

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

COMPLAINT NO. 006000000078227

Divya Rana ..Complainant

Verses

M/s. Lake View Developers ..Respondent

MahaRERA Regn. No. P51800000154

Coram:

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

Appearance:

Complainant: In person
Respondent: Adv. Bhadbade

**ORDER
(Dated 05.12.2019)**

1. The complainant/allottee who had booked a flat with the respondent/promoter seeks withdrawal from the project and refund of her amount as respondent failed to deliver possession as per agreement.

2. As per online complaint, alongwith her husband the complainant booked flat no. B 403 in the project of the respondent by paying of Rs. 20,00,000/- on 05.11.2014. The complainant alleges that due to some unavoidable circumstances she does not want to go ahead. She intimated about it to the respondent on 31.07.2015 through email. There were several discussions in person & over telephone. However, till today a respondent has not refunded money causing severe distress to the complainant. The respondent had promised to refund the money post completion of the project. The project was completed around March 2018. However, respondent has not complied with the request of the complainant. As usual the location of the project, the price that was agreed is missing in the complaint for the reasons best known to

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the Complainant. Even copy of agreement /allotment letter was not placed on record by the Complainant and it was placed on record by the respondent. The allotment is dated 05.11.2014. The project is at Powai. The price of the Flat no. B - 403 in the building 'Atlantis' was agreed at Rs.2,97,62,750/-. Most of the requisite terms to constitute an agreement are found in the allotment letter. It appears that flats were being constructed as per & subject to the orders passed by Bombay High Court. Payment schedule has been given in this allotment letter. However, no date for delivery of possession is found mentioned either in the allotment letter or in the subsequent correspondence.

3. The matter came up before Hon'ble member on 13.05.2019 and complaint came to be transferred to Adjudicating Officer. The matter came up before me on 18.07.2019. Plea of the respondent was recorded. Respondent filled written explanation. Matter was adjourned for final hearing to 23.08.2019. Arguments were heard on that day. As I am working at Mumbai and Pune Offices in alternative weeks and due to huge pendency in this office, this matter is being decided now.

4. The respondent in the written explanation admitted that complainant booked Flat no. B - 403 in its project "Atlantis" for a price of Rs.2,97,62,750/-. It is denied that respondent made false promise or violated provisions of law. Complainant has suppressed material facts. When the flat was booked by the complainant Real Estate (Regulation & Development) Act, 2016 was not in force. As per clause no. 5 of the agreement dated 05.11.2014 in case of non-payment of any instalment respondent is entitled to terminate allotment after giving 15 day's notice. Alternatively, the respondent is entitled to charge interest at the rate of 18% p. a. on the delayed payments. The respondent was shocked when complainant requested for cancellation of booking vide email dated 25.03.2016. The respondent informed complainant that respondent was entitled to recover losses and other expenses from the complainant. Vide notice dated 31.03.2018 respondent informed complainant about receiving Occupancy Certificate and asked for paying the dues. Rs.17,03,975/- have been paid to various authorities towards service tax, GST, cost etc. Complainant is liable to pay charges towards electricity, water connection, ad hoc maintenance, club membership etc. The complaint therefore deserves to be dismissed.

5. Following points arise for my determination. I have noted my findings against them for the reasons stated below.


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Points	Findings
1. Is the complainant an allottee? If yes, has the respondent failed to deliver possession as per agreement without there being circumstances beyond his control?	Negative
2. Is the complainant entitled to the reliefs Claimed?	Negative
3. What Order?	As per final order

Reasons

6. **Point no. 1 & 2:** It is respondent who has placed on record copy of allotment letter dated 05.11.2014. As stated earlier though all other terms necessary to constitute a valid agreement are found in the allotment letter, there is no date for delivery of possession mentioned in this letter. The Flat being allotted to the complainant was ascertained. The price was also ascertained. The payment schedule was agreed upon. The complainant claims that she paid Rs.20,00,000/- on 05.11.2014. There is no denial on the part of respondent, though payment receipt issued by respondent is not placed on record by the complainant. Infact ~~a~~ respondent has placed on record statement of total outstanding payment at exhibit 'D'. Amount received is mentioned as Rs.19,28,454/- + service tax of Rs.71,546/- taking total of Rs.20,00,000/-.

7. As per section 46 of contract act when not time for performance is specified in the contract, engagement must be performed within a reasonable time. It is well settled that in case of flat purchased a period of about 2 to 3 years, since booking is a reasonable time for delivery of possession.

8. The matter does not rest at that. The complainant appears to have booked flat on 05.11.2014 by making payment of Rs. 20,00,000/-. The complainant did become an allottee under the allotment letter issued by Respondent. However, vide email dated 02.04.2016 the

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complaint sought cancellation of her allotment. Further there is email dated 31.07.2015 for shifting to 1BHK Flat & there is mail dated 25.03.2016 asking him to cancel allotment due to unavoidable circumstances. Vide mail dated 02.04.2016 respondent informed that the amount will be refunded after the premises booked are sold subject to losses that will be incurred & expenses that were required to be borne. Further there are mails dated 02.11.2016 and 10.01.2017 sent by complainant requesting for refund of her money.

9. The complainant was seriously pursuing the cancellation of booking. Respondent was inclined to refund the amounts received sans the losses suffered and the expenses borne. As stated earlier no date for delivery possession as such was agreed between the parties. To add, to it parties had decided to cancel the allotment. In my view the complainant thereafter did not remain an allottee. Not only that but the complainant is not at all interested in receiving possession of the flat and has no grievance that the respondent did not deliver possession as per agreement. Out of the agreed consideration of Rs.2,97,62,750/- Complainant paid only of Rs.20,00,000/- to the respondent and nothing more. The question therefore of respondent not delivering possession as per agreement did not survive at all. The complainant was required to approach right forum to redress her grievance about respondent not refunding her amount. She has approached wrong forum and is not entitled for the relief under section 18 of the RERA. I therefore answer point no. 1 and 2 in the negative and proceed to pass following order.

Order

1. The complaint stands dismissed.
2. No order has to cost.

Mumbai

Date: 05.12.2019

MK
signed on 18.12.2019
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA