

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC00600000022946

Vijay Kumar Udasi
Mohit Udasi
Priya Udasi

...

Complainants

Versus

Lohitka Properties LLP
MahaRERA Regn. No. P51800000735

...

Respondent

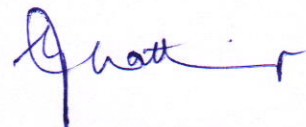
Corum: Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant was represented by Mr. Mangesh Ghanekar, Authorised representative.
Respondent was represented by Ms. Pragathi Malle, Adv. a/w Mr. Zaran Kothari,
Authorised representative.

Order

January 16, 2019

1. The Complainants have booked an apartment bearing no. B-1402 in the Respondent's project 'MONTANA PHASE - 1' situated at Kurla, Mumbai through a provisional allotment letter dated August 13, 2015. The Complainants alleged that even after having paid substantial amount towards the consideration price, the Respondent has failed to execute and register the agreement for sale. Further, they alleged that since the said project did not have all approvals in place, the Respondent had orally promised to handover possession by December, 2018 but has failed to do so. They stated that the Respondent has now put revised project completion date as December 31, 2022 in their MahaRERA registration. Therefore, the Complainants stated that they initiated a cancellation of the said allotment in August, 2017 but the Respondent is yet to refund the amounts paid. The Complainants prayed the Respondent be directed to refund the amounts paid and pay them interest for the delay in handing over possession.



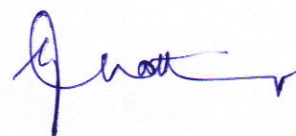
2. The Learned Counsel for the Respondent for the Respondent submitted that the Respondent is willing to execute and register the agreement for sale and handover possession by December 2021. Alternatively, she submitted the Respondent is willing to amicably agree with the Complainants about the manner in which the amount would be refunded.
3. As per the provisions of the Rule 4 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 the revised date of possession for an ongoing project has to be commensurate with the extent of balance development and therefore, the date of handing over possession is stated by the learned counsel for the Respondent, i.e. December 2021 is reasonable.
4. Further, Section 18 (1) of the Real Estate (Regulation and Development) Act 2016 reads as:

“ if the promoter fails to complete or is unable to give possession of an apartment, plot or building, – (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. “

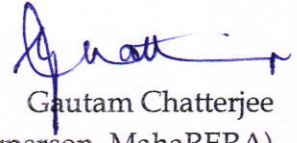
Accordingly, since no agreement for sale has been executed and registered between the parties, provisions of section 18 of the said Act does not apply to the present case.

5. In view of the above facts, if the Complainants reconsider and wish to continue in the MahaRERA registered project, the parties are directed to execute and register the agreement for sale as per the provisions of section 13 of the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations made thereunder within 30



days from the date of this Order, with a possession date before the period ending December 31, 2021.

6. Alternatively, if the Complainants intend to withdraw from the said project then such withdrawal shall be guided by the terms and conditions of the allotment letter.
7. Consequently, the matter is hereby disposed of.



Gautam Chatterjee
(Chairperson, MahaRERA)