

THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY, MUMBAI

COMPLAINT NO: CC006000000044065

*Satpalsingh Jwalasingh Gadhok Complainants .
Ravindrapal Singh Gadhok
Manpreet Singh Gadhok

Versus

M/s Reliance Enterprises Builder Respondents.
& Developers.
(Hill View)
MahaRERA Regn: P51800005482

Coram:

Shri B.D. KAPADNIS.
Member & Adjudicating Officer,
MahaRERA, Mumbai

Appearance:

Complainants : Adv. Shashikant Kadam.
Respondents: Adv. Divya M. Chopra.

Final Order.

12th September 2018.

Pleadings of complainants.

The complainants have filed this complaint u/s. 18 of Real Estate Regulation and Development, Act 2016 (RERA). They contend that they booked Apartment No. 1404, B-Wing of Respondent's Hill View project situated at Chembur. This apartment is in the sale component of the Respondents' SRA project. The respondents agreed to deliver the possession of the flat on or before 31st December 2015. The respondents have failed to deliver the possession of the flat by 31st December 2015. The complainants want to withdraw from the project and claim their amount with interest and compensation.

Defence of respondents.

2. The respondents have filed the reply to submit that the complainants were aware of the fact that the project was being



developed under SRA scheme and therefore the possession of their flat was likely to be delayed beyond the agreed date of possession. Not only that, this was the tentative date depending upon the availability of the building materials and the possession was likely to be delayed because of the Govt. Rules, orders, regulations, etc. They admit that they have not handed over the possession of the flat to the complainants on agreed date because the letter of intent required them to seek various permissions and approvals mentioned in it. The main reasons which delayed the project are;

1. Acquisition of CTS No.148, the adjoining plot. One of the conditions is to acquire this private plot and to include it in the scheme. Its owner was not traceable and therefore the acquisition proceeding was started by SRA on 30.03.2015. But thereafter the said authority did not follow it up and the plot is not yet acquired. Hence, FSI of the same plot have not been granted to the respondents.
2. D.P. Road setback by MCGM- as per the condition laid down by LOI, the respondents' Architects applied to MCGM on 25.11.2013 to get D.P. Road setback land demarcated from A.E. (Survey/D.P./TNC/Dept. of MCGM) and to hand it over free of cost and free of encumbrances to MCGM for obtaining CC for the last 25% of sale built up area. However, they did not get any response from 25.11.2013.
3. NOC for 60 mtrs. Wide Anik Bandra Pinjrapole road. In this context to meet the requirement of L.O.I. they applied on 28.12.2009, however, on 23.4.2010 they received a letter from MMRDA to rehabilitate a mosque. On 20.4.2012

they explained their inability to accommodate the said mosque in SRA scheme and that issue was pending till 13.10.2016 when they filed revised application for NOC.

4. High Rise NOC : They applied for High Rise NOC on 10.03.2013. The concerned authority issued it on 19.04.2017.

5. Revised LOI letter dated 7.6.17 - The application for revised LOI have been submitted on 7.6.17 and it is pending. Hence, they contend that the project is delayed.

3. Therefore, respondents contend that the complainants are not entitled to get the refund of their amount especially when the project is nearing its completion.

4. The following points arise for determination. I record my findings thereon as under: -

POINTS.	FINDINGS.
1. Whether the respondents failed to deliver the possession of the flat on agreed date?	Affirmative.
2. Whether the respondents have been prevented by the causes beyond their control from completing their project in time?	Negative.
3. Whether the complainants are entitled to get refund of their amount with interest?	Affirmative.

Reasons:

Legal Provision. -

5. Section 18 of RERA provides that when the promoter fails to complete or is unable to give possession of apartment in accordance



with the terms of the agreement for sale or duly completed by the date specified therein, he shall be liable, on demand to the allottees in case allottee wishes to withdraw from the project, to return the amount received by him with interest at prescribed rate and compensation also.

6. The rules framed under the Act have prescribed the rate of interest. It is 2% above the State Bank of India's highest marginal cost of lending rate. It is currently 8.5%. Hence, the allottee is entitled to get the interest @ 10.5% from the date of default till handing over the possession of the flat.

Delayed Possession:

7. The parties are not at dispute on the point that the respondents agreed to deliver the possession of the flat to the complainants by the end of December 2015 but they have not delivered it till the date of complaint. Hence, I hold that the respondents have failed to hand over the possession of the flat on the agreed date. The respondents summoned official from SRA but failed to adduce his evidence.

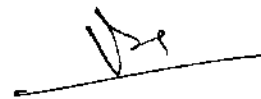
Reasons for Delay:

8. The learned Advocate of respondents submits that the respondents were required to take several permissions and approvals from various authorities mentioned in the letter of intent dated 19.10.2011. She has pointed out the reasons of delay, viz. acquisition of plot bearing CTS No.148; D.P. Road setback issue; rehabilitation of the mosque; the delay caused by the authorities in granting high rise NOC and revised letter of intent dated 7.6.17 which are referred to above. According to her, these causes were beyond the control of the promoter and therefore they could not complete the project in time.



9. At this stage it is necessary to keep in mind that Maharashtra Ownership of Flat Act, 1963 is in force and Section 88 of RERA permits its application. The agreement for sale have been executed in accordance with the provisions of Maharashtra Ownership of Flat Act. Section 8 of the said Act provides remedy of refund of the allottees' amount on promoter's failure to give possession in time. Its clause (b) provides that if the promoter for reasons beyond his control is unable to give possession of the flat by the date specified and a period of 3 months thereafter or a further period of 3 months, if the reasons still exist, then promoter shall be liable on demand to refund the amount already received by him with simple interest @ 9% p.a. from the date he received the same till they are refunded.

10. In view of this provision, I find that even if it is proved by the respondents that they were prevented by the causes which were beyond their control to complete the project in time, they are entitled to get the extension of 6 months at the most and not more than that. In **Neelkamal Realtors Pvt. Ltd. Versus Union of India Writ Petition No.2737 of 2017**, Hon'ble Bombay High Court in its Ordinary Original Civil Jurisdiction have held that the promoter having sufficient experience in open market, is expected to have a fair assessment of time required for completing the project. So when the promoter offers any flat for sale and specifies the date of possession, he have to assess all the difficulties which he is likely to face in completing the project. Once he specifies the date to deliver the possession, he is bound by it. However, in order to attract the customers, promoter specifies the earlier date though he knows that he would not complete the construction on the date so specified. This is nothing but the dishonesty of the promoter and he indulges in such unfair practice in



order to attract the customers for selling his product and to grab their money at the earliest opportunity. Here, in this case the respondents have mentioned that since beginning of the launch of the project they were aware of the fact that various NOCs, permissions and approvals were required and the problems they were likely to face. Despite these facts, they have executed agreement for sale with the complainants in July 2013 and promised to deliver the possession by end of December 2015. Therefore, I find it difficult to hold that respondents have been prevented by the causes which were beyond their control, to complete the project in time. The pleadings of the respondents further demonstrate that they have not acted vigilantly to pursue the matter with the authorities. They cannot take advantage on their own wrongs and reasons assigned by them.

Entitlement of the Complainants.

11. The complainants have filed the statement of their claim marked exhibit- A. The respondents have admitted the receipt of all amount. Complainants have paid of registration charges Rs. 33,160/-. The complainants have filed the affidavit showing that Rs. 36,300/- have been spend by him for completing the process of loan, they include franking, registration and mortgage charges paid to DHFL. The complainants contend in the same affidavit that they paid Rs. 3,60,000/- in cash for car parking charges. The respondents have not filed any counter affidavit to challenge these payments totally amounting to Rs. 3,96,300/-. The respondents are liable to reimburse these amount because the complainants cannot be made to sustain this loss caused due to respondents' failure to complete the project on time. The complainants are entitled to get interest at prescribed rate which is 2% above the SBI's highest MCLR. It is currently 8.5%.



12. The complainants are entitled to get refund of the amount paid by them to the respondents because respondents have failed to deliver the possession of the flat on agreed date. Respondents have defaulted in keeping their promise and hence they must shoulder liability of repayment. In addition to the above amount, the complainants are entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the order.


ORDER

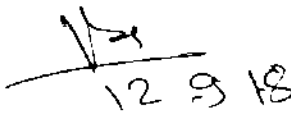
- A. The respondents shall refund the amount mentioned in payment format marked Exh. 'A' and Rs. 3,96,300/- mentioned in affidavit with simple interest @ 10.5% p.a. from the respective dates of their payment till they are refunded to the complainants.
- B. Respondents shall pay Rs. 20,000/- to the complainants as the cost of the complaint.
- C. Exh. 'A' shall form the part of this order.
- D. The charge of aforesaid amount shall be on the flat booked by the complainants till they are refunded.
- E. On the satisfaction of the claim, the complainants shall execute the deed of cancellation of agreement for sale in respondents' favour at respondents' cost.

Mumbai

Date: 12.09.2018.

*Corrected u/s 39 of RERA. On 4.10.2018.


Member and A.O.


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

Set A
R
Mazgaon

TABLE - A

Complaint No. CC006000000044065

HILL VIEW - CHEMBUR

Mr. Satpalsingh Godhak, Mr. Ravindrpal Singh Godhak, Mr. Manpreet Singh Godhak

Flat No. B/14/1404

Sr No	Date	Amount	Purpose	Receipt No/ Cheque NO With bank name
1	02.04.2013	Rs. 5,00,000/-	Amount paid to developer	403103/ Dena Bank(Mazgaon)
2	02.04.2013	Rs. 5,00,000/-	Amount paid to developer	403104/ Dena Bank(Mazgaon)
3	12.04.2013	Rs. 5,00,000/-	Amount paid to developer	403244/ Dena Bank(Mazgaon)
4	12.04.2013	Rs. 6,00,000/-	Amount paid to developer	203114/ Dena Bank(Mazgaon)
5	08.07.2013	Rs. 2,00,000/-	Amount paid to developer	403117.404465/ Dena Bank (Mazgaon)
6	12.04.2013	Rs. 3,60,000/-	Cash (Parking Charges)	
7	17.07.2013	Rs. 87,00,000/-	Loan Amount (Paid by DHFL to Developer Directly)	
		Total - Rs. 1,13,60,000/-		

Table - B

Sr No	Date	Amount	Purpose	Receipt No/ Cheque No with bank name
1	03.06.2013	Rs. 33160/-	Registration Charges (paid at the time of stamp duty)	Dena Bank (Mazgaon)
2	04.06.2013	Rs. 4,54,000/-	Service Tax / VAT (Paid to Developer)	Dena Bank (Mazgaon)
3	18.07.2013	Rs. 18,000/-	Franking Charges for DHFL	Cash
4	04.06.2013	Rs. 15,000/-	Registration Charges for DHFL	Cash
5	02.09.2013	Rs. 3,300/-	Mortgage Fees for DHFL	Cash
6	12.07.2013	Rs. 1,12,500/-	Processing Fee for DHFL	Dena Bank (Mazgaon)
		Total - Rs. 6,35,960/-		

TABLE - C

Sr No	Date	Amount	Purpose	Receipt No/ Cheque No with bank name
1	03.06.2013	Rs. 5,55,000/-	Stamp Duty	Dena Bank (Mazgaon)
		Total - Rs. 5,55,000/-		

1 Satpal Singh
2 Ravinder Singh
3 Manpreet Singh
Complainants Sign

THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY, MUMBAI

COMPLAINT NO: CC006000000044065

*Satpalsingh Jwalasingh Gadhok Complainants.
Ravindrapal Singh Gadhok
Manpreet Singh Gadhok

Versus

M/s Reliance Enterprises Builder Respondents.
& Developers.
(Hill View)

MahaRERA Regn: P51800005482

Coram:

Shri B.D. KAPADNIS.
Member & Adjudicating Officer,
MahaRERA, Mumbai

Appearance:

Complainants: In person.
Respondents: Adv. Divya M. Chopra.

Review Order

The complainants have filed the application under section 39 of RERA and Rule 36 of Maharashtra Real Estate Regulatory Authority (General) Regulations 2017 for review of the order passed on 12.09.2018 and rectified on 04.10.2018. The complainants contend that they booked the flat under subvention scheme. They were required to pay 20% amount at the time of booking of the flat and remaining 80% amount was financed by DHFL. The respondents collected the entire loan amount of Rs.87,00,000/- from the financier and the respondents were bound to pay interest on it till the date of possession. Therefore, they request that since they are withdrawing from the project, the respondents be directed to repay the loan with accrued interest directly to the financier and they be relieved from the liability to pay it after collecting the amount from the respondents as directed. Adv. Ms. Divya Chopra, for the respondents submits that the respondents had some talk with the financier on this issue.

2. It is true that the amount of loan Rs.87,00,000/- has been directly collected by the respondents on 17.07.2013 from the financier and they were responsible to pay its interest till the possession of the flat is handed over. The complainants complain that the recovery

team of the financier very often harass them. Therefore, they may be relieved of the responsibility of recovering the loan amount from the respondents and then to repay it to the financiers. I am convinced that it is the responsibility of the respondents to repay the loan since the complainants have been withdrawing from the project.

3. The second aspect of the matter is; the complainants have paid Rs.5,55,000/- towards stamp duty. The complainants want to withdraw from the project. The agreement for sale has been executed on 4.6.2013. Section 48 of the Maharashtra Stamp Act provides that where any agreement to sale of immovable property on which stamp duty is paid under Article 25 of the schedule 1, is registered under the provisions of Registration Act, 1908 and thereafter such agreement is cancelled by a registered cancellation Deed for whatsoever reasons before taking the possession of the property which is the subject matter of such agreement, within a period of five years from the date of execution of the agreement to sale, then the application for relief may be made within a period of 6 months from the date of registration of cancellation Deed. The complainants have been directed to execute the Deed of cancellation on satisfaction of their claim and this event will occur only after 5 years of the execution of the agreement for sale. Therefore, the complainants will not be able to seek the refund of the stamp duty. The respondents have failed to hand over the possession on agreed date and hence now they have incurred liability to reimburse the amount of stamp duty.

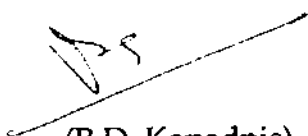
4. In view of the rectified order and newly exhibited Exhibit 'A', it is necessary to clarify the operative order. Hence, the following order.

****O R D E R**

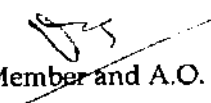
- A. The respondents shall refund the amount mentioned in payment format marked Exh. 'A' except loan amount of Rs.87,00,000/- with simple interest @ 10.5% p.a. from the respective dates of their payment till they are refunded to the complainants.
- B. The respondents shall pay the loan amount of Rs.87,00,000/- with its interest directly to the financier DHFL and DHFL shall not recover it from the complainants.

- C. Respondents shall pay Rs. 20,000/- to the complainants as the cost of the complaint.
- D. Exh. 'A' shall form the part of this order.
- E. The charge of the amount due to the complainants shall be on the flat booked by them till it is refunded.
- F. On the satisfaction of the claim, the complainants shall execute the deed of cancellation of agreement for sale in respondents' favour at respondents' cost.
- G. This order and modified operative order be uploaded.

Mumbai
Date: 12.09.2018.


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

****Corrected u/s 39 of RERA. On 4.10.2018 & reviewed on 8.10.2018.**


~~Member and A.O.~~

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

COMPLAINT NO: CC006000000044065

Mr Satpalsingh Jwalasingh Gadhok,, ---Complainants.
Mr Ravindrapal Singh Gadhok
Mr Manpreet Singh Gadhok

Versus

M/s Reliance Enterprise Builder and Developers. ---Respondents.
(Hillview)

MahaRERA Regn: P51800005482

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


**ORDER ON THE RECOVERY APPLICATION FILED IN THE
COMPLAINT.**

The complainants report non-compliance of the order passed in the matter. The respondents are represented through Adv. Shweta Shirke. She submits that they have not complied with the order and seeks time to submit schedule of repayment. More than sufficient time has already been given.

2. Hence, issue recovery warrant under Section 40(1) of RERA against the respondent.

3. The complainant to produce the statement showing the amount which has become due.

Mumbai.
Date:01.04.2019.


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