

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

COMPLAINT NO. CC00100000000074

Vijay Kumar Mahabirprasad Jatia
Mrs. Gauri Jatia

..Complainants

Verses

Renuka Construction
Mr. Sherzad Hoshi Patel
Mr. Hemant Tukaram Godase
Mr. Hansraj Shripatrao Deshmukh
Mr. Bhairavnath Trimbak Kadlag.

..Respondents

MahaRERA Regn. No. P51600004983

Coram:

Hon'ble Shri Madhav Kulkarni.
Adjudicating Officer, MahaRERA.

Appearance :

Complainants: Absent. Adv. Present

Respondents : Absent.

ORDER
(Dated 23.04.2019)

1. The complainants who had booked a flat with the respondent/builder, seek withdrawal from the project and seek refund of their amount with interest.
2. The complainants have alleged that they booked flat No.102 in the building being constructed by respondent by name Rivera at Anandwalli, Taluka and District Nashik. The price was agreed at Rs.2,18,50,000/-. Agreement was executed in the year 2013. The respondent promised to deliver possession by December, 2015. The complainants paid Rs.54,07,875/- as booking amount. They

made further payments aggregating to Rs.1,76,98,500/- towards consideration. 1% TDS was also deducted from respective payments. The respondents were not carrying out construction at required pace. The complainants kept on following up and sent several email communications. The construction work has come to a halt since long time. The complainants therefore, filed this complaint.

3. The complaint came up before the Hon'ble Member on 07.12.2018 and came to be transferred to Adjudicating Officer. On 22.02.2019 plea of the respondent was recorded. The matter was adjourned to 19.03.2019 for written explanation by the respondent. On that date, respondent failed to turn up when matter was called out. Arguments for complainants were heard. Later on respondent turned up and filed written argument. As I am working at Mumbai and Pune Offices in alternative weeks, this matter is being decided now.
4. The respondents have alleged that respondent no.1 has agreed to refund entire money to the complainants. The respondents were willing to settle the matter amicably. Respondents had also requested the complainants to stay back in the project as Occupation Certificate was expected any moment. The possession date on MahaRERA website is 31.12.2020. The respondents also offer to pay rent as interim compensation.
5. On the basis of rival contentions of the parties, following points arise for my determination. I have noted my findings against them for the reasons stated below:

23/11/19

POINTS

FINDINGS

- | | | |
|---|--|---------------------|
| 1 | Has the respondent failed to deliver possession of the flat to the complainant as per agreement, without there being circumstances beyond his control? | Affirmative |
| 2 | Is the complainant entitled to the reliefs claimed? | Affirmative |
| 3 | What Order? | As per final Order. |

REASONS

✓ **Point Nos. 1 & 2** – The complainants have placed on record receipt dated 14.06.2014. Accordingly, cheque for Rs.54,07,875/- being 25% of flat value and for Rs.1,67,103/- towards Service Tax were received. Flat No.102 in the project Rivera at Anandwalli, Taluka and District Nashik was booked for a total consideration of Rs.2,18,50,000/-. Copy of Agreement dated 14.06.2013 is placed on record. As per clause no.16, date for delivery of possession was December, 2015. Receipt for Rs.54,62,500/- is annexed to the Agreement.

✓ **3.** Agreed date for delivery of possession was December, 2015. Admittedly the respondents have not given the possession to the complainants till date. The complainants claim that respondents pleaded that there was Order passed by National Green Tribunal, due to which construction came to a halt. These circumstances were never disclosed by the respondents to the complainants. If at all any Order was passed by the NGT, reason for the same is not made clear by the respondents. If the respondents committed breach of any provisions of Law, they must blame themselves. The respondents have accepted money from the complainants by promising delivery of their flat. Now in fact respondents have not put forth any defence for the delay in

delivery of possession. I therefore, hold respondents responsible who failed to deliver the possession as per the agreement without their being circumstance beyond their control. I therefore, answer point no. 1 in affirmative.

9. The complainants have paid Rs.1,76,98,500/- plus Rs.6,60,836/- as TDS. If this amount is inclusive of stamp duty, the complainants will not be entitled to recover stamp duty amount which can be refunded to them as per rules. The complainants will be entitled to claim interest as provided under rule 18 of Maharashtra Rules. 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. Respondents to pay Rs.1,76,98,500/- to the complainants, except stamp duty amount, which can be refunded as per rules, together with interest @10.75% p.a. from the date of payments till final realisation.
3. The respondents 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 respondents.
5. The respondents to pay above amounts within 30 days from the date of this Order.

Mumbai

Date : 23.04.2019

mf 23.4.2019
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA