

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI.
COMPLAINT NO. CC006000000056701**

Mr. Lokeshkumar Gautam And
Mrs. Shobha Lokeshkumar Gautam ... Complainants.

VERSUS

Entee Developers ... Respondents.

MahaRERA Regn: - P 51800002249

Coram ... Shri B.D. Kapadnis,
Hon'ble Member -II.

Appearance:

Complainants: In person.

Respondents: Adv.Mr. Vipul Shah

**Final Order
3rd January 2020**

The complainants have booked Flat No. 301, C Wing in respondents' registered project "Happy Home Society", situated at Bhandup (West), Mumbai under the registered Agreement dated 21.12.2010 for Rs. 20,00,000/-. The complainants have paid Rs. 11,20,130/- towards the consideration of the flat. The respondents promised, at the time of booking of the flat in the year 2008 that they would hand over the possession of the flat till December 2012. Thereafter they pushed the agreed date to Dec. 2015. The complainants allege that though agreed price of the flat was Rs. 20,00,000/-, the respondents raised it to Rs. 36,55,800/- which they do not accept. According to them, they are ready to pay the balance of Rs. 8,79,870/-. They further contend that respondents have not mentioned the date of possession in the agreement and left it blank though they were obliged under law to mention it. Therefore, the complainants have been seeking the interest on their amount for delayed possession and also seeking the possession of their flat. They have also contended that respondents have not formed the society of allottees even after



the sale of 51% of the flats of the project. However, in the case filed by Ms. Pratiksha Kandalkar against respondents bearing complaint No. CC006000000056641, directions have been given by the Authority for formation of the Association of the allottees, therefore this issue has not been pressed before me.

2. Respondents have not pleaded guilty. They have contended in the reply that they have been developing SRA project and the Commencement Certificate for plinth was received in the year 2009. They admit that they have executed agreement for sale for Flat No. 301 of C wing in favour of the complainants for Rs. 2000,000/-. According to them, on completion of rehab buildings they applied for its Occupation Certificate in the year 2011 and 2012, but they received it on 12.05.2017. Meanwhile, Development Control Regulations have been amended which necessitated amendment in building plans resulting into increase in cost. Therefore, this fact was made known to the allottees in the meeting held on 30.11.2014. Except the complainants and one other allottee, rest of the allottees agreed to pay escalated price. The complainants did not make the payments as per the demand letters. Ultimately, the respondents informed the complainants by their letters dated 24.5.2017; 11.09.2017; 08.11.2017; 12.12.2017; 08.03.2018; 19.03.2018 that their booking would be cancelled in case of their failure to make the payments demanded by them and cancelled it by the letter dated 24.05.2018. According to them, as per Clause 7 of the Agreement they have power/option to terminate the agreement by giving prior notice of 15 days. Hence, they submit that the booking is cancelled. They are ready to repay the amount of the complainants. Hence, they request to dismiss the complaint.

3. I have heard both the parties. Mr. Shah for the respondents submits that the booking has already been cancelled and therefore complaint is not maintainable. While examining this issue it is necessary to decide the issue regarding the liability of the complainants to make the payment as demanded by the respondents.



4. Respondents have not disputed the fact that as per the Agreement for Sale executed by them on 21.12.2010 they agreed to sell the flat to the complainants for Rs. 20,00,000/-. Thereafter they have escalated the price because of the change in D.C. Regulations and the changes in the Plan as well as increase in cost of construction. When the parties have executed the agreement for sale in the year 2010 under the provisions of Maharashtra Ownership of Flat Act, 1963, the respondents were under legal obligation to mention the date of possession. This legal obligation of the said Act is imposed by Section 4 (1A) (a) (ii) of MOFA, but the respondents have left the date of possession blank in the said agreement for sale. Hence, they are now estopped from denying the date of possession claimed by the complainants. The complainants state that the respondents promised to hand over the possession of the flat till December 2012 and I believe them to hold it.

5. Once the respondents promised the complainants that the possession of the flat would be handed over by December 2012, they were under contractual and legal obligation to complete the project by that time. Respondents have referred to the completion of rehab component in the year 2011-12 and blamed the Planning Authority by contending that the O.C. issued by it on 12.05.2017 is late. They contend that the project got delayed because D.C. Rules changed and the plans were revised. I do not find that the complainants were responsible for delay. On the contrary it appears that the respondents could not complete the sale component in timeline and therefore they cannot take advantage of their own wrong to escalate the price of the flat. Complainants are bound to pay and the respondents are bound to accept agreed consideration of Rs. 20,00,000/- mentioned in the agreement for sale. In view of this, I find that the demand letters issued by the respondents asking the complainants to make the payment of escalated price in fact are illegal and therefore if the complainants have not responded to those illegal demands their booking cannot be cancelled. This is one aspect of the matter.




6. Other aspect is; respondents have cancelled the booking of the flat on 24.05.2018 by exercising their power conferred on them under Clause 7 of the agreement which they have reproduced in their reply. On its perusal I find that on cancellation of the booking they were obliged to refund the amount of the complainants. However, the respondents have not refunded it. Therefore, the process of cancellation of the booking has not come to its logical end. Therefore, I hold that the booking is not cancelled and hence there is no necessity to seek the relief of setting aside the cancellation of booking, as argued. Hence I hold that the complaint is maintainable.

7. Since the respondents have failed to hand over the possession of the booked flat on agreed dated 31.12.2012, the complainants are entitled to claim prescribed interest on their investment made till that date from 01.01.2013 and on subsequent payments from the dates of their payments till getting possession of the flat. The complainants are entitled to get Rs. 20,000/- towards cost of the complaint.

8. Complainants have shown their readiness to pay the balance. If that payment is not made in accordance with the schedule provided under the agreement for sale, the complainants are also bound to pay the same with interest at prescribed rate. The prescribed rate of interest is 2% above State Bank of India's highest MCLR which is currently 8.2% p.a.

9. To conclude, parties shall make the payment as directed. They are permitted to set off their respective claims and pay balance to whom it is due. The respondents shall hand over possession of the booked flat with Occupation Certificate on receiving the agreed consideration.

Mumbai
Date: 03.01.2020


3-1-2020
(B.D. KAPADNIS)
Member -II,
MahaRERA, Mumbai.