

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

COMPLAINT NO: CC006000000023561

Shraddha Amey Naik and Amey
Suresh Naik ... Complainant.

Versus

Sanvo Resorts Private Limited ... Respondent.
MahaRERA Regn: P52000000662

Coram:

Hon'ble Shri Madhav Kulkarni.

Appearance:

Complainant: In Person

Respondent: Adv. Anosh Sequira
a/w Adv. Sana Khan

Final Order

23rd January 2019

1. The complainants who had booked a flat with respondent / builder seek withdrawal from the project and seek refund of the amount paid with interest.
2. The complainants have alleged that they booked flat No. Atlas-807 in the project of the respondent Marathon Nexzone ATLAS-1 at Panvel. Agreement was registered on 2.5.2014. Possession was promised by Dec. 2017. On 29th Dec. 2017, the promoter informed that revised possession date was Dec. 2021. The promoter has claimed that delay has occurred due to force majeure which is not correct. The complainants paid Rs. 4,57,336/- and Rs. 6,86,754/- by issuing cheques on 20th Dec. 2012 after complainants visited the project site on 15th Dec. 2012 and received email from Promoter on 17th Dec. 2012. Complainants further paid Rs. 4,57,836/- on 24.12.2012 and Rs. 6,86,754/- on 24.01.2013. Allotment letter was received on 20th Feb. 2013 and

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on 16th Feb. 2014 letter was received informing that all approvals were in place. On 01.03.2014 complainants paid Rs. 2,42,100/- towards Stamp Duty and Rs. 30,000/- towards Registration charges vide Demand Drafts. After repeated follow-up copy of draft agreement was received and complainants kept on following up with respondent. The respondent pleaded force majeure for the delay in delivering possession. It is a false defence. The complainants demanded Rs. 61,48,112/- with interest but the respondent failed to do it. Hence, this complaint.

3. The matter came up before the Hon'ble Chairperson on 13th June 2018 and came to be adjourned to 5th July 2018. On 5th July 2018 the matter came to be transferred to Adjudicating Officer. On 30th August 2018 on the request of the Respondent the matter was adjourned to 23.10.2018. The respondent filed application on 23.10.2018 alleging that respondent wanted to challenge the transfer of complaint to Adjudicating officer. Further, it was alleged that respondent wanted to file review petition. Ultimately respondent filed written submissions on 17.12.2018 and arguments were heard on the same day. After my sitting at Pune, this complaint is taken up for judgement now.

4. The respondent admitted that complainants booked flat No. 807 admeasuring 61.51 sq. mtrs in building S-2 in B Wing known as ATLAS building Phase-1 Maratha Nexzone. The price fixed was Rs. 48,41,129/-. The allotment letter was given to the complainant on 20.02.2013 which was provisional allotment. Agreement was entered into on 16.04.2014. As per clause No. 15 (1) the date of delivery of possession was Dec. 2017. The Developer was entitled to reasonable extension of 6 months, above said due date thereby aggregating 9 months. The developer was also entitled for reasonable extension on account of any notice/order/notification of govt. and or/public local competent authority, etc. There was change in Planning

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Authority and amendment of sanctioned plans. On 10.01.2014 Govt. of Maharashtra notified entire area of Raigad District as Navi Mumbai Airport influenced notified area and CIDCO was constituted as Special Planning Authority. The said Authority commenced the operation in Jan. 2014 and on 7th May 2014 CIDCO NAINA issued Commencement Certificate for construction up to 27 floors though respondent had applied for Commencement Certificate up to 33 floors. The Officers of MMRDA suggested revision of approved layout by freeing passage, lift, lobby area from FSI computation for rental component and slight changes in footprint of the sale component. Application for amendment plan was made on 17.5.2014. The respondent also sought permission to increase floors from 27 to 33. After 3 ½ years on 9.1.2018, Commencement Certificate up to 29 floors was received. The National Highway Authority of India was moved on 10.01.2008 for access permission. NOC was received only on 16.3.16. Respondent was informed that alignment of highway with proposed service roads on either side was not finalized and therefore access permission could not be given. Permission for laying pipeline was applied for on 1.11.2008. Permission for crossing NH-4B and NH-17 was received on 17.6.16. Application for water tapping was made on 14.11.16. The MJP informed that the application has expired and fresh application was necessary along with capitalisation charges. After several follow-ups water supply was granted in June, 2017 without capital contribution charges. Permission from Civil Aviation Department was sought to build up to 33 floors on 23.9.2010 of height up to 94.50 mtrs. AMSL was received. On 21.9.11 sanction up to 103 mtrs and on 24.4.15 sanction up to 108.35 mtrs and on 6.6.16 sanction up to 112,35 mtrs was received. Sanction up to 120 mtrs was applied for. Delay occurred due to height clearance issue. The respondent was therefore unable to deliver

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possession by December 2017. The building was proposed to be built up to 33 floors since very beginning.

5. On the basis of 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 the flat to the complainant without there being circumstances beyond control?	Affirmative
2. Is the complainant entitled to the reliefs claimed?	Affirmative
3. What order?	As per final order

Reasons.

5. Point no. 1, 2 & 3

Heard complainants Mr. Amey Naik in person and Mr. Anosh Sequira for respondent. Both made submissions on expected lines. Mr. Sequira solicited my attention to Clause 1 of the agreement. He submitted that there was change in Planning Authority. CIDCO NAINA was appointed Authority in January 2010. Village Kolkhe was notified in Jan. 2013. Renewed permission was received in May 2014. Permission from Civil Aviation Dept. could not be received. There was delay in water supply. On the other hand, it is submitted on behalf of complainant that above 27 floors there is different project.

6. It appears that the complainants booked flat on 20.12.20 by issuing cheques for Rs.4,57,836/- as well as Rs. 6,86,754/-. Further, payments were made on 24.12.12 and 24.01.13. It is alleged by respondent that Commencement Certificate up to 33 floors was applied

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for and CC up to 27 floors was received. There is no such mention in the agreement and there is no evidence that complainants were made aware of these facts. The respondent could have undertaken construction of build-up to 33 floors for maximising profits in his business. He was however required to make the complainants aware of the permissions required and seek consent to bear with the delay in obtaining requisite permissions. The agreement is totally silent on this count and respondent cannot take disadvantage of the delay in height approval without making the complainants fully aware of the affairs and after accepting money from complainants.

7. The site is alleged to be included in Navi Mumbai Airport influenced notified area on 10.01.2014. Even Commencement Certificate was received on 7.5.14 from CIDCO NAINA up to 27 floors. This has happened when agreement with the complainants was executed. The efforts of the respondent to seek approval up to 33 floors are of no consequences unless complainants had voluntarily given consent for the efforts of the respondent. Likewise, NOC from Highway authorities or laying pipeline and delay in water supply permission are of no consequences. The complainants have alleged that they were informed that all permissions were in place. The respondent alleges that he applied for permissions well in advance. Delay has occurred on the part of Govt. Authorities. The respondent is in the business of construction and must be aware of the procedures followed by Govt. Department and time taken for approval. It was the respondent who give the deadline for delivering possession and accepted money from the complainants under that promise. Now he cannot plead that delay has occurred due to the reasons beyond his control. I therefore answer point No.1 in the affirmative.

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8. In view of findings of Point No. 1 above, complainants are entitled for refund of the amount paid to the respondent. At the arguments stage it was submitted on behalf of complainants that they have paid 80% of the agreed price to respondent. The contention of the complainants is ambiguous. The price of flat was Rs. 48,41,129/- Its 80% will be about Rs. 40 lakhs. The complainants are claiming refund of Rs. 60,69,425/-. How this amount is arrived at is not understood. Even the respondent is silent about the amount received from complainants. Therefore, complainants are entitled for refund of the amount actually paid with interest. I therefore answer point No.2 in the affirmative and proceed to pass following order.

ORDER

- 1) The complainants are allowed to withdraw from the project
- 2) Respondent to repay the amount paid by complainants except Stamp Duty which can be refunded as per Rules together with interest @ 10.70% p.a. from the date of payments till actual realisation.
- 3) The respondent to pay Rs. 20,000/- to the complainant as costs of this complaint.
- 4) The complainant to execute cancellation Deed at the cost of the respondent.
- 5) The respondent to pay the above amounts within 30 days from the date of this order.

Mumbai.
Date: 22.01.2019

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23.1.2019
(Madhav Kulkarni)
Adjudicating Officer,
MahaRERA