

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

COMPLAINT NO. CC006000000079307

1. MRS. KAVITA PRAVEEN GOGIA
2. MR. PRAVEEN RAMCHAND GOGIA ..Complainants

Versus

SANVO RESORTS PRIVATE LIMITED ..Respondent

MahaRERA Regn. No. P52000000662

Coram:

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

Appearance:

Complainants: Adv Tanuj Lodha

Respondents : Akshada Shetye

**ORDER
(Dated 25.09.2020)**

1. Two complainants allottees who had booked a flat with the respondent / promoter seek compensation as the respondent failed to deliver possession as per agreement.
2. As per detailed complaint, the complainants appear to be wife and husband. While searching for suitable abode they came to know about the project of the respondent Marathon Nexzone at village Kolkhe, Tal. Panvel, Dist. Raigad and booked flat no. 2207 on 22nd floor of building no. S2, known as Atlas 1 in B wing vide

agreement dated 04.11.2014. Possession was promised by December, 2017. The price agreed was Rs.59,04,396/- excluding taxes and other charges. Complainants have made a total payment of Rs.49,47,120/- till this date. There was slow progress of construction and complainants called upon Mrs. Punjabi from respondent company and then received e-mail dt. 18.01.2016 informing that possession will be handed over by 31.12.2017. Again by email dated 22.4.2017, it was informed that possession will be delivered as agreed. However, by letter dated 28.12.2017, it was alleged that there was delay in handing over possession due to the reasons beyond the control of the respondent, viiz. change in approving authority of the project, delay in high way access permission, delay in pipe line permission, delay in civil aviation NOC, delay in approval from CIDCO Naina. Respondent ought to have known all these factors beforehand. By letter dated 12.07.2018 respondent reiterated same contentions. As per RERA website date of completion of project is 31.12.2021. Respondent has not obtained occupation certificate of the building Atlas, nor has handed over possession to the complainants. The respondent has represented that it had 44 years experience and completed over 80 projects housing 5000 happy families and currently building several townships in MM region On MahaRERA website. however, past experience is shown as nil. The complainant therefore, claims interest/ compensation from 01.01.2018 till possession is delivered and compensation of Rs.5 lakhs towards stress and harassment.

3. As per online complaint, complainants booked flat no. 2207 with the respondent for a consideration of Rs.59,04,396/- excluding taxes. Complainants have paid Rs.49,47,120/- Inclusive of taxes. As per agreement, possession was promised by December, 2017. However, possession is delayed. As per MahaRERA record, date for possession is 31.12.2021. Complainants suffered loss because of false statement made by respondent.
4. The complaint came up before me on 14.10.2019. Plea of the respondent was recorded. Respondent pleaded not guilty. He filed written explanation. Matter was adjourned to 15.11.2019. On that day, arguments for complainants were heard. Arguments for respondent were heard on 18.12.2019. As I am working at Mumbai and Pune Offices in alternative weeks and due to huge pendency in this office and due to lockdown conditions due to Corona Pandemic, this matter is being decided now.
5. The respondent has alleged that complainants did book flat no. 2207 in their project, for a consideration of Rs.59,04,396/-. As per clause no. 15(1) of the agreement, possession was to be handed over in December, 2017, provided all amounts were paid by flat purchaser. If the developer was unable to give possession for reasons beyond his control, on demand he was liable to refund amount received with interest at the rate 9% p.a. Under the circumstances mentioned in proviso, respondent was entitled to reasonable extension of time upto 6 months and aggregate 9 months. Under the agreement it was made clear

that plan was sanctioned upto 27 floors and developer proposed to construct 33 more upper floors above the 27 floor building. Respondent was proposing to develop the land in phasewise manner. The district collector granted permissions upto 27 floors on 30.10.2012. On 10.01.2013, Maharashtra Government notified entire area of Raigad district as Navi Mumbai airport influence notified area(NAINA) and CIDCO Naina was constituted as special planning authority which commenced operations in Feb. 2014, On 07.05.2014 said authority issued CC upto 3rd floor. On 17.05.2014, respondent sought permission to increase the height from 27 floors to 33 floors. As there was delay in sanction, respondent wrote letter on 29.02.2016. CIDCO Naina approved the proposal on 09.01.2018 and granted CC upto 29 floors. The respondent could not anticipate these difficulties.

6. Respondent applied for Highway access permission on 10.01.2008. Permission was received on 16.03.2016, that is, after 8 years. Respondent was informed that service roads by the side of highway are not finalised. Water supply upto 2MLD was received on 31.07.2016. Application for laying pipeline by crossing NH4 , NH4 1 7 and NH4 B was made on 01.11.2008. Crossing permission of NH4 B and 17 was received on 17.06.2016. The MJP asked to make fresh application for water supply by paying capital contribution. Respondent sought waiver of capital contribution. Water tapping was done in June, 2017. NOC from Civil Aviation was sought on 09.9.2010. NOC upto

107.75 ltrs AMSL was received on 13.04.2016. Delay has occurred because of these reasons.

7. Following points arise for my determination. I have noted my findings against them for the reasons stated below:

POINTS	FINDINGS
1 Are the complainants allottees and respondent promoter?	Affirmative
2 If yes, has the respondent failed to deliver possession as per agreement, without there being circumstances beyond his control?	Affirmative
3 Are the complainants entitled to the reliefs claimed?	Affirmative
4 What Order?	As per final order.

REASONS

6. **Point Nos. 1 to 3** - Complainants have placed on record copy of agreement dated 4.11.2014. Flat no. 2207 on 22nd floor was agreed to be sold for a consideration of Rs.59,04,396/-. The flat is in S2 building known as Atlas in B wing. Respondent has admitted execution of agreement. I therefore, answer point no. 1 in the affirmative.

7. As per clause no. 15.1 developer was to handover quiet, vacant and peaceful possession after obtaining occupation certificate in respect of said building in December, 2017. Under first proviso, developer was entitled to reasonable extension of time upto 6 months and aggregating upto 9 months. Under next proviso, developer was entitled to reasonable extension under usual

circumstances beyond the control of the developers. Thus under normal circumstances complainants expected possession by 30.09.2018 by providing for reasonable extension.

8. The respondent alleges that permissions did not come in time. Date of present agreement is 04.11.2014. As per clause F Developer submitted proposal to MMRDA on 23.03.2010 for development of rental housing scheme. Developer intended to develop in phasewise manner, a portion of larger land. The Collector granted permission on 20.10.2012 to construct buildings S1, S2 and S3. Under clause M developer had informed purchaser that presently developer intended to construct upto 27 floors. The developer also proposed to construct 33 more upper floors above 27 floor building. Thus on the date of agreement, respondent intended to construct 27 floor building and permission from Collector was in place. .
9. The respondent alleges that thereafter CIDCO Naina became planning authority on 10.01.2013. CIDCO Naina issued CC upto 3rd floor on 07.05.2014. CC upto 29 floor came on 09.01.2018. Therefore, there was delay in completing construction. Respondent was well aware while executing agreement on 04.11.2014 that CIDCO Naina permission was available only upto 3rd floor. Respondent suppressed this fact and made mention about construction permission issued by Collector upto 27 floors. Even thereafter, respondent had a time upto 30.09.2018 to complete the construction and handover possession. This was a period of about 4 years since the complainants booked the flat and made substantial payments. The contention that

respondent intended to increase floors and complainants were made aware about it in the agreement is of no consequence because in the first instance construction upto 27 floors was undertaken and was to be completed, as the buyer had paid money with the hope to get possession as per agreement. Respondent cannot take benefit of his own wrong. He is a professional builder and was required to anticipate all contingencies while giving the date for possession and while accepting money from flat purchaser.

10. The respondent has alleged that highway access permissions came on 16.03.2016, pipeline permission came in June, 2017, Again there was issue about water tapping and permission came in January, 2017 and water tapping was done in June, 2017 without capital contribution. These are not the grounds to justify the delay in delivery of possession. All these things had happened well within the time frame given in the agreement for delivery of possession. A professional builder like respondent, was required to take into consideration all these circumstances while giving date for delivery of possession and while accepting amount from flat purchaser. I therefore, answer point no. 2 in the affirmative.

11. As discussed above, delay has occurred on the part of the respondent in delivering possession since 01.10.2018. Therefore, complainants are entitled to claim interest on the amount paid by them from that date, at the rate as provided under Rule 18 of Maharashtra Rules. Complainants claim to have paid Rs.49,57,120/- Respondent has not denied this payment. For the mental

harassment suffered, complainants are entitled to Rs.50,000/- I therefore, answer point no. 3 in the affirmative and proceed to pass following order.

ORDER

- 1) Respondent to pay interest to the complainants on Rs.49,57,120/- @ 10.40% p.a. from 01.10.2018 till respondent delivers possession or intimates about obtaining occupation certificate to complainants.
- 2) Respondent to pay Rs.50,000 to complainants for the mental agony suffered.
- 3) Respondent to pay Rs._20,000/- to the complainants as costs of this complaint.
- 4) Charge of above amount is kept on the flat booked by complainants.
- 5) Respondent to pay above amounts within 30 days from the date of this Order.

Mumbai

Date : 25.09.2020.

(Madhav Kulkarni)
Adjudicating Officer
MahaRERA