

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

COMPLAINT NO. CC00600000056339

1. PATRICIA FERNANDES
2. RANJIT KUMARAN RAVILOCHAN NAIR ..Complainants

Verses

Sanvo Resorts P. Ltd. ..Respondent

MahaRERA Regn. No. P52000000662

Coram:

Hon'ble Shri Madhav Kulkarni,
Adjudicating Officer, MahaRERA.

Appearance:

Complainant: Complainant present
alongwith CA Sumid
Kapure.

Respondent : Adv. Anesh Sequera &
Sana Khan present.

**ORDER
(Dated 28.05.2019)**

1. The complainants who had booked flats with the respondent/builder, seek withdrawal from the project and refund of their amount with interest and compensation.
2. The complainants have alleged that vide agreement dated 09.01.2015, they booked flat no.1705, in the project of the respondent Nextgen Atlas-1 at village Kolkhe, Tal. Panvel, Dist Raigad, admeasuring 56.33 sq. mtr. carpet area in building S-2 in B wing of the building Atlas. The agreed consideration was Rs.46,26,289/-. On the same date, they booked flat no.1706 having carpet area 56.33 sq. mtrs. for price of Rs.48.36.289/-. As

per clause no. 15.1 of the agreement, date for delivery of possession was December, 2017. Relying on promise given by the respondent, the complainants started making payments as per Annexure-C. The complainants have paid Rs.40,61,259/- towards price of the flat, Rs.1,81,227/- towards service tax and VAT, Rs.2,41,900/- towards stamp duty and Rs.30,000/- towards registration charges in respect of each of flat nos. 1705 and 1706.. The complainants sought housing loan from Punjab National Bank for that purpose. The respondent has failed to give possession on the agreed date. While registering with MahaRERA, respondent has given 31.12.2021 as date for delivery of possession. The total amount paid to the respondent in respect of each flat is Rs.40,61,459/- as price + Rs.2,71,900/- towards stamp duty and registration charges, total comes to Rs.43,33,359/-. The complainants therefore, seek withdrawal from the project and refund of the amount paid as above.

3. The complaint came up before Hon'ble Member on 22.11.2018 and came to be adjourned to 04.01.2019. On 04.01.2019 matter came to be transferred to Adjudicating Officer. The matter came up before me on 26.03.2019. Plea of the respondent was recorded on that day. The matter was adjourned for filing written explanation by the respondent to 25.04.2019 subject to respondent paying costs. The respondent filed written explanation on 25.04.2019. Arguments were heard on the same day. As I am working at Mumbai and Pune Offices in alternative weeks, this matter is being decided now.
4. In affidavit in reply, the respondent has alleged that complainants never issued demand notice to the respondent. The respondent is constructing various buildings in phase-wise manner in the project of respondent Nextgen Atlas-1 at village Kolkhe, Tal. Parvel, Dist Raigad. The complainant booked flat

nos. 1705 and 1706 in Atlas building for a consideration of Rs.48,36,289/- and Rs.48,36,289/-. Agreement categorically provided that 33 floors were proposed to be constructed. Date for delivery of possession was subject to the reasons beyond the control of the developer and on failure, on demand by the purchaser, developer was liable to refund of the amount with simple interest @ 9% p.a.

5. The complainants were well aware that Commencement Certificate upto 27 floors was obtained from the Collector. After change of Planning Authority, it was obtained from CIDCO-Naina dated 07.05.2014. Further, permission upto 30 floors is obtained on 09.01.2018. Highway access permission from NHA was received on 16.03.2016 i.e. after 8 years since application dated 10.01.2008 was filed. Pipeline permission came after 7 years on 17.06.2016. Water tapping permission received on June,2017. Respondent cannot be held responsible for these delays. Present complaint is abuse of process of law and deserves to be dismissed.
6. On the rival contentions of the parties, following points arise for my determination. I have noted my findings against them for the reasons stated below:

POINTS	FINDINGS
1 Has the respondent failed to deliver possession of flat to the complainants as per agreement, without there being circumstances beyond his control?	Affirmative
2 Are the complainants entitled to the reliefs claimed?	Affirmative
3 What Order?	As per final Order.

25-19

REASONS

8. **Point Nos. 1 & 2** - Heard the complainants in person and Adv. Anil Sequera for the respondent. Both made submissions on expected lines. The complainants have placed on record copies of the agreement dated 09.01.2015. As per clause 15.1, date for delivery of possession was December, 2017 i.e. after about 2 years since execution of the agreement. This Clause further provides that if the developer for any reason beyond his control is unable to give possession of the said premises by the date stipulated hereinabove, then developer agrees that they shall be liable on demand by purchaser to refund the amount already received with simple interest @9% p.a. from the date developer received the sum. Usual circumstances under which developer was entitled to extension of time are mentioned. The thrust of the arguments of Adv. Anil Sequera was that complainants never demanded the amount and therefore no cause of action arose for filing of present complaint.
9. Filing of present complaint itself is sufficient demand for refund of money by the complainants. Further Section 18 of the Real Estate (Regulations and Development) Act, 2016 provides for return of the amount received by the promoter, if he fails to complete or is unable to give possession of an apartment etc. in accordance with the terms of the agreement for sale or as the case may be duly completed by the date specified therein on demand by the allottee. There is no dispute that respondent has not delivered possession on the date mentioned in the agreement i.e. by 31.12.2017. In my opinion, present complaint is very much tenable. The respondent has placed reliance on the Judgement of the Hon'ble Apex Court in Criminal Appeal No.2083 of 2013 in the case of Kailash Kumar Vs. State. That was u/s 138 of Negotiable Instrument Act, in respect of dishonour of

cheque. The fact of the dishonour of cheque is communicated by the bank to the person who deposited it in his account in the bank i.e. person in whose favour cheque was drawn. Drawer of the cheque does not have notice about dishonour. Therefore, issuance of the notice informing dishonour of cheque and demanding the amount within stipulated period is mandatory. Failure thereafter will give rise to cause of action for filing of the complaint. Here the respondent i.e. promoter himself gave date for delivery of possession and received amount from the complainants from time to time. He failed to deliver possession on the agreed date and it was well within his knowledge. He has also extended date for delivery of possession unilaterally. Therefore, he cannot take a shelter that no notice demanding the amount was issued by the complainants.

10. Delay was tried to be justified by the respondent on the grounds that highway access permission came after 8 years since application i.e on 16.03.2016. Pipeline permission came after 7 years since application i.e. on 17.06.2016. Water tapping permission came in June, 2017. Therefore, the respondent cannot held responsible for the delay. It must be remembered that agreement was executed on 09.01.2015 and agreed date for delivery of possession was December, 2017. The above said permissions have come well before the date for delivery of possession expired. Therefore, these grounds for delay are not justified.

11. Main ground for delay is that construction permission for 33 floors did not come up. Commencement Certificate upto 27 floors was obtained in the year 2012. CIDCO Naina became the Planning Authority on 10.01.2013 and it issued the Commencement Certificate upto 27 floors on 07.05.2014. This all

had happened well before execution of the agreement in favour of the complainants.

12. No doubt there is mention in the agreement that construction was to be done upto 33 floors. Thus, complainants were made aware that respondent was constructing in all 33 floors. The flats of the complainants are on 17th floor. There is mention in the agreement that respondent had undertaken to increase floors from 27 to 33. At the same time, respondent gave date for delivery of possession as 31.12.2017. It is clear that construction upto 27 floors was already undertaken. The further floors were to be added on the existing structure and there was no case that construction could not begin until further permissions were in place.
13. The respondent has contended that permission to construct upto 30th floor came in January, 2018. It also appears that respondent was not certain whether permission to construct 33 floors will come up and when it will be received. He therefore, inserted clause that complainants could seek refund of the amount with interest, if respondent could not deliver possession on the date mentioned in the agreement. It was very much possible for the respondent to complete the construction upto 27th floor and deliver possession to the complainants after obtaining partial Occupancy Certificate. After accepting so much amount from the complainants, respondent cannot delay delivery of possession on such grounds. I therefore, hold that respondent has failed to deliver possession as per the agreement without there being circumstances beyond his control. I therefore answer for point no.1 in affirmative.
14. The complainants claim to have paid Rs.40,61,459/- to the respondent as price of each flat and further Rs.2,91,000/- towards stamp duty and registration charges. In the event of

cancellation of agreements, complainants will be entitled to refund of stamp duty from the government as per rules. Except that amount complainants will be entitled to refund of balance together with interest as provided under rule 18 of the Maharashtra Rules. I therefore, answer point no.2 in affirmative and proceed to pass following Order.

ORDER

1. The complainants are allowed to withdraw from the project.
2. Respondent to pay Rs.43,33,359/- to the complainants in respect of each flat, except stamp duty amount, which can be refunded as per rules, together with interest @10.75% p.a. from the date of payments till final realisation.
3. The respondent to pay Rs.20,000/- to the complainant as costs of this complaint.
4. The complainant to execute cancellation deeds at the cost of the respondent.
5. The respondent to pay above amounts within 30 days from the date of this Order.

Mumbai

Date : 28.05.2019

MK 28-5-2019
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA