

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC004000000010088

Aditya Kukday ... Complainant

Versus

Mahindra Bebanco Developers Limited
MahaRERA Regn. No. P50500009336 ... Respondent

Coram: Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant was himself present a/w Mr. Madhav P. kukday.
Respondent was represented by Mr. Abir Patel, Adv. (i/b. Wadia Ghandy & Co.) a/w Mr. Yogesh Naik, Authorised representative.

Order (Rectified)

March 03, 2020

[By the Respondent's application dated February 28, 2020; the Order dated February 18, 2020 has been rectified by this Order dated March 03, 2020 with regards to the location of the project in para no. 1; under the provisions of section 39 of the Maharashtra Real Estate (Regulation and Development) Act, 2016]

1. The Complainant has purchased apartment bearing no. 6B in the Respondent's project 'Bloomdale Duplex Home 6' situated at Mihan, Nagpur, via registered agreements for sale dated 24th August, 2016 (*hereinafter referred to as the said agreements*). The Complainant has alleged that the Respondent was to hand over possession of the said apartment on or before July 31, 2017, but has failed to do so, till date. Further, he has stated that per the sale agreement, the Respondent is liable for delay compensation and that the Respondent has agreed to pay compensation at SBI MLCR +2% per email dated March 3, 2018. Therefore, he prayed the Respondent be directed to hand over



possession of the apartment at the earliest, and pay him compensation from August 1, 2017.

2. The Learned Counsel for the Respondent submitted that the Part Occupation Certificate for the wing of this Project, containing the Complainant's apartment, has been obtained and that the Respondent has offered possession of the said apartment to the Complainant on March 13, 2019, along with compensation as stipulated by the said agreement and that Complainant is purposely withholding taking possession. He, further, added that in accordance with Section 19 (10) of the Act the Complainant was required to take possession of his apartment within two months of the receipt of the Occupation Certificate. He also submitted that the date of possession as stipulated by the said agreement is subject to reasonable extension of time in the event that any of the circumstances, stated in clause 12(iii) of the said Agreement.
3. The Respondent's affidavit in reply is annexed to the Order as "Annexure A".
4. On the date of final hearing, the Complainant sent an email stating that he would like to withdraw from the said project and prayed the Respondent be directed to refund the amount along with interest and compensation. He also submitted that he has already taken inspection of the said apartment and has pointed out the deficiencies in the same to the Respondent.
5. In view of the above facts, based on the initial prayers made by the Complainant in his Online Complaint, the Complainant is advised to take possession of the apartment at the earliest as the project is now completed.
6. The quantum of compensation for delay would be guided by the specific clause pertaining to the same, duly agreed upon between the two parties in their registered agreement for sale. The five-year defect liability period shall apply to this registered project and the Complainant can approach MahaRERA for contravention, if any, of provisions of Section 14(3), in the future. The Respondent is directed to pay the Complainant, agreed amount for the delay in handing over possession as stipulated by the said agreement, within 30 days from the date of this Order.



7. Consequently, the matter is hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA

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MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC004000000010088

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... Respondent

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Order

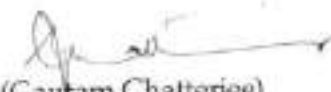
February 18, 2020

1. The Complainant has purchased apartment bearing no. 6B in the Respondent's project 'Bloomdale Duplex Home 6' situated at Mulund, Mumbai via registered agreements for sale dated 24th August, 2016 (*hereinafter referred to as the said agreements*). The Complainant has alleged that the Respondent was to hand over possession of the said apartment on or before July 31, 2017, but has failed to do so, till date. Further, he has stated that per the sale agreement, the Respondent is liable for delay compensation and that the Respondent has agreed to pay compensation at SBI MLCR +2% per email dated March 3, 2018. Therefore, he prayed the Respondent be directed to hand over possession of the apartment at the earliest, and pay him compensation from August 1, 2017.
2. The Learned Counsel for the Respondent submitted that the Part Occupation Certificate for the wing of this Project, containing the Complainant's apartment, has



been obtained and that the Respondent has offered possession of the said apartment to the Complainant on March 13, 2019, along with compensation as stipulated by the said agreement and that Complainant is purposely withholding taking possession. He, further, added that in accordance with Section 19 (10) of the Act the Complainant was required to take possession of his apartment within two months of the receipt of the Occupation Certificate. He also submitted that the date of possession as stipulated by the said agreement is subject to reasonable extension of time in the event that any of the circumstances, stated in clause 12(iii) of the said Agreement.

3. The Respondent's affidavit in reply is annexed to the Order as "Annexure A".
4. On the date of final hearing, the Complainant sent an email stating that he would like to withdraw from the said project and prayed the Respondent be directed to refund the amount along with interest and compensation. He also submitted that he has already taken inspection of the said apartment and has pointed out the deficiencies in the same to the Respondent.
5. In view of the above facts, based on the initial prayers made by the Complainant in his Online Complaint, the Complainant is advised to take possession of the apartment at the earliest as the project is now completed.
6. The quantum of compensation for delay would be guided by the specific clause pertaining to the same, duly agreed upon between the two parties in their registered agreement for sale. The five-year defect liability period shall apply to this registered project and the Complainant can approach MahaRERA for contravention, if any, of provisions of Section 14(3), in the future. The Respondent is directed to pay the Complainant, agreed amount for the delay in handing over possession as stipulated by the said agreement, within 30 days from the date of this Order.
7. Consequently, the matter is hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA

"ANNEXURE A"

①
25/08

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY

COMPLAINT NO. CC004000000010088

Aditya Kukday

... Complainants

V/s

Mahindra Bloomdale Developers Ltd.

... Respondent

AFFIDAVIT OF THE RESPONDENT

I, Yogesh Eknath Naik Authorised Signatory of the Respondent having office at Mahindra Towers, 5th floor, Dr. G. M. Bhosale Marg, Worli, Mumbai - 400 018 do hereby solemnly affirm and state as under:

1. I say that I am well versed with the facts and circumstances surrounding the present case based on my own knowledge and on records maintained by the Respondent. I deny each and every allegation, contention and insinuation made in the captioned Complaint and nothing therein should be deemed to be admitted by Respondent No.1 for want of specific denial. I crave leave to file detailed Affidavit/submissions in the captioned matter, if and when necessary.
2. At the outset, I say that I am filing this affidavit for the limited purpose of placing on record the reasons that led to delay in handing over possession of the subject flat to the Complainant, which reasons, as stated hereinafter, are entirely beyond the reasonable control of the Respondent.
3. I say that by and under agreement for sale dated 24th August, 2016 ("said Agreement"), the Complainant agreed to purchase the subject duplex apartment on the terms and conditions specified therein.



4. In terms of the said Agreement, possession of the subject duplex apartment was to be 31st July, 2017 in terms of clause 12 of the said Agreement. However, the aforesaid possession date was subject to reasonable extension of time in the event that any of the circumstances, stated in clause 12(iii) of the said Agreement.
 5. It is pertinent to note that the Respondent had engaged one B.E. Billimoria & Company Ltd. as the contractor to undertake and construct the present real estate project. However, sometime in the year 2017, some disputes arose between the Respondent and the aforesaid contractor, prompting to termination of the agreement between the Respondent and the above contractor.
 6. After the aforesaid termination, the Respondent was in the process of appointing another contractor so that work on the site could not stop and the apartments were delivered on time.
 7. However, the aforesaid contractor B.E. Billimoria & Company Ltd. filed Arbitration Petition (L) No. 29 of 2017 against the Respondent, challenging the termination of the contracting agreement. By an Order dated 20th January, 2017, the Hon'ble Bombay High Court stayed the termination of the agreement between the parties. As a result, Respondent could not appoint another developer whereas the erstwhile developer had already suspended work on site. A copy of the aforesaid order dated 20th January, 2017 is annexed hereto and marked as **Exhibit-A.**
- Thereafter, the Arbitration Petition (L) No. 29 of 2017 was heard at length by the Hon'ble Bombay High Court, which dismissed the aforesaid Arbitration Petition thereby setting aside the aforesaid order



dated 20th January, 2017 staying termination by Order dated 2nd May, 2017. A copy of the aforesaid order dated 2nd May, 2017 is annexed hereto and marked as **Exhibit - B**.

9. This allowed the Respondent to begin negotiations for appointment of another contractor and commence construction work on site. However, the aforesaid contractor preferred an appeal against the aforesaid Order dated 2nd May, 2017. The Respondent got served with the appeal on 9th May, 2017.

10. By Order dated 29th August, 2017, passed in the aforesaid appeal, the Hon'ble Division Bench of the Bombay High Court was pleased to set aside the Order dated 20th January, 2017 (Exhibit - A). As a consequence, once again, the Respondent could not appoint any new contractor for the project and work on site remained suspended. A copy of the aforesaid order dated 29th August, 2017, is annexed hereto and marked as **Exhibit - C**.



The aforesaid contractor filed a Special Leave Petition (Civil) No. 23407 of 2017 on 4th September, 2017 against the aforesaid Order dated 29th August, 2017 in the Hon'ble Supreme Court. However, by an Order dated 22nd September, 2017 the Hon'ble Supreme Court dismissed the Special Leave Petition filed by the contractor B E Billimoria. A copy of the aforesaid order dated 29th August, 2017, is annexed hereto and marked as **Exhibit - D**.

12. I say that as a result of the aforesaid court proceedings, no work could take place on site. In fact, even after the aforesaid Order, the contractor refused to vacate the site until 22nd September, 2017.

13. Thereafter, the Respondent appointed another contractor i.e. M/s. Skyway RMC Plants Private Limited on 9th January, 2018, and work on site commenced again on 9th January 2018. I therefore submit that the Respondent could not carry out any work on site from 20th January, 2017 to 22nd September, 2017. I say that in terms of clause 12 of the said Agreement, the possession date of 31st July, 2017 was subject to reasonable extension by at least 265 days.

14. I say that in terms of clause 13 of the said Agreement, in case of delay in possession the Respondent was liable to pay a lump sum compensation @ Rs.5/- per square foot which comes to the tune of Rs.1,31,083/- (Rupees One Lakh Thirty One Thousand and Eighty Three Only). However, I say that though not being liable under law, the Respondent, without prejudice to its rights and contentions, as a customer centric organisation, offered interest of an amount of Rs.2,82,459/- (Rupees Two Lakh Eighty Two Thousand Four Hundred and Fifty Nine Only) as per the provisions of the Real Estate (Regulation & Development) Act, 2016 and Maharashtra Real Estate (Regulation and Development) (Registration of real estate projects, Registration of real estate agents, rates of interest and disclosures on website) Rules, 2017 for a period from 20th January, 2017 to 22nd September, 2017 after deduction the aforesaid period of 265 days during which the work on site was suspended due to the ongoing litigation with the contractor B. E. Billimoria & Company Limited. I say that the aforesaid offer, has been made in accordance with the provisions of law.

15. I say that the Learned Chairperson, in the same project has passed Orders dated 30th May, 2018, 12th June, 2018, 1st August, 2018 and 25th January, 2019 directing Complainants therein to accept the offer made by this



Respondent and take possession of the flats. I say that, this complaint is covered by the aforesaid Orders, and judicial propriety demands that the aforesaid Orders, which have now attained finality, guide this Hon'ble Authority at the time of deciding this complaint. Copies of the aforesaid orders are annexed hereto and marked as **Exhibit - E** colly.

16. Further, I say that the occupation certificate for the subject duplex flat has already been obtained by the Respondent and possession of the flat was offered to the Complainant on 13th March, 2019. The Complainant is deliberately withholding taking possession of the flat, and is therefore in violation of section 19(10) of the said Act. I say that the main objection of the said Act is completion of the project, which in the present case has already been done, since occupation certificate has been procured. A copy of the occupation certificate dated 13th March, 2019 *inter alia* in respect of the subject apartment is annexed hereto and marked as **Exhibit -F**.



In the circumstances, I say that the present complaint cannot be entertained, as the Complainant, who has already been offered possession as also compensation as a goodwill gesture, is merely litigating and avoiding taking possession so as to satiate his greed for greater compensation, which is not the object behind implementation of the said Act.

18. I say that the Complainant is trying to misuse the provisions of the said Act to gain monetarily in the form of trying to enhance his compensation from what has already been offered to him and is deliberately not taking possession, which clearly shows that the Complainant is not an end user, but an investor trying to make a return on investment.

6

19. In the circumstances, I say that the captioned Complaint ought not to be entertained by this Authority, as enhancement of compensation cannot be a ground to file a complaint under the provisions of the said Act.
20. I say that the present complaint deserves to be dismissed, in light of what has been stated hereinabove, with costs.

Solemnly affirmed at Mumbai)

Dated this 21st day of June, 2019)



Before Me

Partner/Authorised Signatory

BEFORE ME

For Wadia Ghandy & Co.

Smy
22-6-19

[Signature]
Partner

Advocate for Respondent

S. M. N. Naqvi
NOTARY
Government of India.
Mumbai & Thane Dist.

SR. No. 1001 F. No. 072
NOTARY Register 385 Date 22/06/19

