

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO.: CC00600000044300

Vijay Shetty ... Complainant

Versus

Lucina Land Development Limited
MahaRERA Regn. No. P52000000488 ... Respondent

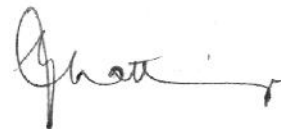
Corum: Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant was represented by Mr. Sanjay Chaturvedi, Adv.
Respondent was represented by Mr. Manish Gala, Adv.

Order

March 06, 2019

1. The Complainant stated that he has booked an apartment bearing no: 39-903/JASMINE4A-1204 in the Respondent's project 'Indiabulls Park 3' situated at Panvel, Raigad in June 2013 via an allotment letter. The Complainant stated the Respondent has made false assurances regarding the amenities as annexed in the allotment letter, and moreover has even made changes to the carpet area and overall layout to the project. Further, he stated that at the time of booking the Respondent had promised to handover possession by October, 2017 but at the time of registering the project with MahaRERA, has now put the revised completion date as January, 2024. Therefore, he prayed that the Respondent be directed to refund the entire amount paid along with interest and compensation as per the provisions of sections 12 and 18 of the Real Estate (Regulation and Development) Act, 2016 (herein after referred to as the *said Act*).
2. The learned counsel for the Respondent submitted that the alleged allotment letter referred to by the Complainant is not an allotment letter but an application for provisional reservation of a residential apartment in a proposed development by M/s Lucina Land Development Limited. Further, he submitted the said application clearly states that the allocation of the residential allotment would be subject to availability of residential apartment in the said proposed project and no date of possession or amenities were mentioned in the said



application. He also submitted that clause 27 of the said application contains express provisions for revision of changes in plans etc and therefore, the Complainant's allegations that the Respondent has made changes to the carpet area and overall layout to the project without her consent are not tenable. He submitted the Respondent is willing to execute and register the agreement for sale.

3. Section 4 (2)(1)(C) of the said Act reads as follows:

...

(1) (C) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: — the time period within which he undertakes to complete the project or phase thereof, as the case may be;

Rule 4(2) 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 reads as:

...

The promoter shall also disclose the original time period disclosed to the allottees, for completion of the project at the time of sale including the delay and the time period within which he undertakes to complete the pending project, which shall be commensurate with the extent of development already completed.

...

The promoter is entitled to prescribe a fresh time limit for ongoing projects, for getting the remaining development work completed, which in the instant case as per the declaration of the promoter binds him to complete the balance work by December, 2023.

4. In the *Neel Kamal Realtors Suburban Pvt. Ltd. and anr. Vs. Union of India and others*, the Honourable High Court in para 115 of its order (hereinafter referred to as the *said Order*) has held that the object and purpose of this Act is to complete the development work within the stipulated time frame. Also, as per para 86 of the same order, promoter is entitled to prescribe a fresh time limit for getting the remaining development work completed, which in the instant case as per the declaration of the promoter binds him to complete the balance work by December, 2023. Further, in para 122 of the said order, the Honourable High Court has observed that the provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect.

5. Section 12 of the said Act reads as below:

12. Where any person makes an advance or a deposit on the basis of the information



contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

Therefore, the provisions of Section 12 of the said Act cannot be retrospectively applied to transactions that transpired before the said Act came into force. Further, the Complainant has failed to show that they have sustained any loss or damage by reason of an alleged incorrect, false statement made by the Respondent and therefore Section 12 of the said Act is not applicable in the present case.

6. 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;*

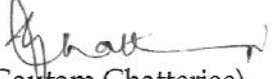
he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed 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 specific allotment of any apartment has been made and 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.

7. In view of the above facts, the parties are advised 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.



8. Alternatively, if the Complainant intends to withdraw from the said project then such withdrawal shall be guided by the terms and conditions of the application of provisional reservation of premises and not by any order issued by this Authority.
9. Consequently, the matter is hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA