

AUTHORITY

MUMBAI

COMPLAINT NO: CC006000000055349

Subodh Adhikary ... Complainant.

Versus

Reliance Enterprises. Respondents.
Veenit Mapara
(Hill View)

MahaRERA Regn: P51800005482

Coram:

Hon'ble Shri B.D. KAPADNIS,
Member & Adjudicating Officer.

Appearance

Complainant: Adv. Aditya Deolekar.

Respondents: Adv. Divya M. Chopra

Final Order.

27th September 2018.

Pleadings of complainant.

The complainant has filed this complaint u/s. 18 of Real Estate Regulation and Development, Act 2016 (RERA). He contends that he booked Apartment No. 1602, 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 by December 2015. The Agreement for Sale to this effect has been executed on 10.09.2014. The respondents have failed to deliver the possession of the flat by December 2015 and stopped the construction from April, 2016. The complainant wants to

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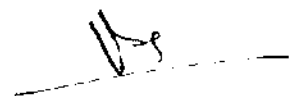
continue in the project and claims * interest on his amount and compensation.

Defence of respondents.

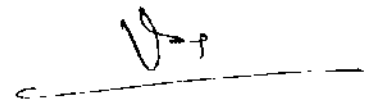
2. The respondents have failed to file the reply. Hence the complaint proceeds without their reply. However, the learned advocate of the respondents has raised some points which the respondents have raised in other matters of the same project. So I put them on record.

3. The respondents submit that the complainant was aware of the fact that the project was being developed under SRA scheme and therefore the possession of his flat was likely to be delayed beyond the agreed date of possession December 2015. 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 complainant by the end of December 2015 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 has 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 has been submitted on 7.6.17 and it is pending. Therefore, they contend that the project is delayed.
4. Therefore, respondents contend that the complainant is not entitled to get the refund of his amount especially when the project is nearing its completion.
5. 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 complainant is entitled to get *interest on his amount? Affirmative.

Reasons:

Legal Provision. -

6. 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 continue in the project, to claim interest at prescribed rate on his amount from the date of respondents' default till handing over the possession of the flat for every month of delay and compensation also.

7. 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%.

Delayed Possession:

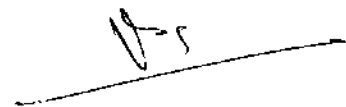


8. The parties are not at dispute on the point that the respondents agreed to deliver the possession of the flat to the complainant by the end of December 2015 but they have not delivered it till the date of complaint. Hence, I hold that the respondents have failed to hand over the possession of the flat on the agreed date.

Reasons for Delay:

9. 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.

10. 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 has 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.



11. 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 has 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 has 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 complainant on 10.09.2014 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 Complainant.

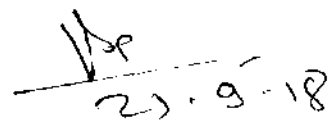
12. The complainant wants to continue in the project. The complainant has filed the statement of the payment made by him to the respondents marked exhibit- A amounting to Rs. 63,23,242/- . The respondents have admitted the receipt of all amount mentioned therein. The complainant is entitled to get interest at prescribed rate which is 2% above the SBI's highest MCLR. It is currently 8.5% from the date of default i.e. 01.01.2016 till receiving the possession of the flat.

13. In addition to the above amount, the complainant is entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the order.

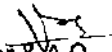
ORDER

- A. The respondents shall pay the complainant simple interest @ 10.5% p.a. on his investment Rs. 63,23,242/- from 01.01.2016 till receiving the possession of the flat.
- B. The respondents shall pay the complainant Rs. 20,000/- towards the cost of the complaint.
- C. The respondents are at liberty to adjust their dues accrued till the date from the interest amount and shall pay the balance to the complainant.

Mumbai
Date: 27.09.2018.


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

* corrected u/s 39 of RERA on 4.10.2018


Member & A.O..