

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI

Complaint No.CC006000000044250

Surva Bhattacharjee

.. Complainant

OMQ 19J/1, Officers Enclave,
Air Force Station, Kalalkunda,
West Midnapur, West Bengal-721303

Versus

M/sLucina Land Development Ltd

.. Respondents

15th Floor, Tower-I, Indiabulls Finance Centre
612-613, Elphinstone Mill Compound
Senapati Bapat Marg, Elphinstone Rd
Mumbai-400013

MahaRERA Regn No.P52000000709

With

Complaint No.CC006000000044276

Faizan Khatri

.. Complainant

Flat No.1103, A Wing, Arihant Anaya
Secor-35G, Owe, Kharghar,
Navi Mumbai-410210

Versus

M/sLucina Land Development Ltd

.. Respondents

15th Floor, Tower-I, Indiabulls Finance Centre
612-613, Elphinstone Mill Compound
Senapati Bapat Marg, Elphinstone Rd
Mumbai-400013

MahaRERA Regn No.P52000000709

2/10/19

With
Complaint No.CC006000000044282

Sanjeev Shukla .. Complainant
C-301,Kukreja Estate,
Sector-11, CBD Belapur (E)
Navi Mumbai-400614

Versus

M/sLucina Land Development Ltd .. Respondents
15th Floor, Tower-I, Indiabulls Finance Centre
612-613, Elphinstone Mill Compound
Senapati Bapat Marg, Elphinstone Rd
Mumbai-400013
MahaRERA Regn No.P52000000709

With
Complaint No.CC006000000044285

Manoj Nair, .. Complainant
Flat No.A-1201, Sea Queen Heritage
Plot No.6, Palm Beach Road,
Sector-18 Sanpada, Navi Mumbai-400705

Versus

M/sLucina Land Development Ltd .. Respondents
15th Floor, Tower-I, Indiabulls Finance Centre
612-613, Elphinstone Mill Compound
Senapati Bapat Marg, Elphinstone Rd
Mumbai-400013
MahaRERA Regn No.P52000000709

With
Complaint No.CC006000000044287

Anurag Tiwari .. Complainant
40, Shalimar Garden, Ismailganj,
Sector-8, Indira Nagar,
Chinhut, Lucknow, UP 227105

2-10-19

Versus**M/sLucina Land Development Ltd****.. Respondents**

15th Floor, Tower-I, Indiabulls Finance Centre
 612-613, Elphinstone Mill Compound
 Senapati Bapat Marg, Elphinstone Rd
 Mumbai-400013

MahaRERA Regn No.P52000000709**With****Complaint No.CC006000000044297****Indira Chauhan****.. Complainant**

H.N.100/101, Sahyognagar,
 Near Regional Workshop,
 Nanded-431 605

Versus**M/sLucina Land Development Ltd****.. Respondents**

15th Floor, Tower-I, Indiabulls Finance Centre
 612-613, Elphinstone Mill Compound
 Senapati Bapat Marg, Elphinstone Rd
 Mumbai-400013

MahaRERA Regn No.P52000000709**With****Complaint No.CC006000000044301****Anant Patil****.. Complainant**

18/A, Saj Villa, Siddharth Society,
 8th Amravati Road,
 Nagpur-440 023

Versus**M/sLucina Land Development Ltd****.. Respondents**

15th Floor, Tower-I, Indiabulls Finance Centre
 612-613, Elphinstone Mill Compound
 Senapati Bapat Marg, Elphinstone Rd

h
 2-10-19

Mumbai-400013

MahaRERA Regn No.P52000000709

With
Complaint No.CC006000000044313

Dinesh Kumar Nahar

.. Complainant

A-18, Rallway Officers Flats,
Nirmal Park, Near Voltas House,
Byculla, Mumbai 400 027

Versus

M/sLucina Land Development Ltd

.. Respondents

15th Floor, Tower-I, Indiabulls Finance Centre
612-613, Elphinstone Mill Compound
Senapati Bapat Marg, Elphinstone Rd
Mumbai-400013

MahaRERA Regn No.P52000000709

With
Complaint No.CC006000000044315

Thomas Johny

.. Complainant

4/3, Aaaisi Nagar,
P.L. Lokhande Marg,
Chembur, Mumbai 400 081

Versus

M/sLucina Land Development Ltd

.. Respondents

15th Floor, Tower-I, Indiabulls Finance Centre
612-613, Elphinstone Mill Compound
Senapati Bapat Marg, Elphinstone Rd
Mumbai-400013

MahaRERA Regn No.P52000000709

Coram : Shri M.V. Kulkarni
Hon'ble Adjudicating Officer

[Handwritten signature]
2-10-19

Appearance :**For Complainants – Adv. Sanjay Chaturvedi****For Respondents – Adv. Manish Gala****COMMON FINAL ORDER****07-10-2019**

1. The complainants / allottees in these 9 complaints who had booked flats with the same respondent / promoter seek refund of the amount paid with interest under Section-12 of the Real Estate Regulation and Development, Act (Hence forth RERA in short) as the respondent failed to provide amenities that were promised.
2. The complainants in all these nine complaints claim that they booked flats in Phase-II of the project of the respondent 'India Bulls Greens' registered as India Bulls Park-I at village Kon, Taluka Panvel, Dist. Raigad. The number of flats with carpet area, date of booking, price agreed and amount paid are given in the chart below.

Sr No	Case No.	Flat No. & Carpet area	Booking date	Price agreed (Rs.)	Amount paid (Rs)
1	44250	1601- 810 sq.ft	7-2-2014	60,75,000	13,89,392
2	44276	1902- 516 sq.ft	31-3-2014	45,71,650	8,60,602
3	44282	801 -1126 sq.ft	8-6-2011	70,30,400	15,43,40
4	44285	1006 -1288 sq.ft	30-6-2013	65,93,681	9,95,650
5	44287	1288- 854 sq.ft	17-6-2013	61,81,112	19,65,994
6	44297	2508- (previous 2101) 824 sq.ft	31-10-2013	61,73,650	17,62,176
7	44301	3406-(previous 3402) 850 sq.ft	31-3-2014	65,02,500	8,17,791
8	44313	2206 -1295 sq.ft	23-3-2013	61,31,250	19,49,392
9	44315	806 -831 sq.ft	17-10-2013	60,53,600	20,04,520

2-10-19

3. The common grievance of the complainants is that the construction is not as per original plan and there is deviation. Now the possession date given is 31st December, 2023, whereas initially it was given as October, 2017. The club house, schools and other amenities in the complex were promised alongwith other amenities. However, nothing is ready and there is deviation from what was promised. The project is under litigation. Since the grounds on which complaints have been filed and the reliefs claimed are similar, all the matters are being decided by common order.

4. The complaints came up before Hon'ble Chairperson on 9th July, 2018 and came to be transferred to Adjudicating Officer. The matters came up before me on 11th Sept, 2018. The respondent challenged the maintainability of the complaints by filing application. Say of the complainants was called. Arguments on the application were heard on 26th September, 2018. By common order dated 24th October, 2018 I held that the complaints were maintainable only under section-12 of the RERA. The respondent challenged the order before Hon'ble Appellate Tribunal in appeal No.10923. By order dated 10th June, 2019 Hon'ble Appellate Tribunal directed me to decide issue of maintainability of complaints under section-12 of the RERA afresh on merits. All contentions of the parties are kept open. The grievance of the respondent was that the order was passed without considering alleged brochures placed on record in the complaints. On 22nd November, 2018, 20th December, 2018, 24th January, 2019, 27th February, 2019,

2-10-19

28th March, 2019, 26th April, 2019 no effective hearing could be done as the appeal was pending. Respondent had filed written statement on 20th December, 2018. On 20th June, 2019 arguments for complainants were heard. On 25th July, 2019 respondent filed additional written statement. Arguments for respondent were heard. As I am working at Mumbai and Pune Offices in alternative weeks and due to huge pendency in this office, this matter is being decided now.

5. In his written statement the respondent alleged that the complaint is false. This is arm twist tactic by complainants. Complainant has not produced documents about what amenities were promised while booking the flat. Complainant has to prove as to who gave the said brochure relied upon by the complainant and has to prove correctness of the brochure. The brochure stands superseded by application and cost sheet. Said brochure is of the year 2013 and incomplete and not of the project in question. The reservation was subject to changes. Application did not mention any of the amenities claimed. Due to non receipt of approvals options were given to complainant and complainant chose to stay invested. Signing of cost sheet in the year 2015 amounts to waiver of complainants claim. Respondent has not withdrawn any amenities approved in the year 2015. Respondent intended to complete the project in phasewise manner. Plans were in the process of finalisation. Under clause 7 and 10 of the application, complainant understood that there could be change in the building plan. Clause-27 as well as clause-39 show that the amenities were at the sole discretion of the respondent.

7-10-19

Since permission of Phase-II was taking time, complainant was given three options, one of them being to shift to Phase-I. Necessary permissions were received in October, November, 2015. Signing of the cost sheet by complainant shows that complainant was not serious about the amenities. It is denied that the complainant was not informed about the litigation that was pending.

