

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.**

COMPLAINT NO: CC006000000057784.

Ms. Sushma Rawat.

... Complainant.

Versus

M/s. Nirmal Lifestyle (Kalyan) Ltd.

... Respondents.

MahaRERA Regn: P51700003616.

(Thames)

Coram: Shri B.D. Kapadnis,
Member-II.

Appearance:

Complainant: Adv. Ms. Amita Chaware.

Respondents: Adv. Mr. Tushar Kadam
a/w Ms. Vaishali Mohite.

FINAL ORDER

4th September, 2020

The complainant booked flat no. A-308 in the respondents' registered project 'Thames' for Rs. 27,75,195/- on 19.10.2013. The respondents agreed to handover the possession of her flat on or before 18.11.2017 by sending a letter dated 18.11.2016. The complainant has paid Rs. 13,94,717/- which is more than 50% of the total consideration. Despite this, the respondents have not executed the agreement for sale and registered it. Complainant lost her husband and therefore she sent a letter dated 19.10.2016 for cancelling the booking. Respondents offered another flat in different project just like project Thames which was to be completed within two to twelve months but did not refund her money. Therefore, the complainant requests to direct the respondents to refund her money with interest under section 18 of RERA.

2. The respondents have filed their reply by pleading not guilty. They deny that they agreed to handover the possession of the flat by November 2017. The respondents have raised the objection about maintainability of the



complaint by contending that the complainant is not an allottee. Moreover, she has cancelled the booking on 19.10.2016 i.e. before RERA came into force and therefore, the respondents have not committed any breach of any of the provisions of the RERA. Hence, this Authority has no jurisdiction to entertain this complaint. The complainant's claim is also barred by limitation. So far as delay is concerned, the respondents contend that by notification dated 11.01.2012 the Development Control Regulations for Greater Mumbai were changed which required various permissions/approvals but the concerned officials delayed them. They further contend that in one of the cases Hon'ble Chairperson of the Authority has taken the view that the interest on account of delay should run from the revised date of possession disclosed at the time of registration of the project and reliance has also been placed on Minal Anil Bhosle V/s Shree Prakash Creative Buildcon JV wherein the Appellate Tribunal moulded the relief by extending period of possession. Hence, they request to dismiss the complaint. In alternative, they contend that if they are required to pay the interest then it may be subject to the moratorium period because of the spread of Covid-19 Pandemic.

3. I have heard Ld. Advocates of the parties on virtual platform. They have highlighted the issues pleaded by them.

Preliminary objections.

4. The respondents' Ld. Advocate Mr. Kadam brings to my notice complainant's letter of cancellation of booking dated 19.10.2016 to contend that the cause of action arose in the case before RERA came into force and therefore, this complaint is not maintainable. Though the complainant has filed application on 19.10.2016, the respondents have not acted upon it. They have not refunded her amount. On the contrary, they have written a letter



dated 18.11.2016 to offer another flat in other project but they have not refunded the complainant's amount and did not accept the cancellation. Hence the complainant's relation as an allottee with respondents did not snap. Moreover, the complaint has been filed on 23.01.2019, it means within three years of cancellation letter sent by the complainant dated 19.10.2016. Period of limitation for recovery of money is three years from the day when the payment becomes due. Even if it is believed that cause of action arose on 19.10.2016, it continued till the date of complaint and since the project is registered under RERA it is governed by the said Act. Sections 12,14,18 and 19 of RERA are retroactive and project has brought with it all the legacy of rights and liabilities of the parties. Hence, I find that the claim is well within the limitation and this Authority has the jurisdiction to try this complaint. The cases on which respondents have been relying for contrary view are not applicable to the facts of the complaint because of these reasons. I find no substance in the allegations levied by the respondents relating to maintainability of the complaint.

Non execution of an agreement.

5. Section 4(1) of Maharashtra Ownership of Flats Act provides that no promoter can accept more than 20% of the total consideration of the unit without executing and registering the agreement for sale. Section 13 of the RERA has come in effect from 01.05.2017 and it provides that the promoter cannot accept more than 10% of the total consideration of the unit unless he executes and registers the agreement for sale. In this case, obviously more than 50% of the total consideration of the flat has been received by the respondents without executing the agreement for sale. Therefore, they have committed breach of section 4 of MOFA as well as section 13 of the RERA.



Date of possession.

6. Now the next issue is, what was the agreed date of possession? The complainant contends that when she booked the flat in the year 2013 the respondents agreed to handover the possession of her flat on or before 18.11.2017. Complainant submits that the respondents by their letter dated 18.11.2016 offered another flat in different project which was to be completed within two to twelve months like project Thames. These contents are sufficient to infer that they indicated time line for handing over possession of the flat of Thames project during that period. Therefore, complainant is justified in saying that the agreed date of possession is 18.11.2017.

Reasons of delay.

7. It is admitted fact that the respondents have not completed the project. So far as delay is concerned the respondents contend that officials did not issue required approvals and permissions in time. Moreover, in the year 2012 the DCR got changed and therefore, the project got delayed. The parties were governed by Section 8 of MOFA. Section 8(b) of the MOFA provides that even for the reasons beyond the control of the promoter the project is delayed, the period more than 6 months cannot be extended. In this case more than 6 months have already passed and therefore it is not necessary for me to consider the reasons of delay assigned by the respondents presuming that they were really prevented from completing the project due to those reasons.

Material date for computing delay.

8. Mr. Kadam submits that at the time of registration of the project, the respondents have mentioned the proposed extended date of completion which has not been crossed and therefore, she submits that the respondents would be liable to pay interest to the complainant, if the flat is not constructed on or before the revised date. He has also brought to my notice the case of



Minal Bhosale. I find myself unable to agree with the views canvassed him because Hon'ble Bombay High Court in Neelkamal Realty Suburban Pvt. Ltd. V/s. Union of India have clarified the fact in Para-119 that under the provisions of Section 18 of RERA the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under RERA promoter is given facility to revise the date of completion of project and declare the same under Section 4. RERA does not contemplate re-writing the agreement. After going through these observations on same lines I hold that actual date for computing the delay shall be the date of possession agreed by the parties and it cannot be computed from the revised date unilaterally declared by the promoter at the time of registration of the project. It is true that whenever the ends of justice demand, the relief can be moulded by the Authority but this discretion cannot be used against the provisions of law. RERA permits the application of MOFA by virtue of its section 88 and hence, I find that even if it is taken for granted that the project was delayed because of reasons beyond the control of the promoter, the agreed period cannot be extended beyond the period of six months.

Complainant's entitlement u/s 18 of RERA.

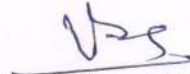
9. Section 18 of the RERA enables the allottee to claim refund of his amount with interest on promoter's failure to complete the flat on the date specified by the respondents as discussed above. Here the respondents have delayed the possession and hence, the complainant is entitled to get refund of her amount with the interest at prescribed rate. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 7% p.a. The complainant is also entitled to get Rs. 20,000/- towards the cost of the complaint. In view of this following order.



ORDER

- A. The respondents shall refund Rs. 13,94,717/- with simple interest at the rate of 9% p.a. from the dates of receipt till refund.
- B. The respondents shall also pay Rs. 20,000/- to the complainant towards the cost of this complaint.
- C. Charge of the aforesaid amount shall be on booked flat till satisfaction of complainant's claim.
- D. The payment shall be subject to the period of moratorium specified by this Authority from time to time.

Date: 04.09.2020.


4.9.2020

(B. D. Kapadnis)
Member-II,
MahaRERA, Mumbai.