

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

COMPLAINT NO: CC00600000055437.

Ramesh Mishra

... Complainant.

Versus

Larsen & Toubro Ltd.
(Emerald Isle)

... Respondents.

MahaRERA Regn: P51800003307.

Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

Appearance:

Complainants: Adv. Vaibhav Warerkar

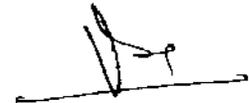
Respondents: Adv. Yashish Kamdar a/w
Adv. Vatsal Parikh.

FINAL ORDER

12th December 2018.

The complainant contends that he booked flat no. 1204, with parking space in T-6, Phase-1 of the respondents' registered project in 'Emerald Isle' situated at Powai. He contends that though he has paid more than the agreed amount of consideration, the respondents illegally demanded approximately Rs. 35 lakhs more and withheld the possession of the flat for non-compliance of the said illegal demand, thereby the respondents contravened Section 19(3) of RERA. He further contends that the respondents have failed to hand over the possession on the agreed date 31st May 2018. He claims interest on his investment for every month of delay till handing over the possession of the flat, under Section 18 of RERA.

2. The respondents have filed the reply wherein they contend that they were ready to hand over the possession of the booked flat since the agreed date of possession, 4th October 2017. However, the complainant did not



make the full payment of the amount of taxes, interest on late payment and other charges namely Rs. 30,71,952/- which was due from him. They show their readiness to hand over the possession on full payment of the agreed amount and therefore, request to dismiss the complaint.

3. Heard the learned advocates of the parties and perused the documents placed on record.

4. The parties are stick-up to the agreement for sale dated 09.03.2018. Therefore, I have carefully perused the agreement. The sum and substance thereof is that the flat no. 1204 in T-6 with garage/car parking space is agreed to be sold for total consideration of Rs. 3,79,82,970/-. The agreement shows that the respondents received Rs. 3,45,15,798/- before the date of the agreement and Rs. 34,64,172/- were due out of the agreed consideration. The agreement provides following schedule of payment.

Rs. 10,60,670/- were payable at the time of application.

Rs. 3,67,22,300/- were to be paid on or before 26.06.2017.

Rs. 2,00,000/- were to be paid on receipt of O.C. Admittedly,

O.C is received on 15.09.2017.

From this schedule it becomes clear that Rs. 3,77,82,970/- were to be paid towards the consideration on or before 26.6.2017.

5. Clause 3 (e) of the agreement provides that the above mentioned consideration was exclusive of taxes (paid or payable) by the promoter by way of VAT, service tax, goods and service tax, cess or other similar taxes. Clause 6.1 contemplates the interest payable at the rate prescribed under RERA, on delayed payments or on the investment of the allottee if the possession is delayed. Clause 23 of the agreement provides that the agreement constitutes entire agreement between the parties with respect to the subject matter and supersedes any previous arrangement or understanding contained in other agreement, allotment letter, correspondences, arrangements whether written or oral, if any, between the parties.



6. In view of Clause 23, the agreement supersedes all other earlier agreements and documents including allotment letter. So relation of the parties will have to be governed by these terms and conditions. Letter of allotment loses its field.

7. The dispute is; the complainant contends that he paid Rs. 4,98,920/- in excess, whereas the respondents have been contending that the complainant has made default in making the timely payment and therefore, they claim Rs. 24,74,330/- as interest on delayed payments. They further contend that they are required to pay 12% GST on interest amount and thus, Rs. 27,71,251/- are due from the complainant. They further claim that the complainant is also liable to pay the other charges included in Clause 13 of the agreement. Therefore, Rs. 30,71,952/- in total are due from the complainant.

8. It appears that the respondents have charged the interest on the basis of the demand letters which remained unpaid on time. However, the agreement shows that on or before the complainant was to pay the respondents Rs. 3,77,82,970/- towards the application fee and part consideration. If the complainant has not paid this amount in time, then he is liable to pay interest, at agreed rate from 26.06.2017 on the amount falling short of Rs. 3,77,82,970/- as well as on the further payment of Rs. 2,00,000/- which was required to be made on 15.09.2017 i.e. on receipt of the O.C., if not paid. The respondents cannot claim interest more than this, on account of the consideration amount.

9. So far as payment of taxes are concerned which are either paid or which are payable by the respondents pertaining to the booked flat, the complainant is liable to reimburse the respondents as per Clause 3 (e) of the agreement. Similarly, the complainant is bound to pay the respondents the charges mentioned in Clause 13 of the agreement. In Clause 8 of the agreement it has been specifically mentioned that the complainant will be



entitled to get the possession of the flat only on making the full payment of the dues.

10. After taking into consideration the facts of the case, I find it necessary to direct parties to settle their account in the light of terms and conditions contained in the agreement as discussed above instead of preparing statement of their account. To my mind, the above observations are more than sufficient to find out what is due from each other and what is due to each other. Therefore, the order.

ORDER

The parties are directed to settle their account in the light of the observations referred to above within the period of 10 days from this order.

Thereafter the parties shall adjust their claims and if anything is found due, from any party then such party shall make payment thereof to the party entitled to it, within next 10 days.

If the entire amount due from the complainant is received then, the respondents shall hand over the peaceful possession of the flat to the complainant, within two days.

The complainant's claim for interest on his investment for delayed possession will depend upon the date of the full payment of the due amount.

The parties shall bear their own cost.

Mumbai.

Date: 12.12.2018.


12.12.18
(B. D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.