

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

COMPLAINT NO: CC006000000192416.

Prapti Malhotra

... Complainant.

Versus

1. Sankalp Siddhi Developers Pvt. Ltd
2. Sahyog Homes Ltd. (Formerly Known as M/s. Sahyog Homes
...Respondents.

MahaRERA Regn: P51800007725.

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

Appearance:

Complainant: Adv. Mr. Makarand Raut.

Respondents: Adv. Ms. Gauri Tyagi i/b Adv. Akash
Menon


**FINAL ORDER
16th December, 2020**

The complainant contends that she along with Vijay Malhotra, Manju Malhotra, Pragati Malhotra, (hereinafter called flat purchasers) booked flat no. A-1801 in the respondents' registered project 'Lamor' situated at Oshiwara, Jogeshwari, Mumbai. The respondents agreed to handover the possession of the flat on 5th February 2016 with grace period of six months. This is mentioned in the allotment letter. They have paid Rs. 2,27,05,558/- out of total consideration of the flat Rs. 2,85,05,300/- Even after receiving more than 65% of the total consideration, the respondents did not execute the agreement for sale and therefore, the complainants filed



complaint no. CC006/782. In that matter, an attempt was made to settle it but when it could not be settled, then the Authority passed an order on 15.12.2019 directing the respondents to handover the possession of the flat on or before 31.12.2019 failing which they shall pay the interest from 01.01.2020. Thereafter, the respondents have executed the agreement for sale but have not handed over the possession of the flat on its agreed date. They have revised the date of possession as 31. 07.2022, therefore, the purchasers withdraw from the project and claim refund of their amount under section 18 of the RERA.

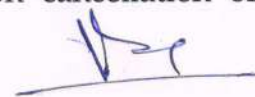
2. The respondents plead not guilty. They contend that clause 11 of the agreement for sale stipulates that the respondent no. 1 shall endeavour to handover the possession of the flat by December 2019 on 'best Effort Basis'. It also provides that, the respondent no. 1 is entitled for further extension on account of the reasons beyond the control of the developer. Accordingly the respondent completed the construction upto 31st floor and the complainant's flat is situated at 18th floor of the building. Though the complainant's flat is completed in all respect, the respondents could not give the possession thereof pending the completion of the construction of the remaining flats. Thereafter due to outbreak of Covid-19 pandemic there was nation-wide lockdown and Central as well as the State Government imposed guidelines not to carry out the construction on site and therefore the construction work was stopped. Not only that, this Authority has also extended the period of possession by six months calling it as a moratorium period (force-majeure period) by its order no. 14 of 2020. Therefore, the respondents contend that they could not complete the project in time and request to dismiss the complaint.



3. I have heard the learned advocates of both the parties on virtual platform.

4. In the final order passed in the earlier complaint the Authority directed the respondents to execute the agreement for sale contending therein that the agreed date of possession would be 31st December, 2019 and the interest for delayed possession would be paid from 01.01.2020. Even thereafter, the respondents have failed to handover the possession of the flat on agreed date. Hence, the cause of action to file this complaint has arisen thereafter. In this circumstance, I find that this complaint is maintainable.

5. There is no dispute between the parties that, the agreed date of possession is 31st December 2019 and the respondents could not handover the possession of the flat on the agreed date. The respondents contend that because of the outbreak of Covid-19 pandemic, they could not complete the construction work of the remaining flats and handover the possession of the complainant's flat on agreed date. They have further contended that the force-majeure period has also been granted by the Authority. Even after taking into consideration these aspects of the matter, I find that, the date of possession expired much before the outbreak of Covid-19 pandemic. Moreover, moratorium period of six months expired on 14.09.2020. Even thereafter, the respondents have not handed over the possession of the flat. Flat purchasers will have to be restored to the position which they occupied before booking the flat as the respondents have defaulted in handing over the possession in time. Hence, I find that the flat purchasers are entitled to get reimbursement of amount of taxes and registration charges of agreement for sale also. However, on cancellation of the

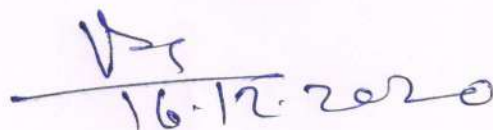


agreement within the period of five years of its registration, they can apply to the Government for refund of the stamp duty. Hence, for the time being the flat purchasers are not entitled to get the reimbursement of the stamp duty amount. They are entitled to claim refund of the consideration amount paid to respondents with interest at prescribed rate under section 18 of the RERA. 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. Hence, the following the order.

ORDER

- A. The respondents shall refund the amount mentioned in para 5 of the order to the flat purchasers with simple interest at the rate of 9% p.a. from the dates of their receipt/payment till its refund.
- B. The respondents shall also pay Rs. 20,000/- to the complainant towards the cost of the complaint.
- C. The charge of the aforesaid amounts shall be on the booked till satisfaction of the flat purchasers' claim.
- D. It is hereby clarified that, in case of the respondents' failure to satisfy the flat purchasers' claim within five years from the registration of the agreement, the respondents shall reimburse the amount of stamp duty with interest at above rate.
- E. On satisfaction of the claim, the flat purchasers shall execute the deed of cancellation of the agreement for sale and the respondents shall bear its cost.

Date: 16.12.2020.


16.12.2020

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