

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

COMPLAINT NO: CC006000000023737

Maria Abbas ... Complainant.
Versus
Ekta Parksville Homes Pvt. Ltd. ... Respondent.
MahaRERA Regn: P99000000109

Coram:

Hon'ble Shri Madhav Kulkarni.

Appearance:

Complainant: Mr. Bhimani

on behalf of Complainant

Respondent: Representative C.P. Goyal
with Adv. Harshad Bhadbhade

Final Order

19th December, 2018

1. The complainant who had booked a flat with respondent / builder seeks withdrawal from the project and refund of the amount paid to the respondent with interest and compensation.
2. It is alleged that possession was promised in December 2017, however, possession is not handed over. Therefore, complainant seeks refund of money paid to the respondent with interest as well as rent paid by complainant. From the Agreement it can be seen that the project is at Village **Dongare**, Taluka Vasai, which was part of the project undertaken by HDIL. The complainant booked flat No. 503 having carpet area of 383.2 sq.ft. in the building Brooklyn Park. The price agreed to be paid was Rs. 30,75,000/-. As per clause 13.1 possession was promised in December 2017.

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3. The matter came up before the Hon'ble Chairperson, MahaRERA on 07th May 2018 and it came to be referred to the Adjudicating Officer. Plea on behalf of respondent was recorded on 01st August 2018. The respondent filed written explanation on 19th November 2018. Same day arguments were heard. As I am working at Mumbai Office as well as Pune Office in specific weeks, this matter is being decided now.

4. The respondent has alleged that HDIL submitted proposal for development of rental housing scheme at Village Dongare, Bolinj, Chikhal Dongare, Taluka Vasai within the limits of Vasai-Virar Municipal Corporation. On 2nd February 2009 vide its letter MMRDA granted location Clearance. The respondent entered into Development Agreement in respect of Project having Ground + Podium + 15 Storeys construction. The respondent is entitled to construct and sell all the flats, Offices, commercial premises, shops, go downs, garages, etc. The respondent started construction work as per commencement certificate. On 7th Dec. 2013 stop work notice was issued to HDIL by VVCMC as certain features were being constructed which were not in the approved plan. The respondent vide letter dated 17.12.2013 informed VVCMC that development of the project was in accordance with sanctioned plans only. Thereafter VVCMC granted further Commencement Certificate. VVCMC once again sent stop work notice on 8th Jan. 2014 addressed to HDIL. The respondent accepted and confirmed that HDIL inadvertently amended earlier plans and promised reinstatement of earlier plans. HDIL informed VVCMC that construction carried out by respondent was in accordance with sanctioned plan. VVCMC issued further Commencement Certificate in May 2014. The complainant made

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provisional booking of flat No. 604 on 20th May 2014. The complainant was made aware of the nature of the project which was undertaken in undeveloped area. As per clause 13.1 of the agreement possession was to be handed over by Dec. 2017 + 6 months' automatic extension which means by June 2017. Due to various mitigating events the date of possession stood extended. On 9th Feb. 2018 the respondent's Architect applied to MSEDCL for grant of permanent electric connection. No permanent electric supply has however been granted. The respondent requires consent to operate from Maharashtra Pollution Control Board. It was HDIL which was required to apply for consent to operate from MPCB. Though building work is completed respondent could not obtain Occupation Certificate and hand over possession to the Complainant. Consent to operate from MPCB is obtained by HDIL on 8th Aug. 2017 on certain terms and conditions.

5. There was ban on sand excavation, therefore, respondent was unable to carryout construction up to the standard required. The respondent lost nearly 18 months due to non-availability of sand. The complaint therefore deserves to be dismissed.

6. On the basis of rival contentions of 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 flat booked by complainant as per terms of agreement without there being circumstances	

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- beyond his control? Affirmative
2. Is the complainant entitled to the reliefs claimed? Affirmative
3. What order? As per final order

Reasons.

7. Point no. 1 & 2- Shri Harshad Bhadbhade, learned Counsel for respondent has submitted that delay in delivering possession has occurred due to reasons beyond the control of the respondent. The Municipal Corporation gave stop notice for one year without any fault of the respondent. Now 84% of the project is completed. There was paucity of sand due to NGT order. This resulted into delay in delivering possession. The representative of the complainant submitted on the other hand that the date for delivery of possession was December 2017+ 6 months. The complainant has paid Rs. 25% of consideration. Other projects are going on. The respondent did not pay pre-EMI interest as per agreement. Now, the complainant wants to withdraw from the project and want refund of her money.
8. The agreement is dated 25th June 2014. As per clause 12.1 the date of delivery of possession was Dec. 2017. Under first proviso Developer was entitled to reasonable extension of time for a period of 6 months. Usual ground under which further extension of time could be granted are given in second proviso including prohibition order of judicial authority or statutory authority. We are required to refer to the events pleaded by respondent only since execution of

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the agreement, because on the date of execution of agreement the respondent was well aware of the events that had already happened. The price of the flat at Rs. 30,75,000/ was quoted by the respondent and was agreed to by the complainant. Likewise date of delivery of possession including reasonable extension was June 2017 which was also given by the respondent and agreed to by the complainant. Now, we have to see whether as sudden events occurred due to which respondent was taken by surprise.

9. The first stop work notice dated 17th Dec. 2013 had come well before execution of present agreement. Even the second stop work notice dated 08th Jan. 2014 came well before execution of present agreement. Therefore, these notices are of no help to the respondent. The respondent was well aware that permanent electricity connection from MSCDCL and consent to operate from MPCB were required to be obtained before obtaining Occupation Certificate. Even thereafter he committed to deliver possession to the complainant by June, 2018 at the latest. Ban on sand mining is being pleaded by the respondent. The ban had come due to illegal sand mining by sand mafia. However, legal activities were not prohibited. There could be alternatives available for respondent. Other builders have kept their commitment. Therefore, the defence of the respondent cannot be accepted. Even the extended promise of delivering possession by Dec. 2018 is not being honoured. I therefore, answer point no.1 in the affirmative.

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10. In her complaint, the complainant did not give exact amount paid by her to the respondent. The complainants do not care to give the necessary details in their complaints and not following basic rules of pleadings. Complainant has placed the receipts about payment on record. Consequently, refund of actual amount proved to have been paid, with interest as per Maharashtra Rules will be just and proper. I therefore answer point No. 2 in the affirmative and proceed to pass following order.

ORDER

- 1) The complainant is permitted to withdraw from the project.
- 2) The respondent to refund actual amount proved to have been paid, to the complainant together with interest at State Bank of India's highest MCLR prevalent as on today plus 2%, i.e. 8.70% + 2% = 10.70% as provided under Rule 18 of Maharashtra Rules from the date of payment till actual realisation.
- 3) The respondent to pay Rs. 30,000/- to the complainant as cost of this complainant.
- 4) The complainant to execute cancellation Deed at the cost of the respondent.
- 5) The respondent to pay the above amounts within 30 days from the date of this order.

Mumbai.
Date:19.12.2018

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(Madhav Kulkarni)
Adjudicating Officer
MahaRERA