

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

COMPLAINT NO. 00600000054966

Mr. Mohammed Mirza

..Complainant

Verses

Enkay Homes Ltd.

..Respondent

MahaRERA Regn. No. 52000005271

Coram:

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

Appearance:

Complainant: Adv. Shaikh
Respondent : Ex-Parte

**ORDER
(Dated 19.08.2019)**

1. The complainant who had booked two flats with the respondent/promoter, seeks interest on the amount paid to the respondent as respondent failed to deliver possession as per agreement and in the alternative seeks withdrawal from the project and refund of his amount with interest.
2. The complainant has alleged that he booked two flats in the project of the respondent Enkay Garden, at village Wavnje, Taloja on 24.05.2011 viz. flat nos. 001 and 002 in the building no. 6 known as Lotus. Complainant paid booking amount of Rs.2,72,250/- in respect of each flat vide cheque dated 24.05.2011. Respondent issued Allotment Letters dated 01.06.2011. Total cost mentioned was Rs.13,61,250/-. Respondent

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had promised to deliver possession within a period of two years. Respondent failed to deliver possession and showed inability and promised to give two flats in the building Lily at the same cost and on same terms. Respondent issued Allotment Letters of flat nos. 201 and 202 in the building no. 9 Lily dated 19.04.2012. Despite making various phone calls and visiting office of the respondent, complainant did not get progress about the construction of the flats. Being senior citizen and having ill-health, complainant could not visit office of the respondent since 2013. Complainant is ready to pay balance amount. Complainant claims Rs.2,00,000/- towards mental agony suffered.

3. The complaint came up before me on 24.04.2019. Advocate for complainant was present but respondent was absent. Matter was adjourned for final hearing to 18.06.2019. Again respondent was absent. Arguments for complainant were heard. As I am working at Mumbai and Pune Offices in alternative weeks and due to huge pendency in this office, this matter is being decided now.
4. Following points arise for my 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 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.

19.8.19

REASONS

5. **Point Nos. 1 & 2** – According to the complainant, he initially booked flat nos. 1 and 2 in the building no.6 i.e. Lotus, in the project Enkay Garden at Taloja on 24.05.2011 and respondent issued Allotment Letters on 01.06.2011. Copy of Registration form dated 24.05.2011 is placed on record. Booking was done in the name of Mr. Mohammed Shaukat Mirza, Mrs Khairunnisa Shaukat Mirza, Mrs. Durrain Abdul Aziz Shaikh. This is in respect of flat no. 001. Total cost was shown as Rs.13,61,250/-. Booking amount paid was Rs.2,72,250/-. A receipt in respect of cheque no.250161 is also placed on record. Another receipt in respect of cheque no.250162 for Rs.2,72,250/- is also placed on record. Allotment Letters in respect of flat nos. 001 and 002 in building no. 6 i.e. Lotus dated 01.06.2011 are also placed on record. Basic cost was shown as Rs.13,61,250/-. Then there are two Allotment Letters dated 19.04.2012. Accordingly, flat nos. 201 and 202 in building Lilly were allotted to the complainant for a basic cost of Rs.13,61,250/-. Complainant has alleged that since respondent was unable to construct building Lotus, alternative flats were allotted to the complainant.
6. It is the contention of the complainant that respondent had promised to handover possession within a period of two years. No such term is found in the Allotment Letters dated 01.06.2011 and 19.04.2012. It must be remembered that initially booking was done by issuing cheques dated 24.05.2011. More than 8 years have gone by since then. Even since allotment of alternative flats, more than 7 years have gone by. It appears that respondent has not made any progress in this project and therefore, never demanded further amounts, nor executed registered agreement for sale. Except the time agreed for

delivery of possession, all other terms ^{have} ~~are~~ made out from the Allotment Letters i.e. no. of flats, price that was agreed, carpet area i.e. 378 sq. ft. and 1 BHK flat. I am of the opinion that valid agreement was concluded Under Section 46 of the Contract Act, when no time for performance is specified, engagement must be performed within a reasonable time. A period of about two years since inception of a housing project is generally sufficient period for completing construction and delivering possession. In the case at hand, alternative flats were allotted after a period of 1 year, since initial booking. A period of two years since that time expired in April, 2014 i.e. before about 5 years. Respondent has not communicated to the complainant during all this period. It clearly shows that respondent has not completed the construction ^{and} despite accepting money from the complainant. It is contended that owing to his old age, complainant cannot personally visit to the office of the respondent. It is clear that respondent has failed to deliver possession of the flat to the complainant as per agreement, without there being circumstances beyond his control. I therefore, answer point no. 1 in affirmative.

7. The complainant initially sought direction to the respondent to deliver possession of the flat at the earliest. Adjudicating Officer u/s 71 of the RERA is appointed to adjudicate compensation u/s 12, 14, 18 and 19 of RERA Act. Complainant has made alternative prayer for refund of the booking amount with interest @ 18% p.a. It appears that under two cheques dated 24.05.2011, complainant has paid Rs.5,44,500/-. Complainant will be entitled to refund of this amount with interest as provided under Rule 18 of The Maharashtra Real Estate (Regulation and Development)(Regulation of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and

Disclosures on Website) Rules, 2017. Though complainant who claims to be old person, is unable to visit the respondent, why the co-purchasers cannot visit the respondent is not made clear. Anyway, complainant has suffered mental agony. Therefore, he is entitled for compensation of Rs.25,000/- from the respondent for mental agony. I therefore, answer point no. 2 in affirmative and proceed to pass following order:

ORDER

1. The complainant is allowed to withdraw from the project.
2. Respondent to pay Rs.5,44,500/- to the complainant, together with interest @10.75% p.a. from the date of payments till final realisation.
3. Respondent to pay Rs.25,000/- to the complainant towards mental agony.
4. Respondent to pay Rs.20,000/- to the complainant as costs of this complaint.
5. The respondent to pay above amounts within 30 days from the date of this Order.

Mumbai

Date : 19.08.2019


(Madhav Kulkarni)
Adjudicating Officer
MahaRERA