

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

Complaint No.CC006000000012696

1. **Mr. Zoher Fakhruddin Nafar,**
2. **Mrs. Tasnim Zoher Nafar,**

C/27, Machiswala Compound,
Station Road, Santacruz (W),
Mumbai-400054.

.. **Complainants**

Versus

**Housing Development and
Infrastructure Ltd.**

Office at "HDIL Towers",
9th floor, Anant Kanekar Marg,
Station road, Bandra (East),
Mumbai-400 051.

.. **Respondent**

**Coram : Shri M.V. Kuilkarni
Hon'ble Adjudicating Officer**

Appearance :

Complainant : In person

**Respondent : V.K. Madan Mohan,
Authorized Representative**

FINAL ORDER

(7th Feb. 2019)

1. The Complainants, who had booked a flat with the Respondent/Builder, seek withdrawal from the project and refund of the amount paid, with interest and compensation.

✓
7-2-19

2. The Complainants have alleged that they booked Flat No.403 in 'A' Wing in Building No.9, Sector 6 at HDIL Paradise City, at village Mahlm District Palghar on 01.01.2011 by paying Rs. 1,00,000/. The agreement was executed on 31.12.2011. Possession date of flat as per agreement was October, 2013. The Complainants have paid total amount of Rs. 3,29,047/-. Respondent has not given possession till this date. Hence this complaint.
3. The matter came up before the Hon'ble Member on 28.08.2018 and came to be transferred to the Adjudicating Officer. On 19.12.2018 plea of the Respondent was recorded. Respondent also filed written explanation and arguments for the parties were heard. As I am working at both Pune and Mumbai Offices, this matter is being decided now.
4. The Respondent has alleged that Complainant has paid Rs. 2,67,866/- towards consideration of the flat. Rs. 20,981/- were paid towards service tax and VAT. The price of the flat as per clause 4 of the agreement was Rs. 3,39,330/-. It is agreed that under clause 33, date for delivery of possession was 31.10.2013. It is alleged that under clause 32 proviso, developer was entitled to reasonable extension of time under certain circumstances. There was delay in issuing environmental clearance. There was scarcity of sand for constructions in Maharashtra. There was scarcity of construction labour and other support services due to demonetisation that was effected. Thus there was delay due to reasons beyond the control of the Respondent. Respondent had planned mega township in 2010 and plans

7-2-19

were sanctioned by Collector in 2010. Respondent thereafter tried to procure various approvals including environmental clearance on 30.04.2010. Despite constant follow up, environmental clearance was received only on 2nd March, 2012. As on 27th Feb. 2012, Hon'ble Supreme Court upheld the ban on sand mining. Maharashtra Government thereafter issued directives. The National Green Tribunal passed interim order on 05.08.2013 putting restrictions on sand mining. Due to acute shortage of sand, developers imported sand from Indonesia and Philippines and Maharashtra Govt. acknowledged shortage of sand. Due to demonetisation, the developers were forced to default to the financial institutions. Construction labours which were mainly from other States, returned to their villages. The Complainant has not raised objection up till now. The Respondent has completed 20% of the construction, which is more than the contribution made by the Complainant. The complaint therefore, deserves to be dismissed.

5. On the basis of rival contentions, following points arose for determination. I have noted my findings against them for the reasons stated below.

POINTS

FINDINGS

- | | |
|-----|---|
| (1) | Has the Respondent failed to deliver possession of the flat to the Complainant as per the agreement, without there being circumstances beyond his control ? In the Affirmative. |
|-----|---|

7-2-19

- (2) Is the Complainant entitled to
The reliefs claimed ? In the Affirmative
- (2) What order ? As per final order.

REASONS

6. POINT Nos.1 and 2:- There is no dispute that the agreement was executed on 31.12.2011. As per clause No.33, the date of delivery of possession was 31st October, 2013 i.e. after 22 months since execution of agreement. The Respondent has alleged that the plans were sanctioned by Collector in 2010 and environmental clearance was received on 2nd March, 2012. This has happened before the execution of the present agreement. Now the Respondent cannot contend that due to the delay in getting environmental clearance, the project was held-up. The Respondent also claimed that there was shortage of sand in Maharashtra, which affected the construction industry. No doubt, actions against illegal sand mining were being taken by the judiciary as well as the executive. However, legal activities were not prohibited. Again the Respondent has contended that developers in Maharashtra imported sand from Indonesia and Philippines. Any person doing business is required to take all necessary steps for the smooth conduct of the business. Nothing prevented the Respondent from importing sand or making alternative arrangement. The Respondent is taking shelter under the alleged problems ~~based~~ after demonetisation. Demonetisation occurred in Nov. 2016 i.e. 3 years after the deadline for delivery of possession to the Complainants had expired. Thus the

7-2-19

Respondent is defending the delay on fictitious grounds. Respondent accepted money from the Complainants by promising to deliver possession of the house to them. It was the Respondent who had decided the date for delivery of possession. Clearly, the Respondent has failed to deliver possession as per agreement without their being circumstances beyond his control. I therefore, answer Point No.1 in affirmative.

7. In view of finding on Point No.1 as above, the Complainants are entitled to withdraw from the project and entitled to refund of the amount paid by them. The Complainants have alleged that they paid Rs.3,29,047/-. The Respondent alleges that Complainants paid Rs. 2,67,866/- towards cost of the flat and Rs. 20,981/- towards service tax and VAT. The Complainants have added stamp duty amount in the figure given by them. They will be entitled to refund of stamp duty amount as per rules in the event of cancellation of agreement. The Complainants have placed on record the receipts issued by the Respondent. I therefore, answer Point No.2 in affirmative and proceed to pass following order.

ORDER

- (1) The Complainants are allowed to withdraw from the project.
- (2) The Respondent to pay Rs. 3,29,047/- to the Complainants, except the stamp duty amount, which can be refunded to the Complainants as per rules,

2.2.19

together with interest @ 10.70% p.a. from the date of payments till final realization.

- (3) The Respondent to pay Rs. 20,000/- to the Complainants as costs of this complaint.
- (4) The Complainants to execute cancellation deed at the cost of the Respondent.
- (5) The Respondent to pay above said amounts within 30 days from the date of this order.

Mumbai (Camp at Pune)
Date :- 07.02.2019


(M.V. Kulkarni)
Adjudicating Officer,
MahaRERA