

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

COMPLAINT NO: CC006000000056375

Mr. Kishore Hassanandani
Mrs. Nishtha Sharma

... Complainants.

Versus

Ssd Escatics Private Limited
(Goregaon Pearl CHS Ltd - Wing A)

... Respondents.

MahaRERA Regn: P51800004301.

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

Appearance:

Complainants: Adv. Tanuj Lodha.

Respondents: Adv. Abhay Arora a/w
Adv. Karan Bhosale.


FINAL ORDER

2nd May 2019.

The complainants have booked flat no. A-903 situated on 12th floor of the respondents' registered project 'Goregaon Pearl CHS Ltd - Wing 'A' situated at village Pahadi, Goregaon (West), Taluka Borivali. The complainants contend that they booked flat on respondents' representation that the respondents shall complete the project on or before 31st December 2016. The respondents instead of completing the project on agreed date revised it to 31.12.2017. The respondents represented that they had commencement certificate up to 14th floor on the basis of fake/forged endorsement purported to be made by the Executive Engineer and sold the flat situated at 12th floor of the building, though in fact the commencement certificate is only up to 7th floor. Hence, the complainants withdraw from the project and claim refund of their amount with interest and/or compensation under Section 12 of RERA.



2. The respondents have pleaded not guilty and filed their reply to contend that it is the redevelopment project taken from Goregaon Pearl CHS Ltd. They admit that the complainants agreed to purchase the flat on 07.11.2013 and they have paid them Rs. 71,00,000/- out of total consideration of Rs. 1,59,32,350/-. The respondents contend that after the booking of the flat, on 21.11.2013 the Competent Authority approved the sanctioned plans and on 4th December 2013 commencement certificate up to 7th floor of A-wing was issued. Thereafter the respondents applied for additional FSI and MHADA allowed their request subject to the payment of the premium amount. On 12th September 2014, the respondents requested the society to allow them to merge their plot with adjoining plot of Kapilvastu for utilizing increased FSI. However, on 01.01.2015, the Government of Maharashtra by issuing circular restrained its officers from sanctioning the pro-rata FSI. Thereafter, the society filed the complaint no. 337 of 2015 before National Consumer Dispute Redressal Commission (NCDRC) against the respondents for arrears of rent and other reliefs. On 29.07.2015 NCDRC passed the order directing the parties to maintain status-quo and clarified it on 18th December 2015 permitting the respondents to continue the construction. Meanwhile on 11.07.2015, a meeting of the concerned flat purchasers was convened and the respondents agreed that the proposed date of possession would be 31st December 2016. On 27.04.2016, MHADA issued letter to MCGM for granting of the approvals of the redevelopment projects. On 26.10.2016, the society filed Arbitration Petition No. 160 of 2017 which came to an end by filing consent terms on 16.05.2017. Meanwhile on 03.07.2017 the restriction of granting pro-rata sanction was removed by the Government. On 09.02.2018 society filed Contempt Petition No. 24. Of 2018 and the Hon'ble High Court restrained the respondents from creating any third party rights in respect of suit project by its order dated 29.06.2018. In Arbitration Petition No. 665 of 2018 filed by the society, Hon'ble High Court appointed



Sole Arbitrator on 30.07.2018 who by passing order on 17th September 2018, restrained the respondents temporarily from handing over the possession of any flats of the project to any third party of free sale component including purchasers, investors or any other persons. The said matter was taken to the High Court and later to the Supreme Court but the same was confirmed on 21st January 2019. Hence, the respondents contend that the project was delayed because of these reasons. Therefore, the respondents contend that the period of completion must be extended for the reasons set out in the reply as permitted by Rule 4 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Agents, Rate of Interest and Disclosures on Website) Rule 2017.

3. The respondents, on the point of commencement certificate showing the permission for constructing 14th floor, contend that they received the commencement certificate up to 7th floor, lastly on 15th February 2014. However, one of their employees changed the endorsement from 7th floor to 14th floor and therefore, he was removed. That commencement certificate was not shown or supplied to the complainant. The respondents therefore request to dismiss the complaint.

