

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

1. COMPLAINT NO: CC006000000055848
Pawan Umeshchandra Tiwari

2. COMPLAINT NO: CC006000000055800
Rajkumar Tiwari

... Complainants

Versus

Ekta Parksville Homes Pvt. Ltd.
MahaRERA Regn. No. P99000000115

... Respondent

Coram: Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainants were themselves present a/w Mr. Santosh Kumar Singh, Adv.
Respondent was represented by Mr. Ashok Mohanani, CMD.

Order

December 11, 2018

1. The complainants have purchased an apartment bearing No .1203 - D in the Respondent's project 'EKTA PARKSVILLE PHASE II' situated at, Virar, Thane via registered agreement for sale dated February 28, 2014. The Complainants have stated that the date of possession as stipulated by the said agreement is long over; however, the Respondent is yet to handover the possession of the said apartment. Therefore, they prayed that since the Respondent has failed to hand over the possession of the apartment within the stipulated period, the Respondent be directed to pay interest, on delay, as per the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016.
2. The Respondent explained that the construction work of the project could not be completed because of reasons which were beyond the Respondent's control. Specifically, he submitted that the said project is being constructed on a larger portion



of land portion consisting of various sectors and is being developed in a phase wise manner. Further, he submitted that the Respondent being the developer of only a portion of sector II and sector III property, the Respondent has to depend upon HDIL, who is the owner of the larger layout land, for obtaining all the approvals/sanctions of the plans from Vasai Virar City Municipal Corporation (hereinafter referred to as VVCMC) and such other concerned government authority, as the proposals are put up in sector wise manner.

3. The Respondent then explained that the primary reasons for delay in construction and handing over of possession of the said apartment as stated below:

- i. First Stop work notice: On December 7, 2013 a Stop Work Notice was issued to HDIL by VVCMC, wherein the VVCMC specifically mentioned that "certain features are being constructed which are not in the approved plan" and therefore the construction is not as per plan. HDIL, subsequently, by letter dated December 9, 2013 intimated the aforesaid notice to the Respondent putting the entire blame on the Respondent and directed the Respondent to stop work on site. In reply to the said stop work notice, the Respondent vide their letter dated December 17, 2013 informed VVCMC that the development of the project on the said land is in accordance with the said sanctioned plans only and further VVCMC granted further commencement certificate, only after inspecting the building. Its thereby evident that there was no violation and/or breach of the terms and conditions of the sanctioned plans.
- ii. Second Stop work notice: VVCMC once again sent Second Stop Work Notice dated January 8, 2014 which was addressed to HDIL. After receipt of the said notice by HDIL, they have vide their letter dated January 16, 2014 addressed to the Respondent, accepted and confirmed that HDIL inadvertently amended the earlier Sanctioned Plans and hence further agreed and undertook that they shall forthwith cause the withdrawal of the notices issued by VVCMC by reinstating the earlier plans. In the said letter HDIL further accepted and declared that the construction carried out by the Respondent is as per the plans approved by VVCMC and in terms of the Development agreements and supplemental agreements, which are till date valid and subsisting. The Respondent submitted that VVCMC issued further Commencement Certificate only in the month of May 2014 vide its letter dated May 15, 2014.



- iii. Delay in receiving permanent electric connection: For the purposes of handing over possession of the premises, or even procuring an occupation Certificate, a permanent electric connection/electric supply is necessary. Such electric supply is granted by the Maharashtra State Electricity Distribution Company Limited ("MSEDCL"). By and under application dated February 9, 2018 made by the Respondent's Architect, the Respondent had applied to the MSEDCL for grant of a permanent electric connection to the said Building. A permanent electric supply requires undertaking of complete infrastructure work to establish the supply network and most importantly requires the setting up of transformers by the MSEDCL. The Respondent submitted that though the required sum has been collected by the MSEDCL for grant of permanent electric connection, no permanent electric supply has been granted to the said project.
- iv. Delay in receiving the Consent to Operate: Further, for the purposes of procurement of occupation certificate and hand over possession of apartments in the said Building, the Respondent also requires Consent to Operate from the Maharashtra Pollution Control Board ("MPCB"). Being the land owner, HDIL was required to apply for and procure the Consent to Operate for the entire Larger Layout. Until the year 2017, despite repeated requests, HDIL, for reasons best known to them failed to apply for the Consent to Operate. Due to the above reasons, though the building work was completed, the Respondent could not proceed to obtain an occupation certificate and consequently hand over possession, since they were not permitted to apply for Consent to Operate. The Respondent was time and again only informed that applications from parties other than landowners would not be entertained. Thereafter, the MPCB has approved the Consent to Operate on 08th August 2017 to HDIL on certain terms and conditions which were informed by the Project architect Mr. Ajay wade. The approval for consent to operate was subject to compliance of new terms and conditions, which read thus:
"Consent shall be granted after: (1) Submission of Certificate from Architect regarding BUA completed for which they granted have applied for 1st Consent to Operate. (2) After installation of online monitoring system for the parameters Flow, BOD, and TSS at STP outlet and verification of the same from SRO/RO. (3) After submission of verification report regarding adequacy of STP and OWC capacity and additional requisite consent fees."
It is thus clear that even in August, 2017 the Consent to Operate was only approved by the MPCB and would be granted once the new conditions, imposed by the MPCB were complied by the Respondent after much follow up with HDIL. This, after the said

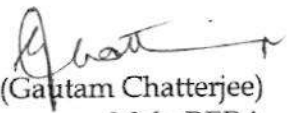


Building was already ready and fit for habitation subject to grant of occupation certificate. Pertinently, all other developers undertaking development on the Larger Layout were required to comply with the aforesaid conditions laid down by the MPCB, and only once the entire layout was in compliance with the conditions of the MPCB, would the consent to operate be granted. Finally, on May 7, 2018 the Consent to Operate for the entire Layout including the said Building was granted by the MPCB.

- v. *Ban on sand mining*: *Sand is one of the main building materials and there is grave scarcity of the same in the State of Maharashtra. Since it is available only against permits issued by the Revenue & Forest Department, Government of Maharashtra, which are valid for 3 months and entitles the Promoters to a very limited quantity. On the other hand, the quality of the sand so procured against these permits is much worse than the sand supplied through mechanized excavation. It is totally unfit for any masonry work involved in multi-storied buildings and where stability of the structure is concerned. The Hon'ble Supreme Court of India has also taken cognizance of this matter and has put restrictions on sand mining across the country. Thereafter the Bombay High Court has also in Civil Writ Petition Nos. 97 and 98 of 2011 vide its Judgment dated January 12, 2011 has put a moratorium on excavation of sand without the State Government's permission. This issue is in public domain. Recently, the Principal Bench of National Green Tribunal at Delhi has also imposed a blanket ban on sand mining across the country. In view of such scarcity of good quality sand, the Respondent did endeavour to do the construction with various alternatives of sand such as fly-ash, stone-dust, dry mortar etc., but the same did not materialize and were non-satisfactory, resulting in compromising with structural stability. The only source of sand is from the Royalty Holders / Suppliers and the Respondent was constrained to work with only that since it is not available in the open market on account of the above-mentioned restrictions.*
4. The Respondent explained that the construction work of the building is as on date completed and he has applied for OC in July, 2018 itself. However, he could not get OC because of reasons as explained above. Further, he submitted 220 families are already residing in the building after taking fit out possession. He added that he is willing to do the same if the Complainant so decides.



5. The Complainant stated that at this juncture they would not press for the interest, on delay, because they would like the project to be first completed with OC. However, they sought liberty to approach MahaRERA at an appropriate stage, which may even include after receipt of OC, to demand interest, on delay as per the provisions of Section 18 of the Act.
6. In view of the above facts, the Complainants are hereby granted liberty to approach MahaRERA at an appropriate stage, which may be even after receipt of OC, as per the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations made thereunder, for the delay in completing the said project.
7. Consequently, the matters are hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA