

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI

Complaint No.CC006000000044288

Rajendra Khair

4, Vishwashanti Apartment,
Golibar Road, Santacruz East
Greater Mumbai - 400055

.. Complainant

Versus

M/sLucina Land Development Ltd

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

.. Respondents

MahaRERA Regn No.P52000000709

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

Appearance :

For Complainants – Adv.Sanjay Chaturvedi

For Respondents – Adv.Manish Gala

FINAL ORDER

07-10-2019

1. The complainant / allottee who had booked a flat with the respondent / promoter seeks refund of the amount paid with interest under Section-12 of the Real Estate Regulation and Development, Act (henceforth RERA in short) as the respondent failed to provide amenities that were promised.
2. The online complaint merely mentions that it is a complaint under Section-12. The detailed complaint mentions that

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complainant booked flat No.2301 i.e. a 2 BHK flat having carpet area of 743.03 sq.ft. in the project of the respondent 'India Bulls Greens' registered as India Bulls Park-I, on 30-11-2012. The project is at village Kon Taluka Panvel, Dist. Raigad. The consideration agreed was Rs.75,64,500/-. Complainant paid Rs.1,00,000/- by cheque on 30-11-2012. He paid Rs.10,69,736/- by cheque on 25-12-2012 as his loan was approved. The project comprises of multi storeyed residential apartments. A total of 27 pages allotment letter has been issued which is nothing but agreement for sale. It is silent on registration of agreement. The consideration included free club membership. The respondent fraudulently sold the property to the complainant at high rate of Rs.5750 per sq.ft. as the complainant was staying in Dubai.

3. Complainant was informed that there shall be International school, a mall and club house. It was informed that respondent had obtained important clearances / approvals. There was inordinate delay in getting environmental clearances. Complainant was informed that instead of December, 2015 possession will be delivered by November, 2017. Respondent failed to deliver possession on the agreed date and even failed to execute a registered agreement. While registering with RERA, the date for completion was given as 27-8-2021 which is now revised to 31-03-2023 as the project is under litigation. There is total breach of trust on the part of the respondent. The club house, school, world class mall etc., offered by respondent differ from what was told. No amenities are mentioned on RERA website. Complainant demanded refund of his

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amount by cancelling the booking but respondent threatened 15% to 25% deduction. Complainant has now invested Rs.33,00,000/- The complaint therefore under Section-12 of the RERA seeks refund of amount of Rs.33,00,000/- with interest @ 18% per annum. The complaint came to be filed on 7th May, 2018.

4. The complaint came up before Hon'ble Chairperson on 9-7-2018 and came to be transferred to Adjudicating Officer. The complaint came up before me on 11-9-2018. It may be noted that the complainant booked flat in Phase-I of the project. There are 9 other complaints of complainants who had booked flats in Phase-II of the project. The respondent challenged maintainability of those 9 complaints. Hearing of all the complaints was therefore prolonged. The respondent opposed the complaint by filing written version on 22-11-2018. On 27th Feb, 2019 order was passed below application by respondent about placing the brochures / pamphlets / advertisement on record. The interim order passed in other matters was challenged before Appellate Tribunal which stayed hearing of those matters. Matter was adjourned on 28th March, 2019, 26th April, 2019. Arguments for complainant were heard on 20th June, 2019. Arguments for respondent were heard on 25th July, 2019. The respondent also filed additional written statement. 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. The respondent in written version alleged that this is a false complaint. Lay out plan was approved in 2012-13 on the

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basis of which complainant applied for provisional booking. Tripartite agreement was executed with respondent and financial institution, which shows payment plan. Respondent time and again invited complainant for execution and registration of agreement. The building in which the complainant had booked a flat has already received OC to the knowledge of the complainant but the complainant has failed to take over possession. Complainant is indulging in arm twist due to bad market condition. Complainant is trying to save himself from paying EMIs after enjoying benefit of subvention period. There are no amenities as alleged in the approved lay out. It was the complainant who failed to come forward to sign a registered agreement for sale. The building in which complainant booked flat received OC on 11-5-2018. It is denied that respondent shared the video with complainant. It is denied that complainant time and again demanded refund.

6. In the additional written statement respondent has denied the brochure produced by complainant and has asked the complainant to prove it. It is alleged that respondent has already received occupation certificate on 11th May, 2018. The 38 amenities as claimed by complainant were not promised by respondent. The amenities available are given in Exhibit 'A'. The proposed date for completion of project is 2023. The brochure contains a rider that it is purely conceptual and not a legal offering. The amenities mentioned are tentative. The complaint therefore deserves to be dismissed.

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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 complainant on the basis of notice/advertisement/prospectus showing amenities which are not being provided, thereby causing loss to the complainant?	Affirmative
2. Is the complainant entitled to the reliefs claimed?	Entitled for Compensation
3. What order?	As per final order

REASONS

8. POINTS No.1 & 2 :- Section-12 of the RERA provides for two remedies for the loss suffered by incorrect information in notice / advertisement / prospectus etc., namely (1) compensation or (2) if complainant wants to withdraw, refund of entire investment alongwith interest. The complainant has not filed his complaint under section-18 of the RERA for refund of the amount with interest and compensation for not delivering possession as per agreement. It must be noted that booking was done by complainant long ago in the year 2012 i.e., almost before 7 years. The complainant averred that initially possession was promised in December, 2015. In November, 2014

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respondent sent email that important clearances / approval were received. Possession was promised by November, 2017. As per RERA record, date for possession was 27-8-2021 and now increased to 31-3-2023. It was not informed that project was under litigation. It appears that the respondent intends to complete the project after 10 to 11 years since respondent started accepting bookings. It is a multi phase project. Completion of later phases is bound to take more time. The respondent asserts that occupation certificate in respect of phase-I has been received on 11-5-2018. We are not required to discuss the controversy about not delivering possession as per agreement.

9. The claim by the complainant is restricted to under section-12 of the RERA. The averments made by the complainant in that respect are that amenities / project high lights stated during booking, namely club house, school, world class mall etc., differ from what are offered. They are much lesser than what was advertised in the year 2013 and agreed in the cost sheet. Copy of the booking form is placed by complainant on record. Though in clause-9 there is a mention of facilities and amenities without specifications, they were to vest solely in the respondent. Clause-14 provides for membership of club. For the non registration of the agreement, both parties blame each other. It appears that complainant has made part payment by obtaining loan under subvention scheme. The complainant did not place copy of brochure on record while filing complaint.

10. Now brochure has been placed on record in respect of project India Bulls Greens, Panvel. The cost sheet shows

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cost in India Bulls Greens, Panvel 20:80 scheme. At the backside there is cost sheet in respect of India Bulls Golf City, Sanvrol - CLP scheme. It appears to be a composite brochure. In all 24 facilities are shown in the map. On the penultimate page there are apartment 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. 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.

11. 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

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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.
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 fledge cricket pitch, and a dedicated play area.

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

12. 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

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6. Mini Football Court
 7. Multipurpose Court
 8. Multipurpose Hall
 9. Seating Alcove Lounge Deck Pergola
 10. Skating area
 11. Swimming Pool.
13. The thrust of the arguments of Adv.Gala is that it is a comprehensive brochure of 2/3 projects. Therefore it cannot be said that all amenities were promised to the complainant. Already occupation certificate has been received and all amenities as promised have been provided to the complainant. Adv.Chaturvedi on the other hand has submitted that the amenities were required to make the accommodation habitable.
14. 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 necessities of the 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.
15. If the respondent has printed a composite brochure, he cannot be absolved from providing amenities in one project and not providing them in other project. The respondent is a big name in real estate. There are many big projects to his credit and said information constantly percolates in the media. His big advertisements are always found in the

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media. Printing of brochures is a common phenomena. If the respondent wants to challenge the genuineness of the brochure, he could have placed the brochure printed by him or the advertisement put up by him on record. Respondent cannot be absolved from the responsibility of providing the amenities that are shown in the brochure which is there on record. It appears that swimming pool, skating area, seating alcove lounge, multipurpose court, multipurpose hall, mini football court, multipurpose mall, kids play area, Gymnasium, yoga steps, cricket net practice, and basketball court are provided by respondent. Club house, stadium, tennis, badminton court, cycling tracks, world class school, world class mall, shopping centre, restaurant, bank, pharmacies, dedicated bus service appear to be not provided by the respondent though 7 years have gone by since the complainant booked his flat and paid substantial amount. Occupation certificate in respect of this project has been received. Allowing total refund at this stage will not be proper in my opinion. I am of the opinion that complainant is entitled to a compensation @ Rs.1,000/- per month from 22nd November, 2018 when the respondent filed his defence statement, till the respondent provides all the facilities from the list in the brochure mentioned above in para 10, subject to complainant complying with the terms that are agreed between the parties. I therefore answer point Nos. 1 in the affirmative and point No.2 as entitled to compensation. I therefore pass following order.

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ORDER

1. The respondent to pay compensation @ Rs.1,000/- per month to the complainant from 22-11-2018 till all the amenities shown in the brochure which is there on record are provided subject to complainant complying with the terms that are agreed between the parties.
2. The respondent to pay Rs.10,000/- to the complainant as costs of this complaint.
3. The respondent to pay the above amounts to the complainant within 30 days from the date of this order.

Mumbai
Date : 07.10.2019
(Camp at Pune)

M.V. Kulkarni
7-10-2019
(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA, Mumbai