

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI
COMPLAINT NO: CC006000000001071

Mr. Sharan Lund and Mrs Vandana Sharan LundComplainants

Versus

M/s. Epitome Residency Private Limited

MahaRERA Registration No - P51800003270

..... Respondent

Coram: Hon'ble Dr. Vijay Satbir Singh, Member 1

Advocate Mr. Mustafa Kanchwala for the complainants.

Advocate Mr. Vibhav Krishna a/w Advocate Khatri for the respondent.

Date : 28th November, 2017

Order

1. The complainants have filed this complaint seeking directions from this Authority for peaceful possession of apartment with occupation certificate at the earliest. They have also requested to give the necessary directions to the respondent to pay compensation with interest @ 12% p.a. against delayed possession, rental hardship and agony caused in the MahaRERA registered project known as "Imperial Heights , Wing C and D " bearing No. P51800003270.
2. This matter was heard by this Authority on various dates and finally on 16-11-2017. Both the parties were represented by their respective Advocates. After conclusion of oral arguments, the parties were allowed to file written submissions on record of this Authority within a week.
3. The complainants had purchased a 2.5 BHK flat in the MahaRERA registered project of the respondent for total amount of




Rs.1,14,68,000/- as per the registered agreement dated 11-09-2009. The agreed date of possession was on or before March, 2011. However, the project got delayed and the complainant could not get the possession of his flat on time.

4. The respondent has argued that the delay was due to the reason beyond his control and there was no willful violation of any provision of the RERA Act. The respondent further stated that the construction of the project is delayed due to various reasons, external causes, obstacles, administrative uncertainty, policy paralysis of statutory authorities, force majeure which were beyond the control of the respondent. Same are as follows;
 - a) The plot under the project is held by the BEST Undertaking and same was to be developed with private participation for the first time and therefore, the proposals require the approval of the Urban Development department of Government of Maharashtra. The procedural delay was inherent in the scheme itself.
 - b) The development agreement was executed in 2007 by which the respondent would be allowed to use full potential of TDR i.e. 60,350 sq.mtrs on the said project. The MCGM refused/delayed to approve the plan showing loading of the TDR on the said project and the said issue was resolved on 1/3/2014 when the Government issued Notification permitting the use of TDR on the plot held by the BEST. The said process caused delay in construction work on site.
 - c) He further stated that due to the administrative conflict amongst the Government departments, the approvals regarding the project were delayed and in the present case the approval granted by the Hon'ble then C.M in the year 2010 was stayed by the succeeding C.M. Thereafter, due to massive fire broke out in Mantralaya where important files were burnt including this project file and almost one year time was lost to reconstruct the said file.

- d) Even the statutory authorities and the State Government were not very clear on the issue of development of the BEST land. Due to absence of any precedent, clarity and shifting stand by MCGM, the Urban Development Department and the State Government in grant of permissions, the project got delayed. Further, various notifications were issued by the State Government from time to time and various restrictions were imposed on the development due to use of TDR on the BEST plot, even though the premium was charged @ Rs.2,500/- per sq.mtr. to the respondent for utilization of the said TDR and this is also one important reason for the delay.
- e) Further, the part of the said plot was wrongly classified under CRZ-II vide notification dated 20-10-2006. When the State government was not ready to rectify the said error, the respondent constrained to file Writ Petition No. 39 of 2016 before the Hon'ble High Court at Bombay and the said error was rectified vide order dated 15-10-2016 by the Hon'ble High Court at Bombay.
- f) Even the DCR was amended on 6-1-2012 whereby the consent of fungible FSI was introduced against the payment of premium due to which the plans were required to be changed. Further, due to inconsistent stands of the statutory authorities, the building plans of Tower A, B C & D were amended from the year 2008 till Jan 2015.
- g) The respondent were unable to resolve the insurmountable obstacles which were beyond their control, and the work was standstill for years and therefore, the respondent vide letter dated 6-6-2012 informed all flat purchasers about the delay in construction activities and gave them option to cancel the booking and collect the refund amounts towards booking.

5. In addition to the above facts, the respondent further stated that the complainants flat is ready for fit-out occupation subject to occupation certificate. He has shown photographs of the building and plan showing the flat, which clearly shows that the construction work was nearing completion. Even



the respondent has addressed letter dated 20-06-2017 to Hon'ble C.M., Maharashtra and other statutory authorities, placing on record the various difficulties. He is ready to handover the possession of the flat to the complainants with occupancy certificate by March 2018, much before the revised date of possession mentioned in the registration with MahaRERA. Further, the present market value of the said flat as per the ready Reckoner valuation, has escalated multifold and therefore, the complainants want to continue with the agreement and simultaneously they are claiming 12% interest per annum from March 2011 and also raised false and fabricated claim of compensation without any supporting documents. Till date the complainants have paid only Rs. 67,92,500/- only and the balance amount of Rs. 46,75,500/- is due with other charges towards various taxes and not made further payment to the respondent. In view of these facts, the respondent requested to dismiss the present complaint filed by the complainants.

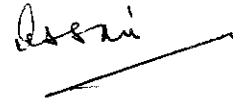
6) Considering the arguments advanced by both the parties and after perusing the record, this Authority feels that the project under reference has got delayed due to the reasons beyond the control of the respondents as stated above and the said grounds of delay are justified grounds for delay caused in completing the project.

7) Since the respondent has agreed to hand over the possession of the flat to the complainant by March 2018, this Authority directs him to give possession of the flat to the complainant on or before 31st March 2018 failing which he would be liable to pay interest to the complainant from April 2018 till the actual date of possession on the entire amount paid by the complainants to the respondent. The said interest shall be at the rate of the State Bank of India's highest Marginal Cost of Lending Rate (MCLR) prevailing at such time plus two percent as prescribed under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects' Registration of Real Estate Agents, Rates of interest and Disclosure on Website) Rules 2017. The respondent shall pay the interest within a period of thirty days from the date on which such interest, becomes due and



payable to the complainant and shall also submit a compliance report before this Authority within a period of 30 days from the date of payment.

8) With the above directions, the complaint stands disposed of.



(Dr. Vijay Satbir Singh)
Member-1