

BEFORE THE ADJUCATING OFFICER WITH
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000012672

Sudha Shankar Badve ... Complainant

Versus

Housing Development & Infrastructure Ltd. ... Respondent.

MahaRERA Regn No. : P990000012735

Coram: Shri Madhav Kulkarni,
Hon'ble Adjudicating
Officer.

Appearance:

Complainants: Vinayak Badve
Respondent: Adv. Madan Mohan

ORDER
(Date: 17th July, 2018)

1. The Complainant who had booked a flat with the builder / Respondent, seeks refund of amount Rs.4,85,051/-paid to him with interest, on account of default on the part of the Respondent.
2. The Complainant has alleged that the Respondent had undertaken a Housing Project at Survey No.946, at Village Mahim, Tal: Palghar, District - Thane, by name HDIL Paradise City. Being satisfied with the amenities provided in it, the complainant decided to book Flat No.2 admeasuring 50.89 sq.mt. carpet area on the ground floor in Bldg.No.25, A-Wing, Sector-4. The total price was agreed as Rs.13,83,550/- excluding the Stamp Duty, Registration Fee and Service Tax. The Agreement was executed in that respect on 4/12/2011. The Complainant paid Rs.4,82,500/- + Stamp Duty, Service Tax, VAT, and

17-7-18

Registration Charges. The Respondent had agreed to deliver possession of flat on 31.12.2013.

3. The Respondent failed to carry out the construction in that project. The entire project prolonged since 2013. The complainant approached the Respondent, with a request to complete the project and provide amenities as per agreement. The condition of the flat is inhabitable. The Respondent is unable to complete the project and obtain Occupation Certificate and therefore unable to deliver possession of the flats. The Complainant is not interested in that project and she demanded interest on amount of refund to be paid. But the Respondent failed and neglected to accept such requests. The Complainant is entitled to withdraw from project and refund of Rs.4,85,051/- paid to the Respondent alongwith interest as provided in Rule-18 of MahaRERA Rules. The Complainant has therefore filed this complaint through power of attorney holder – her son Vinayak.
4. Hon'ble Chairperson heard the complaint's complaint and transferred to the Adjudating Officer vide Roznama dated 7.3.2018. After notification of the date, the Complainant came before me on 20.3.2018. The Complainant appeared in person and Respondent through his Advocate Madan Mohan. The Respondent wanted to file written explanation and sought time for that purpose and thereafter filed it on 27.3.2018. I am working at MahaRERA Offices at Pune and Mumbai in alternate weeks as per availability of dais. Consequently, argument in the matter could be heard only on 27.3.2018 and the matter was reserved for Judgment.
5. The Respondent in his written explanation, admitted that the Complainant booked flat as alleged on 5.3.2011 by making payment of Rs.1,00,000/-. The Agreement for sale was executed on 4.2.2011 which is registered agreement. The complainant had made payment of total Rs.4,41,472/, last instalment being paid on 29.10.2012. Clause-4 of the agreement specifies the price of flat as Rs.13,83,550/-. Clause 33 stipulates the date of possession 31.12.2013.

12-7-18

Clause -32 provides that the developer has reasonable time in contingencies, viz. delay in environment clearance by Environment Department. There was scarcity of sand because of ban on sand mining in Maharashtra. There was scarcity of labour and other services due to demonetization.

6. The Respondent had planned mega township in 2010 and plan was submitted and sanctioned by the Collector in the year 2010. The Respondent then applied for environment clearance which was expected within 3 to 6 months. However, it was obtained only on 2.3.2012 causing a delay of at least one year from start of the construction. Consequently, the respondent could not complete the construction work till December 2014 i.e. one year late. The State Revenue and Finance Department vide policy shown in Govt. Resolution dated 25.10.2010 put various restrictions including environment clearance and sand mining which caused delay for issuing of tenders for sand mining in Maharashtra. In January 2011, the Bombay High Court in Civil Writ Petition No.97-98 of 2011, upheld new policy of the Government to observe that as a result of Interim Relief, there is acute scarcity of sand. On 27.2.2012, the Supreme Court upheld ban and various restrictions. This has resulted in acute scarcity of sand. Due to shortage of sand construction activity could not be carried out in the State. The National Green Tribunal vide its direction dated 5.8.2013, restrained companies from carrying out activities for removal of sand without obtaining environment clearance. The Real Estate companies are desperately trying to cope up with sand scarcity even by importing sand from Indonesia and Philippines.

