

**BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI**

COMPLAINT NO. CC00600000001913

Dr. Shubhada Ram Deoskar
Dr. Ram B. Deoskar

..Complainants

Verses

Neepa Real Estate P. Ltd.

..Respondent

MahaRERA Regn. No. P51800000918

Coram:

Hon'ble Shri Madhav Kulkarni,
Adjudicating Officer, MahaRERA.

Appearance:

Complainant: Present with Adv. Leena
Respondent : Adv. Vikram

**ORDER
(Dated 26.06.2019)**

1. The complainants, wife and husband who had booked a flat with the respondent/promoter, seek withdrawal from the project and refund of their amount with interest as respondent failed to deliver possession of the flat as per agreement and there was veracity in the advertisement in which false statements were made.
2. The complainants have alleged that they booked flat no. 103 in the project of the respondent Vasant Oasis at Marol, in Andheri, Mumbai in the building named as Lilum. Respondent issued Letter of Allotment on 14.04.2015. Total agreed consideration was Rs.3,46,46,750/-. The complainants have paid Rs.1,13,09,093/- They have paid Rs.4,35,883/- towards service tax and

Rs.1,14,335/- towards TDS and Rs.1,14,335/- towards service tax. Thus complainants have paid Rs.1,19,83,646/-. Respondent verbally assured that possession will be delivered by December, 2017. On RERA website, respondent is showing date of possession as 31.12.2022. The construction work has not even commenced.

3. Complainants were shown prospectus/brochures of the building. Lilum was the only building in Phase II of the project. Respondent stopped construction in phase II at plinth level. Respondent has started actively constructing buildings in phase III of the project. This is causing huge financial loss to the complainants. Respondent has not even entered into agreement with the complainants.
4. Complaint is dated 14.11.2017. Order was passed by the Hon'ble Chairperson on 15.01.2018. Direction was given to the respondent to handover possession after executing agreement for sale on or before 31.12.2022. Complainant carried the matter to Appellate Tribunal in Appeal No.10. By Judgement dated 19.03.2018, Hon'ble Appellate Authority set aside the Order and remanded the matter to decide afresh in the light of rival pleadings advanced by the parties. On 20.07.2018, Hon'ble Chairperson transferred the matter to Adjudicating Officer. Matter came up before me on 17.12.2018. The complainants filed Amendment Application to insert pleading regarding Section 12. Matter was adjourned to 21.01.2019. Thereafter, matter came to be adjourned to 20.02.2019. On 20.02.2019 Amendment Application was allowed. Matter was adjourned to 18.03.2019. Respondent had filed affidavit-in-reply on 20.02.2019. Matter was adjourned to 22.04.2019 and then to 20.05.2019 for final hearing on the request of the parties. Arguments were heard on 20.05.2019. As I am working at

Mumbai and Pune Offices in alternative weeks, this matter is being decided now.

5. The respondent has alleged that complainants have not made any advances or deposit on the basis of information contained in the advertisement or prospectus and have not sustained any loss or damage due to the same. Section 12 is not attracted in this case. The complaint is premature as date for delivery of possession on the RERA is 31.12.2022. Complaint is not maintainable.
6. On the rival contentions of the parties, following points arise for my determination. I have noted my findings against them for the reasons stated below:

POINTS	FINDINGS
1. Has the respondent failed to deliver possession of the flat to the complainant as per agreement, without there being circumstances beyond his control?	Affirmative
2. Whether respondent made any incorrect or false statement in advertisement or prospectus inducing complainants to make advance or deposit, thereby causing loss or damage to the complainants.	Negative
3. Are the complainants entitled to the reliefs claimed?	Affirmative
4. What Order?	As per final Order.

REASONS

7. **Point Nos. 1** - Complainants have alleged that respondent issued Letter of Allotment to them on 10.04.2015. Said letter has been placed on record. Accordingly, flat no. 103 on 1st floor, in the building Lilum in the project Vasant Oasis at village Marol, Tal. Andheri was allotted to the complainants at the price of Rs.3,46,46,750/-. Payment schedule is mentioned in clause 5.

As per clause no. 15 Letter of allotment is subject to the terms and conditions that will be mentioned in the agreement. Some payment receipts have been placed on record by the complainants. It appears complainants started making payment since 18.03.2015.

8. Admittedly, no agreement between the parties has been registered. There is only Allotment Letter and on its basis, complainants appear to have made payments to the respondents. Complainants have alleged that respondent verbally assured that complainants will get possession by December, 2017. On RERA website respondent initially put the date of possession as 31.12.2018. Thereafter, respondent has revised date for delivery of possession to 31.12.2021. The Letter of Allotment was dated 14.02.2015. According to the complainants, they were promised possession by December, 2017 i.e. in a period of 2½ years since booking of flat. Respondent then extended date to 31.12.2018 i.e. after 3½ years since booking the flat by the complainants. Now the date is extended to 31.12.2022 which is about 7½ years since booking of flat by complainants. Even the period of 2½ years can be considered as reasonable for getting possession since starting of the construction work.
9. It appears that respondent has undertaken big project by name Vasant Oasis at Marol. As per amended complaint, as per brochure, in phase II, there was only building Litum, which was being built. How many buildings were being constructed in Phase I and Phase III is not known. What was going to be height of the buildings is also not known. Anyway complainants expecting possession in 2½ years since booking the flat was quite reasonable. Complainants claims that they paid Rs.1,13,09,093/- out of total consideration of Rs.3,46,46,750/- with a view to

receive possession of flat that was booked. Only defence put forth by the respondent is that as per RERA website date for delivery ^{is} 31.12.2022. The allegation that initial date promised was December, 2017 and then extended to December, 2018 is not denied by the respondent. It appears that respondent has extended date to December, 2022 unilaterally. Under Section 46 of the Contract Act, when no time for performance is specified, engagement must be performed within a reasonable time. As stated earlier 2½ years since booking of the flat was reasonable time for getting possession. The last payment receipt placed by complainant on record is dated 19.06.2017. As per payment schedule, 10% was to be paid as earnest money and 10% on execution of the agreement. Thereafter, about 6% amount was to be paid on completion of each stage. Respondent has accepted about 1/3rd of the consideration without even execution of agreement and has failed to deliver possession of the flat to the complainant since more than 4 years. I therefore, hold that respondent has failed to deliver possession of the flat as per agreement without there being circumstances beyond his control. I therefore, answer point no. 1 in affirmative.

10. By adding para 6(a) in the complaint, complainants alleged that as per brochure shown by the respondent, Lilum was ^{the} only building in Phase II and complainant booked flat no.103 in this building. The respondent has stopped construction of this building at plinth level. The respondent started construction of phase III of the project. As stated earlier, complainants are silent on no. of buildings to be constructed in Phase I and 3. Even height of the Lilum is not given. Brochure/ prospectus given to the complainants is not placed on record. Alleged promise that Phase II to be constructed first and Phase III thereafter, is not

substantiated by the complainants by adducing evidence. Consequently, complainants failed to prove veracity in advertisement or prospectus on the basis on which they made payments and suffered losses. I therefore, answer point no. 2 in negative.

11. In view of the points no. 1 and 2 as above, complainants are entitled to refund of amount paid by them with interest as per rule 18 of the Maharashtra Rules. Complainants have placed on record total 9 receipts in respect of payment made to the respondent. Total comes to Rs.1,19,83,646/-. Complainants are entitled to refund of this amount with interest at the rate of 10.75% p.a. I therefore, answer point no. 3 in affirmative and proceed to pass following Order :

ORDER

1. The complainants are allowed to withdraw from the project.
2. Respondent to pay Rs.1,19,83,646/- to the complainants, together with interest @10.75% p.a. from the date of payments till final realisation.
3. The respondent to pay Rs.20,000/- to the complainants as costs of this complaint.
4. The respondent to pay above amounts within 30 days from the date of this Order.

Mumbai

Date : 26.06.2019

MP 26-6-2019
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA