w.e.f. 1st July 2016 till handing over the possession of the flats with all agreed amenities.



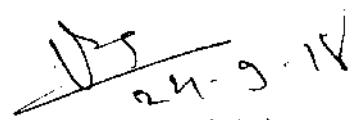
The respondent shall refund Rs. 61,73,878/- charged for connected/affiliated area (lift lobby) of 118 sq.ft. on the basis of pro rata rate.

The respondents are entitled to get the amount of refund adjusted towards the dues payable by the complainants and shall pay the balance, if any.

The respondents shall pay each complainant Rs. 20,000/- towards the cost of their complaints.

Mumbai.

Date: 24.09.2018.


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