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

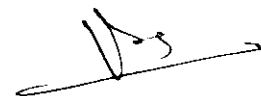
| POINTS | FINDINGS |
|---|--------------|
| 1. Whether the respondents made false statement that the project shall be completed on or before 31 st December 2016? | Affirmative. |
| 2. Whether the respondents falsely represented that they had commencement certificate up to 14 th floor, though they have the commencement certificate up to 7 th floor only? | Affirmative. |
| 3. Whether the complainants are entitled to get refund of their amount with interest? | Affirmative. |



REASONS

5. There is no dispute between the parties that the complainants booked the flat on 07.11.2013 when Maharashtra Ownership Flats Act 1963 (MOFA) was applicable. Section 4 thereof prohibits the promoter from accepting more than 20% of the sale price without first entering into the written registered agreement for sale and The Real Estate (Regulation and Development) Act (RERA) has come into effect from 01.05.2017. Section 13 of RERA also prohibits promoter from accepting more than 10% of the consideration of the flat without first entering into the registered agreement for sale. Rs. 71,00,000/- out of total consideration of Rs. 1,59,32,350/- (44%) have been accepted by the respondents without executing the registered agreement for sale. The obligation to execute the agreement for sale continued. Despite the legal obligation of executing the agreement for sale in complainant's favour the respondents have failed to execute and register it, therefore, they are estopped from denying the complainants' case especially regarding terms and conditions of the agreement. At this juncture, I want to make it clear that the agreement can also be oral agreement for sale. After perusing the pleadings of the parties, I find that though there is no allotment letter or written agreement for sale, both the parties admitted that the complainants agreed to purchase the flat for the price fixed by the parties and the respondents have received Rs. 71,00,000/- from the complainants under the oral agreement. Both Section 4 of MOFA and 13 of RERA cast the liability on the promoter to mention the date of possession in the agreement for sale. Since the respondents have failed to execute the agreement for sale, they cannot dispute the date of possession suggested by the complainants. This is one of the aspect of the matter.

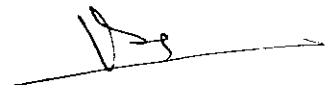
6. Both the parties are not at dispute that after the joint meeting of the promoter and the allottees, the respondents themselves have sent the



minutes of the meeting to the complaints. It is produced on record. It shows that the proposed date of possession was 31st December 2016. So I hold, this date is the agreed date of possession. The respondents have not given the possession of the flat on this date. The respondents have not denied that they have revised the date to 31.12.2017 and while registering the project they have revised it further to 31.12.2019. Respondents contend that the agreement was renovated at the time of these extensions. I do not agree with them because they have nothing to show that the possession dates were extended with the consent of the complainants. This clearly shows that the respondents have made the false/incorrect statement that the proposed date of the possession was 31st December 2016.

7. The learned advocate of the respondents Mr. Bhosale has taken me through various orders passed by the Courts and Authorities to which respondents have referred to in their reply. I restrain myself from reproducing the same facts here. I find that even if it is taken for granted that the reasons of delay assigned by the respondents are really true and they were beyond their control, as per Section 8 (b) of MOFA, the date of possession can be extended for the reasons beyond the promoter's control for three months from the agreed date and if these reasons still exist then it can be extended further for three months only. Thus, in no circumstance it would be extended beyond six months. MOFA is not repealed and Section 88 of RERA permits it to apply in this field also.

8. Mr. Bhosale refers to Rule 4 Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Agents, Rate of Interest and Disclosures on Website) Rule 2017 to submit that this period can be extended if the orders like injunction or stay are granted. In fact, rule 6 (a) provides that from the period of registration of the project the period where actual work could not be carried due to specific stay or injunction orders relating to the project from any court of law, tribunal or any statutory authority as the case may be, be excluded. I do not find any



force in his submission because in Para 100 and 105, the Hon'ble High Court has dealt with this aspect of the matter in Neelkamal Realtors Suburban Pvt. Ltd.-v/s-Union of India (Writ Petition No. 2737 of 2017). In paragraph 100 of the judgement the Hon'ble High Court has directed to relook to the Rule 6 (a) which refers to exclusion of time consumption due to the stay or injunction orders of any court of law or tribunal or competent authority or statutory authority or due to such mitigating circumstances as may be considered by the Authority in deciding the timeline for construction. Therefore, this issue has already been decided by the Hon'ble High Court itself and hence, the period of completion of the project cannot be extended as submitted by Mr. Bhosale.

10. The respondents have fairly admitted the fact that they have the commencement certificate up to 7th floor revalidated on 15.02.2014. They admit the fact that one of their employees played mischief and converted the commencement certificate from 7th to 14th floor. However, the respondents contend that the said fake/forged commencement certificate was not shown to the complainants. However, the fact remains that though the respondents do not have commencement certificate for constructing the 12th floor where the booked flat of the complainants is going to be situated, they agreed to sell it. It was not desirable for them to agree to sell it and obtain huge amount of Rs. 71,00,000/- from complainants. Therefore, I find that in the facts and circumstances of the case, the complaint clearly and squarely falls under Section 12 of RERA. Mr. Bhosale submits that the Section 12 applies only when believing on the false/incorrect statement of the promoter the allottee sustains the loss or damage. In this case I find that the complainants have invested their money on the hope that they would get the possession of the flat latest by 31.12.2016 and their hope has been shattered by the respondents not only once but many times. Mr. Tanuj Lodha relies upon Kolkata West International City Pt. Ltd. v/s-Devasis Rudra in which the Hon'ble



Supreme Court has held that the possession of the booked flat must be handed over within reasonable time/period. The complainants have booked the flat in the year 2013 i.e. six years ago and this period cannot be said to be reasonable period. Therefore, I find that the complainants are entitled to get refund of their amount under Section 12 with interest at prescribed rate from the date of payment till the refund. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 8.75%. Hence the following order.

ORDER

Respondents shall refund the amount mentioned in the payment statement marked Exh. "B" with interest at prescribed rate of 10.75% from the date of payment mentioned therein till the refund.

Respondents shall pay the complainants Rs. 20,000/- towards cost of the complaint.

Exh. "B" shall form the part of this order.

The charge of the aforesaid amount shall be on the booked flat till the satisfaction of the complaints' claim.

Mumbai.
Date: 02.05.2019.

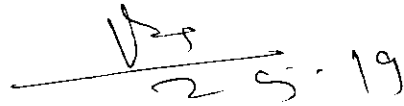

(B. D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.

Exhibit B

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Member I

Complaint No: CC006000000056375

Flat Details: A-903, Sai Goregaon Pearl CHS Ltd

Payment Format

| Sr. No. | Date | Amount | Purpose | Receipt No | Chq No | Drawn on |
|---------|-----------|-----------|-----------|------------|--------|---------------|
| 1 | 07-Nov-13 | 10,00,000 | Flat Cost | 871 | 000051 | Bank of India |
| 2 | 07-Nov-13 | 15,00,000 | Flat Cost | 872 | 136714 | HDFC Bank |
| 3 | 26-Dec-13 | 7,00,000 | Flat Cost | 897 | 136726 | HDFC Bank |
| 4 | 14-Jan-14 | 10,00,000 | Flat Cost | 912 | 136727 | HDFC Bank |
| 5 | 17-Jan-14 | 6,00,000 | Flat Cost | 920 | 136731 | HDFC Bank |
| 6 | 10-Feb-14 | 10,00,000 | Flat Cost | 965 | 136733 | HDFC Bank |
| 7 | 19-Feb-14 | 6,00,000 | Flat Cost | 984 | 136734 | HDFC Bank |
| 8 | 08-Mar-14 | 5,00,000 | Flat Cost | 1002 | 136735 | HDFC Bank |
| 9 | 03-Jun-14 | 2,00,000 | Flat Cost | No Receipt | 000003 | HDFC Bank |
| | Total | 71,00,000 | | | | |

Complainants' Name & Sign:

[Signature]

[Signature]