

**THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY MUMBAI**

COMPLAINT NO. CC005000000022289

Ashishkumar Jagdishbhai Patel

..Complainant.

Versus

Anuradha Anil Saigal,
Anil Kamalkishore Saigal

..Respondents.

MahaRERA Regn. No. **P52100004763**

Coram:

Hon'ble Shri Bhalchandra Kapadnis,
Member-II, MahaRERA.

Appearance:

Complainant: In person.

Respondents: Adv. Mr. Vinod Sampat.

FINAL ORDER

06th January 2020.

The complainant contends that he initially booked flat no. 903/903A in the respondents' project Candy Flower but later on the booking is transferred to flat nos. 803/803A. The payment made earlier was adjusted as consideration of flat nos. 803/803A. The agreement was executed on 04.06.2014 wherein the respondents agreed to hand over possession of the flat within 18 to 24 months from the date of issue of Commencement Certificate. The Commencement Certificate was granted on 16.03.2009. Thereafter, the respondents got it revised on 02.03.2013 and thus, they were required to handover possession of the flat by March, 2015 but they failed to hand over the possession of the flat on agreed date. Hence, the complainant claims interest on his investment for delayed possession u/s 18 of RERA. He also complains that Occupation Certificate has been obtained by the respondents without actually completing entire work. It is also contended by the complainant that there are damaged entrance floor tile in bedroom, improper wall



colouring of living room, visible plaster patch on electric wire line, broken plaster around foot light and railing of balcony, toilet flush cover is not positioned correctly, there are hard stain in toilet commodes, dry balcony door does not lock, rusting spots in kitchen sink and door hinges are found, broken magnetic door stopper of main entrance wall and there is incomplete wall putty finishing work in balcony wall joints, entrance door wall joints. The respondents have not provided agreed amenities. During hearing the complainant complains that proper security gate and cabin, covered car parking are not provided, the electricity meters are kept open, there is construction material lying on the project site and garbage is collected beside building entrance, pavement completion is not complete there are hanging lights in corridor, generator backup is not operational, one lift is not operational and there are hanging cables beside flat doors. The society of allottees has not been formed.

2. Respondents have pleaded not guilty. They have filed their reply to contend that while registering the project with MahaRERA, they have mentioned that project would be completed by 31.12.2018. Full O.C. is received on 14.02.2018. Prior thereto, part OC upto 4th floor was received on 29.04.2017. The complainant was asked to take the possession for fit out work by making balance payment on 16.08.2018. He was again reminded by letter dated 09.09.2018 but complainant did not take the possession. Therefore, respondents request to dismiss the complaint.

3. During the hearing, parties were directed to explore possibility of settlement with a view to get minor defects repaired/removed. Unfortunately, parties could not settle the dispute though the respondents were ready to cure the defects shown by the complainant.

4. I have heard the complainant and the Advocate Mr. Sampat for the Respondents. Mr. Sampat submits that the respondents are ready to form the association of allottees in a month. The respondents have placed on record the documents showing that they have taken steps for formation of the society of the allottees and therefore, this issue does not survive.



5. Mr. Sampat assures that the defects would be removed and necessary repairs would be carried by the respondents. The pavement around the building is constructed. The building material for constructing another building is lying but it is away from the building in which the complainant's flat is situated. The respondents agree to take corrective measures for redressing the complainant's grievances.

6. There is no dispute between the parties that the agreement for sale is executed by them on 04.06.2014 and respondents agreed to hand over possession of the flat within 18 to 24 months from Commencement Certificate. Complainant has referred to the 1st Commencement Certificate issued in the year 2009 and he wants that period of 18 to 24 months be computed from 16.03.2009. I do not accept this submission of the complainant because the complainant himself has pleaded that respondents applied for revised Commencement Certificate on 04.04.2012 and they obtained it on 02.03.2013. Agreement is executed on 04.06.2014. Therefore, it was within the knowledge of the parties that the revised Commencement Certificate was issued on 02.03.2013. Hence I hold that while computing delay, date of revised Commencement Certificate namely 02.03.2013 is material. From this date the respondents were liable to hand over possession of the flat by latest within 24 months i.e. on or before 01.03.2015. They failed to hand over possession on this date. Hence, I record my finding to this effect.

7. The respondents have relied upon the part Occupation Certificate dated 29.04.2017. However, they themselves have mentioned that thereafter electric meters were installed on 05.06.2017 and 16.08.2018 the possession was offered. It was re-offered on 09.09.2018. On 14.02.2018 they received full completion Certificate till 11th floor from PMRDA. Thus, it becomes clear that till 14.02.2018 the flat was not completed /constructed. The complainant paid Rs. 33,22,797/- to the respondents towards consideration of the flat before the agreed date of possession. Hence, the complainant is entitled to get interest on his investment from



02.03.015 till 14.02.2018. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 8.2%. Thereafter he paid Rs. 28,207/- and, Rs. 77,288/- on 12.09.2018, Rs. 24,933/- on 26.09.2018 and Rs. 1,79,728/- on 06.10.2018. The complainant is not entitled to get interest on these amount as the flat was completed and possession was offered prior to these payments.


8. The complainant has placed some photos showing deficiencies and the defects found on the project site and in the booked flat. I have given thought to the deficiencies pointed out by the complainant referred to above. Respondents are ready to carry out necessary repairs for removal of defects. These are minor repairs and I direct the respondents to do the needful for removing those defects.

9. Complainant has sought compensation under various heads. Section 18 of RERA provides that if the promoter fails to complete or is unable to give possession of an apartment on the date specified in the agreement, then allottee is entitled to claim interest on his investment for the delayed possession. This provision does not permit an allottee to claim any compensation as such. Hence I hold that except the relief provided by Section 18 of RERA to the complainant, who wants to continue in the project, other reliefs claimed by him namely that of compensation cannot be granted. However, he is entitled to get Rs. 20,000/- towards cost of the complaint.

10. To conclude, respondents shall pay simple interest at the rate of 10.2% per annum on Rs. 33,22,797/- from 02.03.015 till 14.02.2018.

10. The respondents shall remove defects by carrying out necessary repairs and shall hand over the possession with agreed amenities within 15 days from this Order on receiving balance payment, if any.

Place: Mumbai
Date: 06.01.2020.


6.1.2020
(B.D.KAPADNIS)
MEMBER-II, MahaRERA, Mumbai.