

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000000509

Preeti Kalpesh Shah ... Complainant

Versus

Lucina Land Development Limited ... Respondent
MahaRERA Regn.No. P52000001160

Corum:

Shri Gautam Chatterjee, Chairperson, MahaRERA

Complainant was represented by Mr. Kalpesh Shah.

Respondent was represented by Mr. Abir Patel, Adv., (Wadia Gandhi & Co.)

Order

19th December 2017

1. The Complainant has entered into a registered agreement for sale in 2013 to purchase an apartment bearing No. 306, (17-G) in the Respondent's project 'Indiabulls Greens - 2' situated at, Panvel, Raigad. The Complainant alleged that she was verbally informed by the Respondent that possession of the said apartment would be handed over in 2015.
2. The Complainant further alleged that the Respondent has failed to hand over possession of the said apartment within the stipulated period and therefore she intends to withdraw from the project as per the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the said Act*).
3. During the hearing held on December 18, 2017, advocate for the Respondent argued that the timelines for handing over possession of the said apartment is 60 months from the date of the agreement plus a grace period of nine months as stipulated in the said agreement. Accordingly, he argued the complainant's cause of action to file the present complaint is yet to arise.



4. Further, he argued that despite being entitled to an extension of 31 (thirty-one) months owing to various delays in obtaining permissions as permitted under the said agreement, the Respondent is still willing to hand over possession by December 31, 2018, which is several months earlier than the revised date disclosed by the Respondent in its MahaRERA registration and as allowed by the said agreement.

5. Section 18 (1) of the Real Estate (Regulation and Development) Act 2016 reads as:

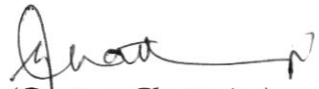
“ if the promoter fails to complete or is unable to give possession of an apartment, plot or building, – (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. ”

Accordingly, since the complainant has failed to establish that the promoter has failed to complete or is unable to give possession of the apartment in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, provisions of section 18 of the said Act does not apply to the present case.

6. In view of the above facts, the respondent shall, therefore, handover the possession of the said apartment, with Occupancy Certificate, to the complainant before the period of December 31, 2018, failing which the respondent shall be liable to pay interest to the complainant from January 1, 2019 till the actual date of possession, on the entire amount paid by the complainant to the respondent. The said interest shall be at the rate as prescribed under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules, 2017.

7. Consequently, the matter is hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA