

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000012703

Mrs. Leena Suresh Tahirramani
Suresh V Tahirramani

... Complainants

Versus

Ekta Everglade Homes Pvt. Ltd
MahaRERA Regn.No. P51800000947

... Respondent

Coram:

Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainants were represented by Dr. Sanjay Chaturvedi, Adv.

Respondent was represented by Mr.C.P.Goyal, Authorised Signatory with Mr. Abir Patel, Adv., (Wadia Gandhi & Co.)

Order

February 23, 2018

1. The Complainant has booked an apartment bearing No. B903 in the Respondent's project 'EKTA TRIPOLIS Phase I' located at Goregaon, Mumbai through a registered agreement for sale dated April 27, 2013. The Complainant stated that as per the said agreement, the Respondent was required to handover possession of the apartment by December 2017. Therefore, the Complainant, who wants to continue in the project, prayed the Respondent be directed to pay him interest, on delay, as per the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the said Act*).
2. The advocate for the Respondent argued that in terms of clause 13.1 of the said agreement, even though the date of possession for handing over the said apartment is December, 2017, the Respondent is entitled to a reasonable extension of 18 months over and above the aforesaid possession date. Therefore, he argued, the date of possession hasn't arrived till date and the present complaint is premature.



3. Further he argued that, under the second proviso to Clause 13.1 of the said Agreement, the Respondent is also entitled to further reasonable extension of time for handing over possession of the said apartment *inter alia* owing to “any restrain and/or injunction and/or prohibition order of Court and/or any other judicial or quasi-judicial authority and/or any statutory authority”, “any delay caused due to MHADA and/or GACPL” and “any event beyond the reasonable control of the Developer.”

He submitted that there was a Stop Work Notice issued by Municipal Corporation of Greater Mumbai (“MCGM”) on April 27, 2015 directing all parties to stop work on the Free Sale Component) owing to delay on part of Guru Ashish Constructions Private Ltd. (“GACPL”) in fulfilling its contractual obligations qua MHADA. The said Stop Work Notice was lifted on December 1, 2015 resulting in a loss of 223 days of construction work. He, argued that reasonable extension of the date of possession for the loss of construction period owing to the said Stop Work Notice is also covered under Clause 13 of the said agreement.

Next, he submitted that there was a delay in receiving permissions from MCGM for trimming and cutting of existing trees resulting in a loss of 208 days of construction work. He argued that reasonable extension for the said delay is also covered under Clause 13 of the said agreement.

- a. Therefore, he argued, that there is no delay whatsoever in handing over possession of the said apartment and that the Respondent has not violated any section/provision of the Real Estate (Regulation and Development) Act, 2017 and that the Respondent is thus entitled to an extension of at least 18 months and 431 days on and from 31st December, 2017 to hand over possession of the said apartment. However, he submitted that the Respondent is committing to handover possession of the said apartment by December 2018.

4. Clause 13 of the said agreement reads thus:

The Developer has commenced construction on the said land prior to the execution of this Agreement and the Developer shall hand over the quiet, vacant and peaceful possession of the said Flat to purchaser by December 2017 (“Due Date”) PROVIDED



THAT all amounts due and payable by the Purchaser to the Developer hereinabove (except the last instalment payable as provided in Clause [7] above) are first duly paid to the Developer.

PROVIDED HOWEVER that the Developer shall be entitled to reasonable extension of time, being a period of 18 months over and above the said due date.

PROVIDED HOWEVER that the Developer shall also be entitled to further reasonable extension of time for giving delivery of the said Flat, if the completion of the building in which the said Flat is situated is, delayed on account of:

- i. Non availability of steel, cement, other building material, water or electric supply; and/ or*
- ii. War, civil commotion or any terrorist attack/ threat; and /or*
- iii. Any notice, order, rule, notification of the Govt. and / or other public or local or competent authority and/or any other change in law which prevents Developer from fulfilling its obligations under this Agreement; and/ or*
- iv. Any strike, lock-out, bandh or other like cause.*
- v. Act of god, which includes earthquake, cyclone, tsunami, flooding and any other natural disaster or unforeseen naturally accruing event.*
- vi. Any event beyond the reasonable control of the Developer.*
- vii. Any restrain and/or injunction and/or prohibition order of Court and /or any other judicial or quasi-judicial authority and/or any statutory authority.*
- viii. Any delay in getting the occupation certificate from the concerned authorities.*
- ix. Any delay caused due to MHADA and/or GACPL*

Then the date for handing over possession of the said Flat as stated aforesaid shall be extended to the extent of the loss of time;


5. 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;



.....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. "

6. The Complainant, in alleging that the date of possession is December 2017, has failed to take into account the further reasonable extensions stipulated under clause 13 of the said agreement. Accordingly, provision regarding interest on delay due to handing over possession of the said apartment, in accordance with section 18 of the said Act does not apply to the present case and therefore the question of interest, on delay, does not arise.
7. On review of the Respondent's MahaRERA registration it is observed that the Respondent has put December, 2020 as the revised proposed date of completion which is an unreasonable time period for completion of the project. 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.
8. As decided in complaint number CC006000000000113, pertaining to this project, the Respondent is directed to handover possession of the said apartment to the Complainant before the period ending December 2018, with OC, failing which the Respondent shall be liable to pay interest to the Complainant from January 1, 2019 till the actual date of possession, on the entire amount paid by the Complainant to the Respondent. The said interest shall be at the rate as prescribed under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules, 2017.
9. Consequently, the matter is hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA