

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

COMPLAINT NO: CC006000000023200

A.N. Malhotra
Ruma Malhotra.

... Complainants.

Versus

Real Gem Buildtech Pvt. Ltd.
(Runwal Pearl)

... Respondents.

MahaRERA Regn: P51900006367.

Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

Appearance:

Complainant: Adv. Mangal Bhandari a/w
Adv. Raju Jain.

Respondents: Adv. Abir Patel i/b Wadia
Gandhy.

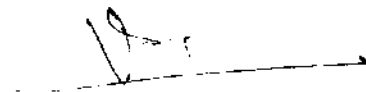
FINAL ORDER

18th June 2018.

Complainants have filed the complaint under Sections 12 & 18 of Real Estate (Regulation and Development) Act, 2016 to claim refund of their amount with interest and/ or compensation.

Pleadings of parties.

2. The complainants booked flat no. 2201, Pavilion B, in respondents' DB-Crown-Tower C, a registered project situated at Prabhadevi, Mumbai. The complainants contend that at the time of booking the respondents represented them that they shall hand over the possession of the flat by the end of 2017. Thereafter they mentioned in the brochure that the project would be completed by June 2019 and at the time of the registration of their project with MahaRERA, they represented that the project was to be



completed on or before 30.06.2020 but now they would complete it on or before 31st December 2022. Therefore, the complainants have claimed refund of their amount with interest and or compensation.

3. The respondents have taken preliminary objection regarding maintainability of complaint under Section 18 of RERA by contending that there is no agreement for sale which is required for application of Section 18. Therefore, the Authority has passed an order on their application on 19.09.2018 holding that for application for Section 18 of RERA, the agreement for sale is necessary. However, the respondents' prayer for dismissal of the complaint has been rejected on the ground that it can proceed under Section 12 of RERA. In these circumstances, the complainants have restricted their case to Section 12 and plea of the respondents has also been recorded for contravention under Section 12. They have prayed not guilty.

4. The respondents have submitted their reply to deny that they promised to hand over the possession of the flat to the complainants by the end of December 2017. They further contend that the brochure upon which the complainants have relied upon showing that the promised date of possession was 30th June 2019 relates to Tower - A & B and not Tower-C, wherein the complainants' booked flat is situated. They contend that the complainants booked the flat by submitting the application containing certain terms and conditions. This transaction has taken place before RERA came into force. Therefore, this Authority has no jurisdiction. According to them, as per Clause 8 of the booking application, the necessary charges can be deducted by the respondents in the case of cancellation of booking and therefore, they request to dismiss the complaint.

5. Following points arise for determination and my findings thereon as recorded as under:


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POINTS	FINDINGS
1. Whether this Authority has jurisdiction to entertain this complaint?	Affirmative.
2. Whether the respondents agreed to deliver the possession of the booked flat at the end of June 2017, thereafter in June 2019 and lastly, on 30 th June 2020?	Affirmative.
3. Whether the stand of the respondents regarding the date of possession proved false?	Affirmative.
4. Whether the complainants are entitled to get refund of their amount with interest and/ or compensation?	Affirmative.

REASONS

Jurisdiction.

6. Section 31 of RERA provides, any aggrieved person can file the complaint before the Real Estate Regulatory Authority or the Adjudicating Officer as the case may be, for the contravention or violation of any of the provisions of RERA or Rules or Regulations framed thereunder against any allottee, promoter or real estate agent. In this case, the complainants have alleged that the respondents' female representative at the time of booking of the flat agreed to deliver its possession by the end of June 2017 and thereafter they relied upon the brochure showing that the project will be completed by June 2019 and the respondents themselves have submitted before the Authority that they were to complete the project on or before 30th June 2020 but now they have revised the date of possession as 31st December 2022. Therefore, it is the allegation of the complainants that they booked the flat on the false assurances of the respondents regarding the date of possession and they sustained loss. Hence, this allegation itself is sufficient to attract Section 12 of RERA. Though complainants booked the flat before RERA came into force, section 12 should be harmoniously read



with section 71 of the Act. Hon'ble Bombay High Court has held in Neelkamal Realtors Suburban Pvt. Ltd.-v/s- Union of India in Writ Petition No. 2737 of 2017 that Section 12 is retroactive. After coming into operation of RERA, if the violation or contravention of the any of the provisions of RERA continues, then RERA is applicable. In view of this legal position, I find that RERA has jurisdiction to entertain this complaint.

Agreed date of possession:

7. The complainants have contended that at the time of booking of the flat respondents' representative demonstrated them that the possession of the flat would be handed over by the end of 2017. The respondents have denied this. The learned Advocate of the respondents submits that it is hearsay evidence and the name of the respondents' representative has not been disclosed by the complainants. Therefore, this evidence is vague and cannot be accepted. Hence, in order to make their evidence stronger, the complainants have produced the affidavit of the brokers Mr. Kuldeep Khanna and his wife Mrs. Sarojini K. Khanna. The respondents cannot deny their participation in the transaction because Mr. & Mrs. Khanna have produced the documents showing that the respondents paid them the brokerage in respect of this transaction. They have corroborated the evidence of complainant no. 1 Mr. Malhotra on the point that the female representative of the respondents told them that the flat would be ready for occupation by the end of 2017. This is direct evidence. They were made to believe that the flat would be completed by the end of 2017 and therefore they booked the flat. This fact is established .


8. The respondents have relied upon the brochure copy of which is placed at Page No. 49 of their compilation. It relates to the "work update DB Crown". It is mentioned therein that anticipated completion date is 30.06.2019. However, the project progress graph of Tower A & B is shown. Therefore, respondents have taken a stand that this brochure relates to A & B tower but the booked flat of the complainants is situated in C-Tower.



Hence this brochure has no relevance. It is submitted on behalf of the complainants that it is in respect of DB Crown project and though graph of Tower A & B is shown, the reader is impressed that the anticipated date of completion of DB Crown project is 30.06.2019 and therefore, the complainants made the payment of next instalments.

9. The complainants have relied upon the registration application of the respondents' project. It shows that the respondents themselves have mentioned in the application that the proposed date of completion of the project is 30.06.2020 and now the revised proposed date of completion is 31.12.2022. The respondents cannot escape from this fact. So the complainants contend that even this assurance of completing project on or before 30.06.2020 is proved to be false.

10. It is pertinent to note that at the time of booking itself both the complainants crossed the age of 80 years. They have deposited the money from time to time as mentioned in payment sheet marked Exh. 'A'. The respondents are silent on the date of completion suggested by them to the complainants. In this circumstance, one must draw the inference that no buyer would invest his money without getting the promise of the agreed date of possession. Every buyer expects the possession of booked flat within reasonable time and this is important in case of aged buyers because they want the possession of their flat at the earliest as shorter life span is left for them. Therefore, it is necessary to believe the complaints when they say that they were told by the female representative of the respondents at the time of booking that the respondents shall hand over the possession of the flat by December 2017. Thereafter they believed in the brochure showing that the project would be completed by June 2019 and paid the next instalment and lastly, the respondents cannot deny that they themselves intended to complete the project by June 2020 and now they have revised the date as 31st December 2022. So I hold that the earlier



representation/statements of the respondents regarding the date of possession were false.

Application of Section 12 of RERA.

11. The learned advocate of the respondents brings to my notice that for application of Section 12, incorrect and false statement must be included in notice, advertisement or prospectus. According to him, it does not contain the oral representation. According to him notice, advertisement and prospectus which may include brochure also are always in form of documents especially when the definition of advertisement, prospectus have been defined by RERA itself. To my mind, notice may be in the form of documents or it can also be in oral form. The gist of it is, the act of conveying the matter. Therefore, when the complainant Mr. Malhotra and the broker Mr. & Mrs. Khanna state on the oath that the female representative of the respondents made the statement that the project would be completed - possession of the flat would be handed over by end of 2017, it amounts to notice. The definition of advertisement defined by Section 2 (b) of the Act is inclusive definition. It includes inviting persons about real estate project or offering for sale or inviting to person to purchase in any manner such apartment or to make advances or deposits for such purposes. These activities can also be done orally. It amounts to advertisement. It has been proved by the complainants that the false statements regarding completion of project/date of possession contained in the notice, advertisement. Therefore, Section 12 of RERA is attracted.

12. Section 12 provides basically a civil remedy of refund of the amount, payment of interest and/or compensation, therefore, I hold that Section 12 requires liberal construction/interpretation.


13. The complainants have relied upon the brochure as well as the registration form filed by the respondents themselves. Relying on these two documents, I hold that the statements regarding the handing over of



the possession of the flat situated in Tower-C are proved to be false statement. Hence, Section 12 is attracted in this case.

14. The respondents' advocate has placed reliance on *Shin Satellite Public Co. Ltd.-v/s- Jain Studios Ltd.* AIR 2006 SC 963 wherein the Apex Court has held that Court do not re-write contract or do something that is not contemplated by parties. According to him, the terms and conditions of the application form are signed by the both the parties which form the contract wherein date of possession has not been mentioned. Therefore, he submits that the Court cannot infer the date of possession as suggested by the complainants when it is not mentioned in the application form. I find that the respondents themselves have filed the application for dismissal of the complaint by contending that there is no contract for agreement for sale. Now they cannot take somersault that there is agreement for sale. Hence I find that this case is not applicable to the facts of the case.

15. The learned advocate of the respondents argues that for application of Section 12, there must be some loss or damage sustained by the allottees because of the false or incorrect statement of the promoter. It is true, that the complainants have not specifically mentioned the loss or damage sustained by them but they have pleaded the fact that they were above 80 years of age when they booked the flat and they expected the possession thereof by the end of 2017. When in an old age the old couple finds that they are not going to get their house in the last days of their lives, it is natural to infer that they have sustained loss or damage. A man can earn money but cannot earn days of his life, once they are spent, they are spent forever. Hence, I hold that this aspect of the matter is quite sufficient to hold that the complainants sustained irreparable loss by investing in project which the promoters are not going to complete as promised by them and as desired by the complainants. To conclude, I hold that Section 12 of the Act is contravened in this case.



Complainants' entitlement.

16. Complainants have decided to exercise their option offered by this Section to withdraw from the project and claim refund of their amount with interest and/or compensation. I find that the complainants are entitled to get back their amount mentioned in payment sheet marked Exh. 'A', as the receipt thereof has not been disputed by the respondents. The complainants are entitled to get the interest at prescribed rate from the dates of the payment mentioned in the payment sheet. The prescribed rate of interest is, 2% above SBI's highest MCLR which is currently 8.05%.


17. In the facts and circumstances, I find that the complainants are entitled to get Rs. 2,00,000/- compensation because of the mental agony caused by the respondents by changing the dates of possession from time to time. The attitude of the respondents in fighting this case also shows their audacity to deny the legal right of old couple. They have harassed the complainants in their last days. The complainants are also entitled to get Rs. 25,000/- towards the cost of the complaint. Hence, the following order.

ORDER

1. The respondents shall refund the amount mentioned in payment sheet marked Exh. 'A' with simple interest at the rate of 10.05% from the dates of their payment till their refund. Exh 'A' shall form the part of order.
2. The respondents shall pay the complainants Rs. 2,00,000/- towards compensation and Rs. 25,000/- towards the cost of the complaint.
3. The charge of the above amount shall be on the booked flat of the complainants till their claim is fully satisfied.

Mumbai.

Date: 18.06.2018.



(B. D. Kapadnis) 18.6.18
Member & Adjudicating Officer,
MahaRERA, Mumbai.

**BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY**

COMPLAINT NO. CC00600000023200 OF 2018

Between

A. N. Malhotra and Ruma Malhotra

... Complainants

AND

Real Gem Buildtech Pvt. Ltd.

(MAHARERA REGN NO. P51900006367)

... Respondent

**STATEMENT OF THE PAYMENTS MADE BY THE COMPLAINANTS
TO THE RESPONDENTS**

Sr. No.	Particulars	Towards Considerations	Towards Taxes
1	1 st installment paid to Respondent towards consideration amounts on 17/01/2013	Rs. 54,09,949/-	
2	Payment made on 30/01/2013 to Respondent towards the Service Tax as demanded by them		Rs. 1,67,167/-
3	2 nd installment paid to Respondent towards consideration amounts on 10/10/2016	Rs. 52,30,607/-	
4	Payment made on 10/10/2016 to Respondent towards the TDS amount as demanded by them		Rs. 52,834/-
5	Payment made on 20/10/2016 to Respondent towards the Service Tax as demanded by them		Rs. 2,37,755/-
6	Payment made on 31/07/2017 to Respondent towards MVAT as demanded by them		Rs. 1,10,983/-
	Total	Rs. 1,06,40,556/-	Rs. 5,68,739/-

Date: 04/04/2018

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Advocate for Complainants

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24/4/18