

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

COMPLAINT NO: CC0060000000110772

Mrs. Falyn Avil and Mr. Edward Avil ... Complainant.

Versus

Spenta Enclave Pvt. Ltd. ... Respondents.

(Alta Vista Phase I)

MahaRERA Regn: P51800000956.

Coram: Shri B.D. Kapadnis, Member II.

Appearance:

Complainant: Adv. Godfrey W. Pimenta.

Respondents: Adv. Sonam Mhatre.

Final Order

11th March, 2020.

The complainants contend that they have booked Flat No. 203 D Wing in respondents' registered project 'Alta Vista Phase I' situated at Lal Dongar, Village Chembur, Tal. Kurla. The respondents agreed to hand over the possession thereof by June 2018 but they failed to do so. Therefore, the complainants withdraw from the project and claim refund of their amount with interest under section-18 of the RERA.

2. The respondents have pleaded not guilty and they have filed the reply to contend that it is SRA project which they agreed to develop in December 2005 by entering into Development Agreements with several societies. They have carried out the construction of rehabilitation buildings. The project could not be completed because there was issue of temple and mosque having been co-existing since more 40 years and Police asked SRA Authorities not to grant occupancy certificate of rehab building as they were apprehensive of riots in the locality. The reasons for delay in the project were beyond the control of the respondents. The respondents oppose the complainants' claim by contending that they are investors. The project is viable even after cessation of the subvention scheme in May 2018 the respondents paid monthly instalment on complainants' behalf from




June 2018 to March 2020 amounting to Rs.24,93,395/-. They further contend that they have contended in the agreement that they shall give possession for fit out on or before June 2018 and therefore this was not the final date of possession and therefore, they have requested to dismiss the complaint.

3. When the agreement for sale was executed in the year 2015, the parties were governed by the Maharashtra Ownership Flats Act, 1963. Section 3(2)(f) casts specific liability on the promoter to specify in writing the date by which possession of the flat is to be handed and he shall hand over such possession accordingly. Respondents have not mentioned the specific date of possession in the agreement despite the legal obligation to do so. Fit out possession is not possession in the eyes of law and therefore the respondents cannot take undue advantage of their own wrong by contending that June 2018 specified in the agreement was the possession date for fit out and is not the agreed date for possession. In view of this legal position, I hold that June 2018 specified by the respondents in the agreement is the date of possession. Admittedly, the respondents have not handed over the possession of the flat on this date Hence the complainants have rightly exercised their right under section-18 of RERA to withdraw from the project and claim refund of their amount with interest.

4. The respondents have made an attempt to plead that they were prevented by the causes mentioned in their reply from completing the project in time. I find that section 8(b) of Maharashtra Ownership Flats Act, 1963 provides that even for such reasons the agreed period cannot be extended beyond six months. In view of this legal position, I find that in any circumstances the respondents were liable to hand over possession of the flat by December, 2018 but they have failed to do so.

5. The parties have jointly placed payment statement marked Exhibit 'A' on record which shows that the complainants have paid the respondents Rs.1,46,41,863/- towards the consideration by way of taking



loan and paid Rs.9,41,785/- directly to the promoter. The respondents are therefore liable to repay the loan amount to the banker and refund the complainants amount of Rs.9,41,785/-. The amount paid by the complainants will carry the simple interest at prescribed rate which is 2% above SBI's highest MCLR. It is currently 8.15% per annum. The respondents are liable to pay Rs. 20,000/- towards the cost of the complaint. The complainants are also entitled to get reimbursement of the registration charges. They can claim the refund of the stamp duty within five years of the registration of the agreement from Sub-Registrar's office on cancellation of the agreement without taking the possession of the flat. However, if the complainants' claim is not satisfied within the period of five years from the registration of the agreement, then respondents would reimburse the amount of stamp duty also to the complainants. Hence the order.


ORDER

- a. The respondents shall repay the loan amount.
- b. The respondents shall refund Rs.9,41,785/- with interest @10.15% per annum from the dates of their payment till refund.
- c. The charge of the aforesaid amount shall be on the booked flat till the repayment of loan amount and refund of complainants' amount.
- d. The complainants, on satisfaction of their claim shall execute the Deed of Cancellation for agreement for sale and the respondents shall bear its cost.
- e. Exhibit 'A' shall form a part of the order.
- f. The respondents shall pay the complainants Rs. 20,000/- towards the cost of the complaint.

Mumbai.

Date: 11.03.2020.

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11.3.2020
(B. D. Kapadnis)

Member II, MahaRERA, Mumbai.

Exh A
Member - 51

AMOUNT PAID BY THE COMPLAINANTS THROUGH ICICI BANK TO THE RESPONDENT

Date	Purpose	Cheq. No.	Amount
21.12.2015	First Disbursal	728978/728979	Rs.24,50,820/-
31.12.2015	2nd Disb.	729108	Rs.40,32,432/-
21.04.2016	3rd Disb.	018663	Rs. 8,84,307/-
29.09.2016	4th Disb	069753/069754	Rs.16,33,270/-
27.10.2016	5th Disb	111971	Rs.16,86,584/-
27.12.2016	6th Disb	111993	Rs.20,34,182/-
12.09.2017	7th Disb.	264347	Rs.7,90,425/-
18.01.2018	8th Disb	265870/265871	Rs.11,29,843/-
		Total	Rs.1,46,41,863/-

AMOUNT PAID BY THE COMPLAINANTS TO THE RESPONDENT DIRECTLY

Date	Purpose	Cheq. No./bank	Amount
23.06.2015	Instalment	346191/Andhra Bank	Rs.5,00,000/-
13.10.2015	Instalment	39154/Kotak Mahindra Bank	Rs.4,41,785/-
		Total	Rs.9,41,785/-

Jayaram
12/2/2020

SA
26/11/19