

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
PUNE

Complaint No.CC005000000010933

Jyoti Vidyadhar Pinjarkar
Pallavi Rajesh Band

.. Complainants

Versus

Gagan Horizone Ventures

.. Respondent

Coram : Shri M.V. Kulkarni

Hon'ble Adjudicating Officer

Appearance :

Complainant : Advocate Mamidwar

Respondent : In person

FINAL ORDER

20-08-2018

1. The complainants who had booked a flat with respondent/developer seek refund of the money paid with interest and penalty as respondent failed to deliver possession as per agreement. Since I am working at Mumbai & Pune offices in alternate weeks as per availability of dais and due to non availability of stenographer, this judgement is being delivered now.

20-8-2018

2. The complainants have alleged that they had booked a flat No.A-302 in Gagan Akankasha, Koregaon Mul,(Urali Kanchan) Taluka Haveli, District Pune with respondent. It is alleged that complainants were promised possession by 31-03-2015. Agreement was signed on 25-04-2013. The area of the flat is 39.48 sq.mtrs. The price agreed is shown as Rs.12,96,000/- Total amount paid is shown as Rs.12,47,464/- Date of delivery of possession mentioned in the agreement is 31-03-2015. Since possession is not delivered, complainants seek refund of total amount paid alongwith interest and compensation.
3. Respondent has resisted the complaint by filing written explanation on 14-6-2018. It is alleged that the date of delivery of possession 31-3-2015 was subject to force majeure as mentioned in clause-20. It was mandatory to obtain environment clearance certificate from government. The respondent applied for it on 8-10-2012. The matter was listed for first hearing on 25-3-2014. On 29-12-2014 SEIAA directed respondent to stop construction activity till ECC is issued. The sanction was given in meeting dated 21-10-2016. The respondent has completed 80% of construction work. He is in a position to hand over possession to complainant in near future. As per RERA record the completion date is 31-12-2018. The respondent is ready to pay rent to the complainant at prevailing rate. The complaint therefore deserves to be dismissed.

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2018-2019

4. 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:

POINTS	FINDINGS
1. Has the respondent failed to deliver possession of flat to the complainant without circumstances beyond his control?	Yes
2. Is the complainant entitled to the reliefs claimed?	Yes
3. What order?	As per final order.

REASONS

5. Point Nos.1 & 2: Shri Mamidwar learned counsel for complainants and the respondent made submissions on expected lines. Shri.Mamidwar has submitted that respondent was well aware about environment clearance when the agreement was entered into. Therefore he is not justified in delaying the possession. It is submitted by respondent on other hand that OC is received now. As per RERA record December, 2018 is the deadline. Reliance is placed on clause-20 of the agreement.
6. The agreement annexed to the complaint shows that it was executed on 25-4-2013. Area 425 sq.ft. Price agreed was Rs.12,96,000/-. Date of possession was 31-3-2015. As per clause-20 extension of time was to be given in case of delay in issuance of environment clearance. It is the contention of the respondent that delay has occurred due to environmental clearance. Letter of SEIAA dated

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21-10-2016 is in respect of project Gagan Akankasha. Environmental clearance is granted subject to certain conditions. The respondent claims to have applied for environmental clearance on 8-10-2012. It is five months before agreement with complainant was executed. There is a record of meeting of SEAC dated 25-3-2014. There is letter dated 29-12-2014 directing respondent to stop construction.

7. It is true that going by the date of delivery of possession mentioned in the agreement, there is a delay of three years. However, the delay has been explained by the respondent. The complainants claim that only 80% work has been completed. On the other hand the respondent claims that the flat is ready for delivery. Whether the respondent informed the complainant to take delivery is not known. The environmental clearance has been conditionally received on 21-10-2016. Compliance certificate appears to have been obtained on 13-6-2018. If the respondent was not in a position to hand over possession ^{6 months} after 21-10-2016 he is to be blamed for the delay. I am of the opinion that complainants will be entitled to claim interest on the amounts from the respondent from 20-4-2017 till they receive possession of the flat. I therefore answer point no.1 and 2 in the affirmative and proceed to pass following order.

ORDER

1. The respondent shall pay interest on the amount paid by the complainant @ the State Bank of India highest Marginal Cost of Lending Rate plus two percent per annum

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prevailing as on date, from 20-4-2017 till possession is delivered or notice to take possession is served on complainants subject to complainants paying balance of consideration.

2. The respondents shall pay costs of Rs.20,000/- to the complainant.
3. The respondent shall pay above amount within 30 days from the date of issue of this order.

Pune
Date :- 20.08.2018

MV 20-8-2018
(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA