

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

COMPLAINT NO: CC005000000011104

Rahul Prabhakar Kshirsagar  
Vijaymala Rahul Kshirsagar

... Complainants

Versus

Akruti Jay Developers  
MahaRERA Regn. No. P52100003342

... Respondent

**Coram:** Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainants were represented by Adv. L. Warange (i/b. Adv. S. S. Pagey).  
Respondent was represented by Mr. Sachin Karia, Adv. (i/b. Law Point).

**Order**

February 25, 2020

1. The Complainants have stated that they have purchased an apartment bearing no: 403-B1 in the Respondent's project "Hubtown Countrywoods Building 1", situated at Haveli, Pune via registered agreement for sale dated April 13, 2012. The Complainants have alleged that the Respondent was to handover possession of their apartment in December, 2013, however, the possession was handed over much later without providing the agreed amenities. Therefore, they have prayed that the Respondent be directed to complete the project as agreed with entire amenities and facilities and pay them interest, for delay, as per the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the said Act*).
2. During the hearing, the learned counsel for the Respondent, denying the allegations and contention of the Complainants, submitted that the Respondent has already obtained Occupancy Certificate for the building in which the Complainants' apartment is situated on November 24, 2017 and possession of the apartment is already



handed over to the Complainants. Further, he submitted the Complainants had defaulted in making payments of their consideration amounts, as per the terms and conditions of the said agreement. He further added that the date of possession mentioned in the said agreement was also subject to further extension in case of contingencies mentioned in clause 2.4 read with clauses 19.5 and 19.5.1. of the said agreement. He also said that the building is complete in all respect as on date and that all amenities as stipulated in the said agreement have been provided by the Respondent.

3. The Respondent has filed his reply dated September 25, 2019 which is taken on record and annexed to the Order as "Annexure A."
4. Section 18 (1)(a) of the said Act reads as:

*" if the promoter fails to complete or is unable to give possession of an apartment, plot or building, – (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. "*

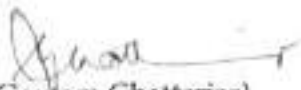
Simple present tense used in the starting line of Section 18 clearly indicated that the provision shall apply only till the project is incomplete or the promoter is unable to give possession. Once the project construction is complete or possession is given, as the case may be, the said provision ceases to operate.

5. In view of the above facts, the Respondent cannot be held liable to pay interest on delay to the Complainants, as per section 18 of the Real Estate (Regulation and Development) Act, 2016.



6. As far as the complaint regarding the Respondent not providing the agreed amenities is concerned, the Complainants have failed to specify the violation of the clauses of their agreement for sale, with regard to provision of amenities. Moreover, the Respondent in his reply has clearly stated that all amenities as stipulated in the said agreement have been provided by the Respondent. Therefore, the Complainant has not been able to establish any violation of Section 14(3) of the Real Estate (Regulation and Development) Act, 2016 too.

7. Consequently, the matter is hereby disposed of.

  
(Gautam Chatterjee)  
Chairperson, MahaRERA

Date: 21<sup>st</sup> September, 2019

To,  
Maharashtra Real Estate Regulatory Authority  
3<sup>rd</sup> Floor, A Wing, Slum Rehabilitation Authority  
Administrative Building,  
Anant Kanekar Marg,  
Bandra (East),  
Mumbai 400 051.

**Re: BEFORE THE MAHARASHTRA REAL ESTATE  
REGULATORY AUTHORITY OFFICE PUNE  
COMPLAINT NO.CC005000000011104 OF 2019**

Mr. Rahul Prabhakar Kshirsagar & Anr. .... Complainants

Vs.

M/s. Akruti Jay Developers ..... Respondents

**REPLY OF RESPONDENTS MENTIONED HEREIN ABOVE**

We, the above named Respondents, do hereby submit as under:

1. At the outset, we say that we are filing this present Reply merely for the purposes of opposing the grant of any interim reliefs or otherwise in favour of the Complainants. Respondents reserve their right to file a further Affidavit, if necessary, at the time of hearing of the present Complaint.
2. At the further outset, the Respondents deny each and every singular statements, allegations, averments, contentions and submissions made in the above Complaint as if the same have been specifically incorporated herein and traversed. Nothing shall be deemed to have been admitted by these Respondents for the specific denial of the same.
3. At the further outset, the Respondents say that the Complaint, as filed by the Complainants before this Hon'ble Authority, is false, frivolous, vexatious, bogus, contradictory and inconsistent and has been filed merely for the purposes of harassing us and extorting money from

us and as an abuse of process of Law by suppression of material facts and documents and with malafide intention to pressurize the Respondents.

4. The Respondents say that the Complainants have deliberately not disclosed true and material facts relevant to the case in hand and have not come to this Hon'ble Authority with clean hands and not entitled to any reliefs in equity or otherwise from this Hon'ble Authority and therefore the Complaint filed by the Complainants is liable to be and should be dismissed with costs.
5. At the further outset the Respondents submit that Maharashtra Real Estate Regulatory Authority ("**MahaRERA**") gets jurisdiction to adjudicate the matter only when any provision of RERA or any rule or regulation framed thereunder is violated or contravened as contemplated by section 31 of RERA. It is humbly submitted that Occupation Certificate in respect of Unit No. 403 situated at 4<sup>th</sup> floor of B-1 building, B-5 Cluster, (the "**said Flat**") which was agreed to be allotted to the Complainants under the Agreement for Sale dated 13<sup>th</sup> April, 2012 (the said "**Agreement for Sale**") is already obtained on 24<sup>th</sup> November, 2017 and accordingly the possession of the said Flat is also handed over to the Complainants and in view thereof this authority does not have the jurisdiction to decide on the present matter, and on that ground alone the complaint should be dismissed.
6. It is humbly submitted that the Respondents have not violated any provisions of Real Estate (Regulation and Development) Act, 2016 ("**RERA**") or contravened any provision of the RERA, wherein MahaRERA could exercise its Authority and accordingly MahaRERA has no jurisdiction to grant any reliefs to the Complainants and in view thereof this complaint is liable to be dismissed with costs.
7. The Respondents state that the Complainants are trying to inappropriately invoke the jurisdiction of this Hon'ble Authority by making false accusations against Respondents.

Without prejudice to what is stated herein, these Respondents repeat and reiterate that Complainants have vide letter dated 10<sup>th</sup> January, 2019, have offered possession in respect of the said Flat to the Complainants which has been duly taken by the Complainants without any demur, protest or objections on 7<sup>th</sup> March, 2018. We humbly state and submit that the Complainants have waived and relinquished their rights to claim/ demand against the Respondents at the time of taking possession and have duly acknowledged the Possession Letter. These Respondents state that the contentions of the Complainants is merely an afterthought to extort the Respondents, which is evident from the fact that from the date of taking possession till the date of filing of complaint the Complainant has not raised a single grievance as regards delay. The Respondents state that on this ground alone the present complaint is liable to be and should be dismissed with cost. Hereto annexed and marked **Annexure "A"** is the copy of Occupation certificate dated 24<sup>th</sup> November, 2017 and **Annexure "B"** is the possession letter dated 10<sup>th</sup> January, 2019.

8. We further state and submit that the Complainants were time and again intimated with regards to revised date of possession from time to time and were entitled to exercise their option under Section 8 of MOFA to exit and claim refund with interest, however the Complainants have chosen to continue with the revised dates as intimated by the Respondents from time to time and thereby novated the date of handing over possession under the said Agreement as per section 55 of Indian Contract Act and accordingly now the Complainants are estopped from raising any grievance with regards the alleged delay in handing over possession of the Flat.
9. Without prejudice to the above Respondents state and submit that the Complainants can not take advantage of their own wrong. In this connection Respondents state and submit that the Complainants were not diligent in making their payments on time and when the Flat Purchasers do not make payments on time the construction of a building

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gets delayed due to irregular payments. The Respondents state and submit that the Complainants did not make the payments as per the schedule despite having undertaken to do so in the Agreement. Respondents state and submit that the Complainants did not pay the requisite amounts as per demand letters dated 1<sup>st</sup> June, 2012 and 23<sup>rd</sup> November, 2012 within the stipulated period. It is well settled fact that when a Flat Purchaser commits delay in making payments the construction of building gets delayed due to insufficient funds. The Complainants in the above case being guilty of contributory negligence themselves cannot take advantage of their own wrong and now seek compensation for alleged delay in delivery of possession. The Respondents crave leave to refer to and rely upon the Demand letters sent to the Complainants as and when produced.

10. Respondents state and submit that the Complainants are guilty of suppressing and/or concealing material facts. The Complainants have stated that the date of possession as per the Agreement for Sale was December, 2013 but the Complainants have failed to mention that the said date is merely tentative date of possession as was also subject to the contingencies mentioned vide Clause 2.4 read with Clause 19.5 and 19.5.1 of the said Agreement. The aforesaid Clauses of the Agreement are reproduced hereinbelow for the kind perusal of this Hon'ble Authority.

- "Clause 2.4 "Possession date" shall mean (the date mentioned in the Agreement") or such extended date due to conditions mentioned in this Agreement or force majeure."
- "Clause 19.5 Delay due to reasons beyond the control of the Developer/Promoter."
- "Clause 19.5.1 "Subject to provision pertaining to Force Majeure contained in this Agreement, if the completion of the building is delayed by any reason beyond the control of the Developer/Promoter agrees

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that the Developer/Promoter shall be entitled to extension of time for delivery of possession of the Flat. The Developer/Promoter as result of contingency arising reserves the right to alter or vary the terms and conditions of the Agreement or if the circumstances beyond the control of the Developer/Promoter may suspend the Scheme for such period as it may consider expedient and the Purchaser(s) agrees not to claim compensation of any nature whatsoever (including the compensation stipulated) in elsewhere in this Agreement during the period of suspension of the Scheme."

11. On plain reading of the said clauses it is crystal clear that the date of possession mentioned in the Agreement in Clause 2.4 is clearly a tentative date of possession, which is subject to the force majeure clause of the said Agreement. Having wilfully signed the said Agreement the Complainants were bound by the terms and conditions of the Agreement. Thus as per the terms and conditions of the said Agreement the Respondents were entitled to a reasonable extension in the date of delivery of possession on account of non-availability of construction material and delay in award of necessary statutory permissions by the relevant government Authorities.
12. Thus Respondents state and submit that despite December, 2013 being tentative date of possession it is not case of the Complainants that they paid 100% of the flat consideration on or before December, 2013. The Complainants at each and every moment were aware regarding the stage of construction and made the payments as per the letters, thereby accepting the extended date of possession. For instance when the Complainants were informed vide Letter dated 24<sup>th</sup> July, 2015 that 91% of the Project was over, the Complainants could have raised their grievance in the month of July, 2014 with a Letter/Email and exercised their option of terminating the Agreement and taking refund of their entire money along with interest.

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However, the Complainants did not raise any protest, and infact made the payment as per letter dated 24<sup>th</sup> July, 2014. The Respondents state and submit that since the Complainants have not exercised their option of terminating the said Agreement, the Complainants have deemed to have given their consent for extended date of delivery of possession of the suit Flat. The Respondents state and submit that the principle of "Promissory estoppel" applies in this case. The Respondents state and submit that since the Complainants by their conduct of not terminating the Agreement have given their deemed consent for the extension of the date of possession the Complainants are now estopped from approaching this Hon'ble Authority on the grounds of alleged delay in delivery of possession.