7. There was scarcity of building materials and shortage of labour, post demonetization effected by Government in November 2016. There is acute economic crisis and no payments for flat and therefore no money for progress of the construction. The Respondent is entitled for extension of date of possession under Clause-32 of the agreement as he is not responsible for the delay and it was caused due to factors beyond his control. The Complainant did not raise

17-18

any objection till this time. The Respondent has offered partly ready flat to the Complainant for the same price in Sector-1. Consequently, the complaint deserves to be dismissed.

8. On the basis of the rival contentions of the parties, following points arise for my determination, I have noted my findings against them for the reasons stated below:

<u>Points</u>	<u>Findings</u>
1. Has the Respondent committed Default in handing over the Possession of the flat as per Agreement ?	Yes
2. Is the Complainant entitled for? Refund of money and compensation?	Yes
3. What Order?	As per Final Order

REASONS

9. Point 1 & 2: It is not in dispute that agreement was executed. As mentioned in agreement dated 4.12.2011 in respect of flat no.2 in Bldg.No.25 in Sector-4 in the project HDIL Paradise City, carpet area is 44.50 sq.mts. and agreed price is Rs.13,83,550/- and Rs.1,00,000/- was booking amount and balance was to be paid in stages. As per Clause-33, the date of delivery of possession was 31.12.2013. The Complainant had made total payment of Rs.4,82,051/-. The Respondent admits having received Rs.4,41,472/- towards cost of the flat.
10. The Respondent alleged that the proposal for the mega township with plan was submitted to the Collector and was sanctioned by the Collector in the year 2010. The date of agreement between parties is 4.12.2011 and the booking was done by the Complainant on 5.3.2011. Since

12-5-18

plan was sanctioned by the Collector, there must have been some progress, when the complainant booked flat on 5.3.2011 and further progress when agreement was executed on 4.12.2011. The period of about 2 years was fixed for completion of construction and delivery of possession i.e. by 31.12.2013. This was reasonable period for completion of project and handing over possession. It must be remembered that though more than four years have gone by, the Respondent is still not in a position to handover possession of flat booked by the Complainant. In fact, he has offered alternate flat to the Complainant but it is not acceptable to her.

11. On behalf of Complainant, Advocate Kadam has submitted that various notifications and G.R.s. of the Govt. were issued prior to the agreement. The Complainant has been forced to occupy the premises on leave and licence basis. The Respondent has not been able to obtain Occupancy Certificate in respect of the flat that was booked. The facilities as per agreement are not in existence. On the other hand, Adv. Madan Mohan who is himself representative of the Respondent, relied on Clause 32 of the agreement and the circumstances like shortage of sand, want of NOC and other contingencies and submitted that respondent is not responsible for the delay.
12. As stated earlier, a 2 years period for delivery of possession since execution of agreement was reasonable period. The policy of sand mining was proclaimed by Maharashtra Govt. on 25.10.2010. It was challenged in the High Court in the year 2011. Thus, when agreement was executed, the respondent was aware of Govt. policy regarding sand mining. Even thereafter he had agreed to deliver a possession of the flat within 2 years. At the time of execution of agreement, the Respondent must be well aware of the consequences of Govt. Policy and the shortage of sand that could have resulted. There were alternatives available to the Respondent including importing of sand. The respondent pleads cost escalation. However, it was responsibility of Respondent to deliver a possession and fix

12-1-19

the price of the flat by considering the cost of construction. The Respondent is also pleading demonetization as a cost of delay which was effected in November 2016. Consequently, the Respondent cannot be absolved of his responsibility to deliver a possession within reasonable time. The Complainant is therefore, entitled for refund and money paid by her along with interest. I, therefore answer on point Nos.1 & 2 in the affirmative and proceed to pass following order:-

ORDER

1. The Respondent shall pay Rs.4,41,472/- to the Complainant with interest @ the State Bank of India highest Marginal Cost of Lending Rate plus two percent per annum prevailing as on date, which is refundable from the date of payment till actual realisation.
2. The Respondent shall pay cost of Rs.25,000/- to the Complainant.
3. The Respondent shall pay above amount within 30 days from the date of issue of this order.


(M. V. Kulkarni)
Adjudicating Officer, MahaRERA
Mumbai.

Place: Mumbai

Date :17th July, 2018.