

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

COMPLAINT NO: CC006000000057050.

Vijay Lal Menaria  
Premlata Menaria

... Complainants.

**Versus**

M/s. Bhoomi & Arkade Associates  
MahaRERA Regn: P99000006132.

...Respondent.

(Acropolis 2)

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

**Appearance:**

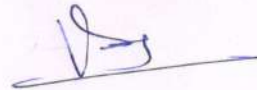
Complainants: Adv. Mr. Bhimani.

Respondent: Absent.

**FINAL ORDER**

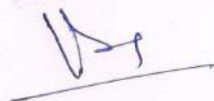
**02<sup>nd</sup> December, 2020**

The complainants contend that initially they booked the flat nos. 1104 and 1105 in the E wing of the respondent's registered project 'Acropolis 2'. Later on, the complainants cancelled the booking of flat no. 1104 and the respondent accepted it. The money paid towards the flat no. 1104 has been adjusted against the payment of flat no. E-1105. The complainants have paid Rs. 21,75,727/- till June 2016 as and when demanded by the respondent as against the total consideration of Rs.



28,06,000/-. The complainants contend that the respondent issued payment schedule stating that it has received Rs. 21,04,500 towards the consideration and Rs. 71,227/- towards the service taxes, in total Rs. 21,75,727/-. The respondent did not execute the agreement for sale even after accepting this much amount of consideration from the complainants. The complainants contend that the respondent orally agreed to handover the possession of their flat by December 2017 but did not hand it over on agreed date. At present, the project is still incomplete and therefore the complainants have cancelled the booking by sending notice on 24.05.2018 to that effect. The complainants further contend that the respondent falsely represented to provide 34.25 sq. mtrs. area i.e., 368. 58 sq. ft. area in the allotment letter, however, as per the project details mentioned on the MahaRERA Website the respondent has mentioned that the area of the flat would be 31.24 sq. mtrs. which is equivalent to 336.14 sq. ft. It is less than the agreed carpet area. Therefore, the complainants want to withdraw from the project and claim refund of the amount. They have also prayed for forensic audit and pass necessary order.

2. The respondent pleads not guilty and has filed the reply to contend that the transaction is not completed because the complainants have not paid entire consideration of the flat, the stamp duty and registration charges for agreement for sale and taxes. There is no agreement for sale. The complainants are the speculative investors and they are not the allottees. The respondent further contends that in the absence of the agreement for sale the complainants cannot claim any reliefs under section 18(3) or 19(4) of RERA. The respondent contends that as per the order passed on 28.09.2018 in the case of Hina Nimavat vs Bhoomi & Arkade



Associates bearing no. CC006/54591, the Tribunal granted time for obtaining occupancy certificate up to 31.12.2018 for the entire 15 wings and they have obtained it on 14.01.2019. There is no delay in completing the project. Therefore, at this stage the complainants may not be permitted to withdraw from the project. The complainants did not come forward for executing the agreement for sale by paying stamp duty and registration charges. The respondent contend that it received Rs. 21,04,500/- from the complainants, however, it claims Rs. 56,120/- towards cancellation charges, Rs. 56,120/- towards brokerage charges and therefore, it contends that the total payable amount as per the provisional booking would be Rs. 19,92,260/-. The respondent offered to refund this much amount to the complainants but they did not agree to accept it. The respondent also contends that upon the termination or cancellation of the allotment, the respondent will be entitled to retain cancellation charges minimum of 2% of the total consideration value or such losses or damages suffered by it in sale of the said premises to the new purchaser, whichever is more, the balance shall be refunded only after new purchaser has been found for the said premises. The complainants are not entitled for any refund unless the said premises are agreed to be sold to another purchaser. Hence, the respondent request to dismiss the complaint.

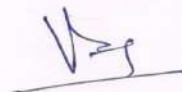
3. There is no dispute between the parties that the respondent has received more than 20% of the total consideration of the flat during MOFA regime and retained with it more than 10% of the total consideration of the flat executing the agreement for sale. Therefore, this is clear breach of section 4(1) of the MOFA and section 13(1) of the RERA. In this circumstance, the respondent is estopped from denying the agreed date of





possession suggested by the complainants. The complainants contend that the respondent promised to handover the possession of the flat by December 2017. Even it is not taken for granted as gospel truth, one will have to go to the web page where the respondent itself has declared the information relating to its project. It is mentioned therein that the respondent proposed to complete the project by December 2018 and therefore I find that, in this circumstance when the respondent has declared the December 2018 as the date of possession or the completion, as the case may be, for all the allottees of the project, the same date should be taken for granted for handing over the possession of the flat booked by the complainants also. Admittedly, the respondent has failed to handover the possession of the said flat on or before December 2018 and therefore, I hold that, the respondent made the false statement regarding the date of possession and hence, the complainants are entitled to get refund of their amount under section 12 of the RERA. It is pertinent to note that, the Hon'ble Supreme Court has held in Fortune Infrastructure V/s. Trivora D'lima (2018) 5 SCS 442 that the reasonable period of possession is only three years. Therefore, I hold that the respondent is liable to refund the amount of the complainants.

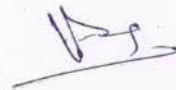
4. As per the provisions of MOFA, the promoter was not entitled to recover more than 20% of the total consideration of the flat without first executing the agreement for sale and registering it. Even after RERA, the same liability is continuing but with amount of total consideration is made 10%. Therefore, I find that, the respondent was not entitled to recover more than 20% of the total consideration of the flat during MOFA regime and it was not entitled to retain more than 10% of the total consideration without



executing the agreement for sale. On this ground also, I find that, the complainants are entitled to get back their amount.

5. The respondent submits that it is entitled to make deductions which are referred to above. I find that the respondent itself is at fault because it has failed to handover the possession of the flat on the agreed date. Therefore, it cannot take disadvantage of its own wrong. Hence, I find that the respondent is not entitled to deduct the amount mentioned by him in his reply. In short, the complainants are entitled to get refund of their entire amount. The principle of restoration will have to be applied in such cases, because the allottee will have to be restored to his original position which he was occupying before booking the flat. When the promoter makes the default in handing over the possession of the flat on agreed date of it or he commits any breach of any of the material condition, the promoter makes himself liable to reimburse all the money spent by the allottee for purchase of the flat in such cases. I find that the respondent is liable to reimburse the amount of taxes also. Hence, I find that, the entire amount paid by the complainants is to be returned or refunded by the respondent.

6. The learned advocate of the complainants argued that, in the allotment letter the area of the flat is 34.25 sq. mtrs. area i.e., 368. 58 sq. ft. area and on the web page the area of the flat is shown as 31.24 sq. mtrs. which is equivalent to 336.14 sq. ft. Therefore, there is a reduction of the carpet area of the flat, be that as it may.

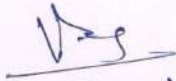


7. To conclude, I find that the complaint is maintainable because, the allotment letter is issued by the respondent and therefore the complainants are the allottees. Any aggrieved person can file the complaint under section 31 of the RERA if the promoter contravenes or violates any of the provisions of the RERA or rules or regulations made thereunder. Here I find that the respondent has contravened section 13 (1) as well as section 12 of the RERA. The complainants are entitled to get refund of their amount with interest at prescribed rate. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 7% p.a. The complainants are also entitled to get Rs. 20,000/- towards the cost of the complaint. Therefore, the following are the order.

#### ORDER

- A. The respondent shall refund Rs. 21,75,727/- with simple interest at the rate of 9% p.a. from the dates of receipt of the amount till the refund.
- B. The respondent shall also pay Rs. 20,000/- to the complainants towards the cost of the complaint.
- C. The charge of the aforesaid amount shall be on the booked till satisfaction of the complainants' claim.

Date: 02.12.2020.

  
2.12.2020  
(B. D. Kapadnis)  
Member-II,  
MahaRERA, Mumbai.