13. It is respectfully submitted that the conduct of the Complainants would show that they are dishonestly approbating and reprobating and are only interested in extracting moneys in the garb of the alleged delay, while making baseless allegations against the Respondents herein. On the one hand they have condoned the delay and accepted possession as on date in satisfaction of their Agreement and are now taking a complete U-turn and are dishonestly and malafidely claiming interest.
14. Without prejudice to the aforesaid, the Respondents wish to deal with the present complaint paragraph wise as under :
  - a. With reference to paragraph 1 of the Complaint, the Respondents state and submit that the same is true and correct.
  - b. With reference to paragraph 2 (a) of the Complaint, the Respondents state and submit that partial contents of the said paragraph is a matter of record save and except the allegation that as per Section 18 of the said act the Respondents have failed to deliver/give possession in accordance with the terms of the said Articles of Agreement mentioned herein and also not

completed the said project as per sanctioned plans and specifications till date as alleged and put the Complainants to the strict proof thereof.

- c. With reference to paragraph 2 (b) of the Complaint, the Respondents state and submit that the same is true and correct.
- d. With reference to paragraph 3 (a) of the Complaint, the Respondents state and submit that the statements made therein is matter of record save and except the allegation that as per Section 18 of the said Act, the Respondents have failed to give possession in accordance with the terms of the said Article of the Agreement mentioned herein as alleged and also not completed the said project as per sanctioned plans and specifications till date as alleged or at all and put the Complainants to the strict proof thereof .
- e. With reference to paragraph 3 (b) of the Complaint, the Respondent state and submit that the same is true and correct.
- f. With reference to paragraph 4 (a) to 4 (d) of the Complaint, the Respondents state and submit that the same is true and correct.
- g. With reference to paragraph 4 (e) to 4 (f) of the Complaint, the Respondents deny each and every allegations and contentions therein and put the Complainants to the strict proof thereof.
- h. With reference to paragraph 4 (g) of the Complaint, the Respondents state and submit that the same is true and correct.
- i. With reference to paragraph 4 (h) and 4 (j) of the Complaint, the Respondents deny that the Agreement is nothing but commitment given by the Respondents to the Complainants and put the Complainants to the strict proof thereof. The Respondents state and submit that the date of possession as per the Agreement for Sale was December, 2013 but the Complainants have failed to mention that the said date was merely tentative date of possession as was also subject to the contingencies mentioned vide Clause 2.4 read with

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Clause 19.5 and 19.5.1 of the said Agreement which are reproduced in Clause 10 hereinabove for the kind perusal of this Hon'ble Authority.

- j. With reference to paragraph 4 (i) of the Complaint, the Respondents deny that the Complainants have complied with the payment terms and there is no complaint about the same as alleged or at all and that the Complainants have complied with the terms of contract as alleged. The Respondents state and submit that the Complainants did not make payments as per the schedule despite having undertaken to so in the Agreement. The Respondents state and submit that the Complainants did not pay the requisite amounts as per demand letter dated 1<sup>st</sup> June, 2012 and 23<sup>rd</sup> November, 2012 within the stipulated period.
- k. With reference to paragraph 4 (k) of the Complaint, the Respondents deny that inspite of timely payment of the due instalments and inspite of several reminders and requests given by the Complainants herein, the Respondents did not pay any heed to the requests and pleas of the Complainants as alleged and put the Complainants to the strict proof thereof. The Respondents state and submit that Complainants were always entitled to exercise their option under Section 8 of MOFA to exit and claim refund with interest, however the Complainants have chosen to continue with the revised dates as intimated by the Respondents from time to time and thereby novated the possession date prescribed under the said Agreement as per section 55 of Indian Contract Act and accordingly now the Complainants are estopped from raising any grievance with regards the alleged delay in handing over possession of the Flat as alleged or at all.
- l. With reference to paragraph 4 (l) and 4 (m) of the Complaint, the Respondents state and submit that one of the main objects and reasons of the enactment of the RERA Act is to infuse transparency, ensure fair-play and reduce frauds & delays. The Respondents say

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and submit that although the Real Estate Project has got delayed for reasons beyond the control of the Respondents herein and which cannot be attributed to the Respondents. The Complainants had an option to exit or continue from the Real Estate Project. The said Complainants have accepted and condoned the delay and agreed to continue in the Project and have in fact taken possession of their flat allotted in accord and satisfaction of the Agreement and date of taking possession.

m. With reference to paragraph 4 (n) to 4 (p) of the Complaint, the Respondents deny that the Complainants after lot of agitation received the possession of the said Flat on 7<sup>th</sup> March, 2018 i.e after delay of 50 months as alleged or at all and put the Complainants to the strict proof thereof. It is respectfully submitted that the Complainants have willfully taken possession of the Flat on 7<sup>th</sup> march, 2018 in full satisfaction of all the Respondents obligations under the Agreement and the Complainants have accepted that there are no further acts / deeds / obligations pending on the part of the Respondents and that after being fully satisfied that the Complainants have taken possession of the Flat. That being so the Complainants have specifically waived all the grievances raised by them in the said Complaint and / or in any correspondence prior thereto including but not limited to the right to receive any compensation for delayed possession. Thus the Complainants have accepted the alleged delay in handing over of the possession of the Flat. The Respondents further say and submit that the Complainants had taken possession. The Respondents further deny that Complainants had asked for compensation as alleged or at all and put the Complainants to strict proof thereof.

n. With reference to paragraphs 4 (q) to 4 (s) of the Complaint, the Respondents deny that the Complainants are entitled to any sort of compensation

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on any ground including compensation on account of delayed possession as alleged and put the Complainants to the strict proof thereof.

- o. With reference to paragraph 4 (t) of the Complaint, the Respondents deny that there are several things which are even incomplete today as alleged and put the Complainants to the strict proof thereof. The Respondents further submit that items mentioned in the said paragraph are either not as agreed as per the Agreement or is already been provided or already in place and therefore the question of all these things being not ready and are incomplete is bogus and not true and correct. Nonetheless as per clause 8 of the said Agreement, the project could be handed over in phases as was always envisaged at the time of entering into the said Agreement.
- p. With reference to paragraph 4 (u) of the Complaint, the Respondents deny that the possession of the Flat is delivered without amenities as alleged and put the Complainants to the strict proof thereof. The Respondents would like to put it on record that as already stated hereinabove, the building is fully complete in all respects and the Respondents herein has obtained the Occupation Certificate on 24<sup>th</sup> November, 2017 for the said building upon the terms and condition therein contained. It is clear that the Complainants are using every unrelated matter available to them in order to bring on record false information in order to claim wrongful compensation and on this ground also the Complaint may be dismissed. The Respondents deny that it is necessary to give directions to the Respondents to complete the project as agreed with the entire amenities and facilities as alleged and put the Complainants to the strict proof thereof. The Respondents submit that the project is complete the Complainants have taken possession of their Flat and now they have nothing to lose and hence they are now trying to illegally extract huge amounts from the Respondents herein in the

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garb the alleged lack of amenities as alleged and as demonstrated hereinabove.

q. With reference to paragraph 4 (v) of the Complaint, the Respondents deny that the Respondents never tried to settle this matter as alleged and put the Complainants to the strict proof thereof. The Respondents further deny that the Respondents did not pay the legitimate amount of compensation to the Complainants as alleged and hence they are constrained to approach this Hon'ble Forum by way of present Complaint as alleged or at all and put the Complainants to the strict proof thereof. It is further submitted that the Respondents herein has always acted bonafidely and for the interest of the consumers this is just another example of the Complainants trying to throw mud in the hope that some of it may stick and prejudice the mind of the Hon'ble Authority.

r. With reference to Para 6 of the Complaint, the Respondents state and submit that for the reasons stated hereinabove this Hon'ble Authority has no jurisdiction to try and entertain the present complaint and the same is liable to be dismissed with costs.

15. In the light of above, the Respondents pray to the Hon'ble authority of RERA that the present complaint is bad in law and does not come under the jurisdiction of RERA authority, hence deserves to be dismissed with compensatory costs. The Complainants are not entitled to any relief as claimed there under.

*Jahannum*

**Law Point**

Advocate for Respondents

*Shurta*  
Respondents