6. In the additional written statement respondent alleged that the brochures are not identical and incomplete. Complainant has to prove as to who gave a brochure to complainant and in what manner complainant relied on said brochure. Single common chart filed by the complainant showing 38 amenities that were promised is incorrect. The list of amenities is annexed to the written statement. The building is still under construction, the claim is premature the brochure is purely conceptual. The complaint therefore deserves to be dismissed.
7. Following points arise for my determination. I have noted my findings against them of the reasons stated below:

<u>POINTS</u>	<u>FINDINGS</u>
1. Has the respondent accepted amounts from complainants on the basis of notice/advertisement/prospectus showing amenities which are not being provided, thereby causing loss to the complainants?	Affirmative
2. Are the complainants entitled to the reliefs claimed?	Entitled for Compensation

2-10-19

3. What order?

As per final order

REASONS

8. Point Nos.1 and 2 : It is clear that the complainants had made the bookings between 2011 and 2014. It also appears that changes were made in the plan by the respondent in the year 2015. It is the contention of the complainants that the respondent had initially promised to deliver possession, in October, 2017. The date for delivery of possession was increased to August, 2021 and then to March, 2023. The complainants do not seek withdrawal from the project due to the failure on the part of the respondent to deliver possession as per agreement because the complaints are filed not under Section-18, but under Section-12 of RERA. We are not required to go into the point whether respondent has not delivered possession as per agreement.
9. Section-12 of the RERA provides for two remedies in case of loss or damage suffered by incorrect or false statement in notice / advertisement / prospectus. First remedy is seeking compensation. Second remedy available is withdrawal from the project and refund of the amount with interest and compensation. The complainants are seeking withdrawal and refund of the amount with interest and compensation. The complainants had not produced the brochures alongwith complaints despite filing complaints^h under Section-12 of the RERA. The respondent therefore challenged the tenability of the complaint. Rule-7 of the Maharashtra Rules in respect of manner of holding inquiry

7.10.19

provides that upon appearance by the respondent contravention committed by him has to be explained and his plea of either guilty or not guilty is to be recorded. Thereafter parties are to be directed to produce documents or other evidence.

10. The complainants have placed on record brochures on 22nd March, 2019. It is the submission of Shri.Gala that it is a combined brochure of two, three projects. Therefore it cannot be said that all amenities were promised to the complainants. On the other hand Adv.Chaturvedi has submitted that the complainants booked flats because of the amenities that were promised. While purchasing a house a person has two things in mind. Firstly the basic necessities like affordability, water, sanitation, facilities of commutation to work place, quality of construction and basic necessity of children and old persons, like schools, dispensaries etc., Second thing is the facilities or amenities that are offered without which a person can accommodate himself but the amenities add feel good factor.
11. It is the submission of Adv.Manish Gala that the brochures in complaints 44250, 44287, 44313 & 44315 are from different project. It is his contention that they are from Savroli project. The application forms are in respect of Kon project in these four complaints. When did the booking changed is not made clear by respondent nor the new booking evidence is placed on record. Now the brochures have been placed on record by complainants. The amenities promised are mentioned in the brochures. That appears to be a composite brochures in respect of projects at Kon as

27-03-19

well as Savroll. If the respondent wants to challenge the genuineness of the brochures, best course open for him is to produce the brochures printed by him. The respondent is a big name in the real estate. Big advertisements are found in the media. Therefore it is natural for the respondent to print a brochure in respect of his project in question. Without producing said brochure respondent cannot allege that the brochure produced by complainants is a false brochure.

12. Now brochure has been placed on record in respect of project India Bulls Greens, Panvel. The cost sheet shows cost in India Bulls Greens, Panvel 20:80 scheme. At the backside there is cost sheet in respect of India Bulls Golf City, Sanvroll - CLP scheme. It appears to be a composite brochure. In all 24 facilities are shown in the map. On the penultimate page there are apartments highlights which are 10 in number. There are projects highlights which appear to be the amenities promised which are 7 in number. The amenities promised are as follows:

1. Grand clubhouse with stadium, swimming pools & toddlers pool, tennis, squash, badminton and basketball courts, cricket pitch, cycling and jogging tracts, a gym and a meditation and yoga centre.
2. A world-class school with a comprehensive curriculum and extra-curricular activities.
3. Premium health care centre fully-equipped with latest medical facilities.
4. World-class destination mall with entertainment and recreation facilities.

