

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000010616

Yashwant Dashrath Sawant

Dashrath Y. Sawant

... Complainants.

Versus

Apl Yashomangal Developers

ARK Prem Developers

(Alfa Greenfields Phase-1)

... Respondents.

MahaRERA Regn: P52100001020

Coram: Shri B.D. Kapadnis, Hon'ble
Member & Adjudicating Officer.

Complainant: Mr. Shashikant Kadam, Adv.

Respondent: Mr. Ritesh Bellara, Adv.

Final Order

18th January 2018.

How long the reasons beyond control of promoter responsible for delaying the project can absolve him from liability to refund allottee's amount, interest and/or compensation under law, is the important issue involved in this complaint.

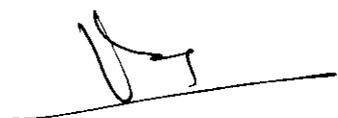
2. The complainants have booked flat no. 204, Building No.-1, D-Wing of respondents' registered project Alfa Greenfield, situated at Wadgaon Mawal, Pune. The respondents executed agreement for sale of the said flat in favour of complaints, wherein they have agreed to deliver the possession of the flat on or before December 2013. The respondents have failed to deliver the possession of the flat till the date of complaint. Hence, the complainants want to withdraw from the project and they claim refund



of their amount with interest and/or compensation under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (in short, RERA).

3. The respondents have pleaded not guilty and they have filed their explanation to deny complainants' claim. They contend that Clause-21 of the agreement for sale provides for extension of time for giving delivery of the units on account of delay in grant of any NOC, permission, licence etc. The respondents have contended that they received the permission for making construction in the year 2011 itself. They applied for Environmental Clearance on 12.05.2011 and the Environmental Clearance committee heard them in the meeting conducted during 17 to 19 January 2013. On 22.07.2013, they received a show cause notice from the said authority and therefore, the respondents stopped the construction to avoid further complications though on 12.08.2013 in their reply they brought to the notice of the said Authority that the construction made by them was less than 20,000 sq.mtrs. Thereafter, they received a letter from Environmental Clearance Authority dated 26.06.2014 directing them not to carry out construction till obtaining Environmental Clearance permission. In the month of February 2015 hearing was given to the respondents. During that meeting the respondents submitted that the construction was completed. Ultimately on 01.03.2017 they got Environmental Clearance. Therefore, the respondents contend that from the receipt of show cause notice dated 20.07.2013 till the grant of Environmental Clearance on 01.03.2017 they could not carry on further construction and take the project to completion. They further contend that though they have mentioned 31.12.2019 as the date of completion of their project while registering with MahaRERA, the date can be preponed as they have applied for plinth checking and they hope to receive completion certificate soon.

4. Following points arise for determination and I record findings thereon as under:

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POINTS

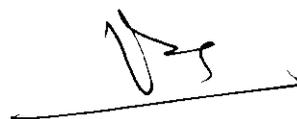
FINDINGS

1. How long the reasons beyond control of promoter responsible for delaying the project can absolve him from liability to refund allottee's amount, interest and/or compensation under law ? 3+3 months.
2. Whether the respondents have failed to deliver the possession of complainants' booked flat on agreed date? Affirmative.
3. Whether the complainants are entitled to get refund of their amount with interest? Affirmative.

REASONS

Time limit for promoter's exemption to refund allottee's amount due to reasons beyond his control.

5. Admittedly, the agreement for sale has been executed when the Maharashtra Ownership Flats Act, 1963 was in force. In fact, this Act is still in force in the State of Maharashtra. The respondents have produced the documents on record to show that they applied for permission to get Environmental Clearance on 12.05.2011. Thereafter, show cause notice was issued, then the respondents received stop work order dated 26.06.2014 and lastly, on 01.03.2017 the Authority granted the clearance certificate. These facts have been established. I have also taken it for granted that these causes were beyond the control of respondents because of which though the substantial construction was made, the remaining work was stopped. The respondents have referred to Clause 21.v. of the agreement. This Clause refers to the agreed date of possession i.e. December 2013. It also refers to Section 8 of Maharashtra Ownership Act, 1963. In Sub Clause v. thereof it is mentioned that the respondents would be entitled to get



extension due to delay in grant of NOC/permission/licence etc. So by relying upon this Clause, the respondents submit they were prevented from delivering the possession of a flat on the agreed date.

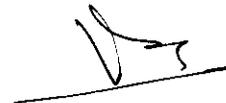
6. It appears that while agreeing to this Clause, Section 8 of Maharashtra Ownership Flats Act 1963 was before the parties. Section 8 reads as under-

“ 8. Refund of amount paid with interest for failure to give possession within specified time or further time allowed - If -

- (a) The promoter fails to give possession in accordance with the terms of his agreement of a flat duly completed by the dates specified, or any further date or dates agreed to by the parties, or*
- (b) The promoter for reasons beyond his control and of his agents, is unable to give possession of the flat by the date specified, or the further agreed date and a period of three months thereafter, or a further period of three months if those reasons still exist,*

Then, in any such case, the promoter shall be liable on demand (but without prejudice to any other remedies to which he may be liable) to refund the amounts already received by him in respect of the flat (with simple interest at nine per cent per annum from the date he received the sums till the date the amounts and interest thereon is refunded), and the amounts and the interest shall be a charge on the land and the construction if any thereon in which the flat is or was to be constructed, to the extent of the amount due, but subject to any prior encumbrances. “

7. A perusal of Clause (b) makes it clear that if the promoter for reasons beyond his control is unable to give possession of the flat by the date specified in agreement or further agreed date and the period of three months thereafter or further period of three months, if reasons still exist, then in such a case the promoter shall be liable on demand to refund the amount already received by him with simple interest at the rate of nine per



cent per annum. This provision therefore, makes it very clear that the period within which refund of amount can be claimed by allottee can be extended by three months first if the reasons are beyond the control of promoter and if they continue then it can be extended by three months again. The maximum period for extension would be only six months and not beyond that howsoever strong reasons might be.

8. There is section 6 in The Real Estate (Regulation and Development) Act, 2016 (in short, RERA) but it relates to the extension of registration of real estate project. I restrain myself from discussing it because I cannot do it better than what has been beautifully done by the Hon'ble Bombay High Court in Neelkamal Realtors Pvt. Ltd. Vs. Union of India & ors, writ petition no. 2737 of 2017 of original civil jurisdiction. Hon'ble High Court has referred to sections 6 and 7 of the Act to sum up that on expiry of registration granted u/s. 5 may be extended for the period of one year when in the facts and circumstances of the case if it is shown that the reasons were beyond the control of promoter. This provision is not relating to the issue as to how long the reasons beyond control of promoter responsible for delaying the project can absolve him from liability to refund allottee's amount, interest and/or compensation under law. Since the Maharashtra Ownership Flats Act is still in force and Section 88 of RERA permits its application, I hold that in the absence of specific provisions in RERA like Section 8 of Maharashtra Ownership Flats Act, this provision of Section 8 will have to be applied.

Respondents failure to deliver possession on agreed date.

9. The respondents have not disputed that they agreed to deliver the possession of the flat on or before December 2013. It is also fact that they have not delivered the possession of the said flat till the date. Hence I hold that the complainants have proved that the respondents have failed to deliver the possession of the flat on the agreed date.



10. I have already referred to Section 8 of the Maharashtra Ownership Flats Act 1963. I find that even the issue regarding non completion due to reasons beyond the control of the promoter loses its relevance and importance if it is delayed beyond six months of the agreed date in case of withdrawal from the project. Therefore, I find that it is difficult to agree with the respondents when they say that they were prevented because of the delay caused in getting the Environmental Clearance which was beyond their control.

Entitlement of the complainants.

11. The Section 18 of RERA provides that the allottees can claim refund of his amount with interest and/or compensation if the promoter fails to deliver the possession of the apartment on the date specified in the agreement. It gives the option to allottees to withdraw from the project. In view of this provision, the complainants have exercised their right to withdraw from the project and claim refund of their amount with interest.

12. The respondents have not disputed the payments disclosed in the compensation sheet filed by the complainants marked as Exhibit 'A'. They have mentioned that stamp duty has been paid by the complainants and on cancellation of agreement for sale, the complainants would be entitled to get back its refund, hence, I find that the complainants are not entitled to get Rs. 44,800/- paid by them for purchasing the stamps. Since the respondents have defaulted in delivering the possession of the flat on agreed date, they must compensate the complainants by reimbursing all other amount mentioned in the compensation sheet except the amount of stamp duty. Section 18 of RERA allows the allottee to collect his amount with interest at prescribed rate which is MCLR of SBI + 2%. The current rate of MCLR of SBI is 8.05% at present. Thus, the complainants are entitled to get simple interest at the rate of 10.05% together with Rs. 20,000/- towards the cost of the complaint. Hence, the following order.



ORDER

- A. The Respondents shall pay the Complainants the amount mentioned in Para 12 of this order with simple interest at the rate of 10.05% from the respective dates of their receipt till they are repaid together with Rs. 20,000/- towards the cost of the complaint. Statement marked as Exhibit 'A' shall form the part of this order.
- B. On satisfaction of the entire claim, the complainants shall execute the document of cancellation of registered agreement for sale, at the cost of respondents.
- C. The charge of these amount shall remain on the flat No. * D-204, Building No. 1 of Alfa Greenfield till the satisfaction of the complainants' claim.



(B.D. Kapadnis)

Member & Adjudicating Officer
MahaRERA, Mumbai.

Mumbai.
Date: 18.01.2018

* Rectified by exercising power u/s 39 of RERA. Rectified page be uploaded.



(B.D. Kapadnis)

Member & Adjudicating Officer
MahaRERA, Mumbai.

Mumbai.
Date: 01.02.2018.

Compensation sheet

Name: Yashwant D. Sawant and Dashrath Y. Sawant Project: Alfa Greenfields at Vadgaon Maval, Pune - 412106 Flat No. D 204 Compensation Calculation Sheet											
Date	Receipt No.	Agreement Value paid	Service tax paid	VAI paid	Develop ment	Mainten ance	Stamp Duty	Registration	Other	Total amount Paid (INR)	Interest calc.till 31st Dec, 2017 @9%
30-Oct-11	266		57800							57800	32124
30-Oct-11	267			22400						22400	12449
18-May-12	534	68000								68000	34423
29-Oct-11	Registration						44800	22400		67200	37365
10-Sep-11	242	100000								100000	56811
20-Oct-12	697	347178								347178	162479
18-Jul-12	380	110000								110000	54030
15-Sep-12	390	179900								179900	85746
06-Jun-12	373	515000								515000	258290
23-Jan-14	1336								65000	65000	23047
05-Nov-14	1612	195369								195369	55496
28-May-13	796	167900								167900	69469
04-Dec-12	750	179153								179153	81856
20-May-12	540	400								400	202
29-Sep-11	254	235912								235912	132919
Total Payment		2098812	57800	22400	0	0	44800	22400	65000	2311212	1096706
										3407918	

Stamp duty paid in the form of...