

1

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

Complaint No.CC006000000044304

Mrs. Pushpalata Damodar Pai

B-1701, Swapnalok Towers, Pimpripada Road,
Malad (E), Mumbai-400097.

.. Complainant

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

(08.03.2019)

1. The Complainant, who had booked a flat with the Respondent/Builder, seeks withdrawal from the project and refund of the amount paid, with interest.
2. The Complainant has alleged that she booked Flat No.101 in 'B' Wing in Building No.17, Sector 4 of HDIL Paradise City, Chintupada Road, at village Mahim, District Palghar (West)

u
8-3-19

in the year 2011. The total value of the flat was Rs. 10,34,100/-. Agreement for sale was executed and registered on 11th May, 2012. The Complainant has paid Rs 2,06,820/- towards demands and Rs. 46,767/- towards service tax, VAT, stamp duty and registration charges. Thus paid total amount of Rs. 2,53,587/-. The Respondent fraudulently mentioned area in the agreement as 35.67 sq mtrs. i.e. 384 sq. ft. instead of 540 sq.ft. given in payment schedule. There is inordinate delay in completion of the project. The Complainant therefore, wants to withdraw. The Complainant also seeks Rs. 50,000/- towards physical and mental agony.

3. The matter came up before the Hon'ble Chairperson on 16th July, 2018 and came to be adjourned for amicable settlement to 3rd Sept. 2018. On 7th Sept. 2018, the matter came to be adjourned to the Adjudicating Officer. The matter came up before me on 21st Jan. 2019. Complainant sought adjournment on personal ground. Respondent's representative appeared, his plea was recorded. As he pleaded not guilty, as per direction he filed written explanation. The matter was adjourned for arguments to 21st Feb. 2019 and arguments were heard on that date. As I am working at both Pune and Mumbai Offices in the alternative weeks, this matter is being decided now.
4. The Respondent has admitted that agreement for sale was executed in favour of Complainant on 20th April, 2012. The Complainant has made total payment of Rs.2,06,820/- towards consideration of flat and Rs. 15,667/- towards service tax and VAT. As per clause 33 of the agreement, the

12/19

date of possession was 31st Dec. 2013 subject to extension as per clause 32. As per RERA record the date for completion is 30th Sept. 2019. Delay has occurred in delivering possession due to delay in release of environment clearance, secondly due to scarcity of sand, thirdly due to scarcity of construction labour caused due to demonetisation and fourthly due to financial crunch due to depression in market. A mega township was planned by Respondent in the year 2010 and plans were submitted and sanctioned by Collector in the year 2010. The Respondent tried to procure various approvals including environmental clearance vide letter, dated 30.04.2010. Environmental clearance was received only on 2nd March, 2012. Supreme Court vide order, dated 27th Feb. 2012 directed Ministry of Environmental to give minimum lease of 5 hectares and environmental clearance mandatory. The Government of Maharashtra revised policy in March, 2013 and put ban on sand mining, which resulted in acute shortage of sand for construction activity. National Greens Tribunal by order, dated 05.08.2013 restrained sand mining without obtaining environmental clearance. Shortage of sand was recognized by the Minister. Further due to demonetisation, construction workers were not available for six months. Then due to economic down turn there was no demand for the completed flats and no money flow. Complainant has not raised objection till now. Construction is now 20% completed. The amount received for taxes has gone to the Government. The complaint therefore, does not deserves to be allowed.

W
8-3-19

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.
(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:-** The Complainant has placed on record copy of agreement, dated 20.04.2012, registered on 14.05.2012. There is no dispute about execution of agreement. The flat is in Building No.17 in Sector 4 in the project "HDIL Paradise City". As per clause 33, date for delivery of possession was Dec, 2013 i.e. about 1½ years after execution of the agreement. Ordinarily that period is sufficient for completion of the construction and handing over possession. The Respondents admits having received Rs.2,06,820/- towards price of the flat. Complainant claims that she has paid Rs. 46,767/- towards service tax , VAT, stamp duty and registration charges. The Respondent

h
8.3.19

admits that up till now only 20% construction is done and possession could not be delivered by 31.12.2013.

7. It is the contention of the Respondent that Respondent planned a mega township in the year 2010 and the plans were sanctioned by the Collector in the year 2010. He also applied for environmental clearance on 30.04.2010 and environmental clearance was received on 02.03.2012. This all has occurred before execution of agreement on 23.07.2012. Therefore, delay in getting environmental clearance is of no help to the cause of the Respondents.
8. The next ground pleaded by Respondent is scarcity of sand and other building material. Guidelines from Hon'ble Supreme Court are said to have given on 27.02.2012. The Respondent must have been aware of these guidelines, still executed agreement in favour of Complainant. No doubt, restrictions were placed on illegal sand mining. Illegal sand mining had become a menace and therefore, the guidelines have come into force. The legal activities were not banned. Also there could be alternative availability like use of alternative material or import of sand. The Respondent is a professional builder and was required to take all steps to complete the project in time, especially after accepting money from the flat purchasers. Many other builders have been completed their projects and handed over possession to the flat purchasers. The ground taken by the Respondent therefore, is not tenable.
9. The ground of after effects of demonetisation are also pleaded by the Respondent. The agreed date for delivery of

8-3-17

possession was 31.12.2013. Demonetisation has come after about 3 years thereafter. It was only because the Respondent was not prompt in completing the projects that he may have faced the difficulties after demonetisation. Even now the Respondent claims that only 20% of construction is completed. It is the Respondent, who is to be blamed for the non-performance. I therefore, hold that the Respondent failed to deliver possession of the flat to the Complainant at the agreed date without there being circumstances beyond his control. I therefore, answer Point No.1 in the affirmative.

10. Due to the inordinate delay in delivering possession, the Complainant wants to withdraw from the project and wants refund of the amount paid by her to the Respondent. The Complainant is entitled to refund of the amount with interest under Section 18 of Real Estate (Regulation & Development) Act, 2016 (RERA). The Complainant claims to have paid in all Rs. 2,53,587/-. A chart has been given showing all the amounts paid inclusive of the stamp duty of Rs. 20,700/-. In the event of cancellation of agreement, the complainant will be entitled to refund of stamp duty as per rules. The Complainant will therefore, entitled to refund the amount with interest as per Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosure of Website) Rules, 2017 i.e. at State Bank of India's highest Marginal Cost Lending Rate + 2 %, except the stamp duty amount, which is refundable as per rules. I therefore, answer

8.3.17

Point No.2 in the affirmative and proceed to pass following order.

ORDER

- (1) The Complainant is allowed to withdraw from the project.
- (2) The Respondent to pay Rs. 2,53,587/- to the Complainant, except the stamp duty amount, which can be refunded to the Complainant as per rules, 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 Complainant as costs of this complaint.
- (4) The Complainant 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 :- 08.03.2019


(M.V. Kulkarni)
Adjudicating Officer,
MahaRERA