

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.

COMPLAINT NO: CC006000000054619.

Nirmala Gill (alias Nirmala Bhide) ... Complainant.

Versus

L & T Parel Project LLP
(JV with ORDPL)
Omkar Realtors & Developers Pvt.Ltd.
Darshan Realtors Pvt. Ltd.
Omkar Realtors & Developers(Siddhivinayak) ... Respondents.
(Crescent Bay - T4)
MahaRERA Regn: P51900006593.

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

Appearance:

Complainant: Adv. Nilesh Gala.

Respondents: Adv. Shadab Peerzade.

FINAL ORDER

04th September 2018.

The complainant contends that she booked flat no. 2803 in T-4 wing of respondents' project Crescent Bay situated at Lower Parel. The respondents agreed to deliver its possession by 30th September 2017 with a grace period of six months. However, the respondents have failed to hand over the possession of the flat on the agreed date. Therefore, she claims interest on her investment for every month of delay under Section 18 of RERA.

2. The respondents have filed their written statement to contend that they have obtained occupation certificate on 15.03.2018 of T-4 tower. They gave possession demand letter on 29.03.2018 asking the complainant to take the possession and clear the dues, amounting to Rs. 15,96,856/- However, the complainant refused to take the possession by contending



that the club house was not operational and was not fully usable. No water connection was connected as certificate under Section 270A of Municipal Corporation Act was not furnished. The respondents contend that after receiving the occupation certificate on 27.03.2018 they applied for the certificate under Section 270A of the MMC Act. But the water supply connection got delayed because the road cutting was under way. On 14.06.2018 MCGM issued Form-P under Section 270A of MMC Act and issued a letter on 14.08.2018 for permanent water connection. The complainant is bound to take possession by paying the amount due to the respondents. They are entitled to recover maintenance charges after 15 days from the issuance of possession letter irrespective of the fact whether the possession is taken or not. The maintenance allowance is accrued to Rs. 3,71,520/- till 31st August 2018 but the respondents have shown their willingness to waive it and therefore, they request to dismiss the complaint.

3. Following points arise for determination and I record my findings thereon as under:

POINTS	FINDINGS
1. Whether the respondents failed to deliver the possession on agreed date?	Affirmative.
2. Whether the complainants are entitled to get interest on her investment?	Affirmative.

REASONS.

4. The parties are not at dispute on the agreed date because the respondents have agreed to hand over the possession by 30th September 2017 with grace period of six months. Thus, they were required to hand over the possession by 31st March 2018. The respondents have relied upon the occupancy certificate received on 15.03.2018 to show that the project



was completed before the agreed date of possession. However, on perusal of the occupancy certificate it can be seen that the respondents were required to obtain certificate under Section 270A of the MMC Act which relates to the water connection. This fact, therefore, clearly establishes that though the occupancy certificate was issued there was no water connection connected to the building. The respondents themselves have contended that on 14.06.2018, the water department of MCGM issued Form-P but the connection is actually connected on 04.07.2018 and thereafter it has been made permanent. Section 2(zf) of RERA provides that if the project has provision for civil infrastructure such as water, sanitation and electricity, the local authorities can issue the occupancy certificate. So this fact leads me to hold that the project was not completed till 04.07.2018.

5. On 23.08.2018 when the matter was being heard at that time the respondents admitted that the swimming pool has not been completed. According to them, rest part of the club house is constructed. It is the grievance of the complainant that the respondents have not provided various amenities mentioned in her letter dated 04.05.2018 (Exh.'N' of the complaint). Therefore, I hold that the project is not completed in all respect and all the amenities promised by the respondents are not in place. However, for safer side I may say that the flat was worth for occupation on 04.07.2018 when water connection was connected. Section 18 of RERA provides that if the promoter fails to complete the project as per the terms of the agreement then allottee gets the right to claim interest on his investment if he desires to continue in the project. The complainant has desire to continue in the project and therefore, she is entitled to get interest on prescribed rate which is 2% above the SBI's highest MCLR from the 1st April 2018 till she gets the possession of the flat.

6. So far as the dues are concerned, the complainant has paid Rs. 2,00,000/-, the balance of consideration pending the complaint. She has also shown her readiness to pay the amount mentioned in the possession



demand letter. She has deposited Rs. 4,00,000/- with MahaRERA out of Rs. 6,00,000/- towards the charges of the club house and she undertakes to deposit the remaining Rs. 2,00,000/- on the completion of club house.

7. The complainant is liable to pay maintenance allowances after 16 days from the date on which she was bound to accept the possession. Therefore, I find that the maintenance allowance for the month of August 2018 at the most has become due. The respondents are ready to waive it. At the cost of repetition, I put it on record that complainant has shown her willingness to clear all the dues except charges of the club house before taking possession. In the facts and circumstances, I find that the interest awarded is compensatory in nature and therefore there is no necessity in granting additional compensation in this case. Therefore, the following order.

ORDER

The respondents shall pay the complainant interest on her investment i.e the consideration amount Rs. 4,03,87,720/- and TDS amount from 01.04.2018 to 31.08.2018. ^{* 79 B inclusive of Rs}

The complainant shall either deposit or shall pay the balance of club house Rs. 2,00,000/- on completion of it till then she shall not use the club house.

On completion of the club house Rs. 4,00,000/- deposited by the complainant be paid to the respondents.

The complainant shall clear the dues and she shall take the possession of the flat within eight days of the order.

Mumbai.

Date: 04.09.2018.

V.S.
4.9.18
(B. D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.

* correct to Rs. 4,03,78,720/-
inclusive of TDS amount?
4039 of RERA -

V.S.
15.2.19