5-10/19

5. Creche, shopping centres, restaurants, banks, pharmacies and a post office.
 6. Thoughtful additions like separate toddlers and children's play areas and sit-outs for elderly.
 7. Dedicated bus service to & from local railway station / bus-stand.
13. On behalf of complainant a common list of amenities promised and not provided is given as follows:

1. A reputed international School - Ryan International School.
2. A lavish spread Clubhouse
3. A well equipped medical care centre.
4. Cycling, Jogging and walking tracts, a full-fledged cricket pitch, and a dedicated play area.
5. Tennis, Squash, Badminton & Basketball Court.
6. Gym, yoga and Mediation Centre.
7. A lavish podium of over 3 lakh sq.ft.
8. Well designed clubhouse with infinity pool, swanky pool with kind's fun pool, senior citizen park.
9. Marble flooring in living room, dining room and passage, wooden flooring for all bedrooms.
10. Wardrobe for all bedrooms, glass doors for all bedrooms,
11. Jacuzzi in master toilet.
12. Split AC in all bedrooms and living rooms video door phone.
13. An 18 hole golf course. Swanky golf club with steam, sauna, Jacuzzi yoga and arobic centre, squash courts, lawn tennis, table tennis, adventure sports, sports training academies and amenities, Junior sports facilities.

u
2-10-19

14. Lavish entertainment and shopping precincts, advance home automation and security system.
15. A well known academic superior school with a comprehensive curriculum and extra-curriculum activities for children.
16. A fully equipped medical centre with latest equipment and doctors on call 24/7.
17. Dedicated sports facilities with professional coaches to help children to improve their skills at cricket, tennis, squash, badminton, basketball, hockey and football.
18. Cycling, jogging and walking tracts, a full fledged cricket pitch, and a dedicated play area.
19. Large open spaces, scenic sit outs for elders, dedicated play area for toddlers and children, and a landscape boulevards.
20. Creche, shopping centers, restaurants, banks pharmacies and post office.
21. A lavish spread clubhouse with an extraordinary design and a generous spread of indoor sports, fitness and recreation facilities.
22. Salon, bar counters, snooker and card room, TT room Lounging areas, Banquet Hall.
23. Large format discount stores, hyper marts, single and multi branch outlets, niches for weekend markets, books stores, hangout zones and the widest range of children's play area. On site nursery, nature trail and outdoors sports.
24. World class school with a comprehensive curriculum and extra curriculum activities.
25. World class destination mall with entertainment and recreation facilities.

✓
7-10-19

26. Creche, shopping centres, restaurants, banks pharmacies and post office.
27. Dedicated bus services to and from local railway station / bus stand.

15. ~~The~~ following facilities are said to have been provided.

1. Basketball Court.
2. Cricket Net Practice
3. Gymnasium Amphitheatre/ yoga steps
4. Kid play area/ Kids pool
5. Landscape Mound Multipurpose Mall
6. Mini Football Court
7. Multipurpose Court
8. Multipurpose Hall
9. Seating Alcove Lounge Deck Pergola
10. Skating area
11. Swimming Pool.

16. Though it is a composite brochure, respondent cannot be absolved from the responsibility of providing the amenities that are shown in the brochure which is there on record. Respondent claims that swimming pool, skating area, seating lounge, multi purpose court, multipurpose mall, kids play area, gymnasium, yoga steps, cricket net practice and basket ball court are provided. It appears that those facilities are now available only for Phase-I. Therefore the complainants are making grievance. Likewise club house, stadium, tennis and badminton court cycling track, world class school, world class mall, shopping centre, restaurant, bank, pharmacies, dedicated bus service appear to have

2-0-19

been not provided though more than 5 years have gone by since complainants booked flats and paid substantial amounts. However, allowing total refund at this stage will not be proper in my opinion. I am of the opinion that each of the complainants is entitled to compensation @ Rs.1000/- per month from the date of this order till the respondent provides all the facilities from the list in brochure subject to complainants complying with the terms that are agreed between the parties. I therefore answer point No.1 in the affirmative and point No.2 as entitled to compensation, I therefore pass following order.

ORDER

1. The respondent to pay compensation @ Rs.1000/- per month to complainants in each complaint from the date of this order till all amenities shown in the brochure which is thereon record are provided, subject to complainants complying with the terms that are agreed between the parties.
2. Respondent to pay Rs.10,000/- to complainant in each complaint as costs of the complaint.
3. The respondent to pay the above amounts to the complainants within 30 days from the date of this order.

Mumbai
Date : 07.10.2019
(Camp at Pune)

10/10/2019
(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA, Mumbai