BEFORE THE

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

MUMBAI

COMPLAINT NO: CC006000000001007

Navin Kumar	...	Complainant
Versus		
Lucina Land Development Limited MahaRERA Regn.No. P52000001160	...	Respondent

Corum:
Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant was present himself.
Respondent was represented by Mr. Dinyar Madan, Adv., Mr. Chirag Kamdar, Adv., and Mr. Abir Patel, Adv., (Wadia Gandhy & Co.)

Order

13th December 2017

1. The complainant has entered into a registered agreement for sale on October 18, 2011 to purchase an apartment bearing No. 203, (19CI) in the Respondent's project 'Indiabulls Greens - 2' situated at, Panvel, Raigad. The date of possession was 60 months from the date of the agreement plus a grace period of nine months. Therefore, the complainants alleged the date of possession as stipulated by the said agreement is July, 2017.

2. Complainant allege the respondent has failed to hand over the possession of the said apartment within the stipulated period and therefore he is entitled to be paid interest for delay, as per the provisions of section 18 of the Real Estate (Regulation and Development) Act 2016.

3. During the hearing held on December 7, 2017, advocate for the respondent argued the timelines for handing over possession of the said apartment will have to be read with

the provisions as stipulated under Clause 9 of the said agreement. The relevant portion of Clause 9 of the said agreement reads thus:

> "...
>
> *Provided that the Promoter shall be entitled to reasonable extension of time for giving delivery of said Apartment on the aforesaid date, if the completion of building in which the said Apartment are situated is delayed on account of*
>
> *(i)* ...
>
> ...
>
> *(v) delay in issuing any permission, approval, NOC, sanction and/or building occupation certificates and/or completion certificate by the concerned authorities; and/or*
>
> *(vi) delay in securing necessary permissions or completion / occupancy certificate from the competent authorities or water, electricity, drainage and sewerage connections from the appropriate authorities, for reasons beyond the control of the Promoter;*
>
> *(vii) force majeure or any other reason (not limited to the reasons mentioned above) beyond the control of or unforeseen by the Promoter, which may prevent, restrict, interrupt or interfere with or delay the construction of the Building including the said Apartment, and/or;*
>
> *(viii)* ...
>
> ..."

4. Further, he argued the construction work of the project is delayed because of reasons which were beyond the Respondent's control and well stipulated for in the said agreement.

5. He then explained that the primary reasons for delay in construction and handing over of possession of the said apartment are:

a) **delay in the release of incentive FSI due to change in planning authority from Alibaug Township Authority (or Additional Director of Town Planning, Alibaug (ATA) to City and Industrial Development Corporation ("CIDCO")** - On January 10, 2013 Government of Maharashtra (Urban Development Depart) vide its notification bearing no. TPS-1712/475/CR-98/12/UD-12, notified the entire area of Raigad district (including the said Land) as "The Navi Mumbai Airport Influence Notified Area" and appointed CIDCO to be the Special Planning Authority for the said notified area and that although CIDCO was appointed as the special planning authority in January 2013, the authority did not have any set up, nor did it function for a considerable period of 19 months. Accordingly, the said Project came to a standstill as no further commencement certificate for incentive FSI could be released. He further stated that the concerned department of CIDCO only commenced operations in January, 2014. Immediately thereafter, on 15th January, 2014, the Respondent applied for grant of further commencement certificate. Thereafter, it was only on August 12, 2014 that the Respondent was granted its first commencement certificate by the CIDCO. Therefore, he argued, that evidently for a period of almost 19 (nineteen) months i.e., from January 2013 to August 2014, the Respondent was unable to obtain any sanctions and hence unable to carry on further construction. As a result, the possession date contemplated under clause 9 of the said Agreement stood automatically extended by a period of 19 (nineteen) months in terms of clause 9 (v) and (vi) thereof.

b) **delay in grant of High Rise Committee Clearance** – the erstwhile special planning authority of the Raigad Region i.e. the ATA, at the time of granting clearances for implementing the said Project, imposed a condition upon the Respondent that in the event that the buildings being constructed on the said Land were greater than 30 floors (as was conceived by the Respondent), the Respondent would be required to procure a clearance from the High Rise Committee constituted in that behalf. At the time of receiving sanctions i.e. in 2010, the High Rise Committee was not constituted and therefore, from the period starting January 13, 2010 upto September 13, 2012, when the clearances were granted, i.e. approximately 31 (thirty-one) months, the said project was

delayed owing to grant of necessary high rise clearance. As a consequence, the date of possession, in terms of clause 9 of the said Agreement, stood reasonably extended owing to reasons beyond the control of the Respondent.

c) **change in amenity space policy by the MMRDA** - the original plan of the said project was sanctioned by the ATA on September 18, 2011. However, in April 2011, MMRDA recommended certain changes in the amenity space policy thereby compelling the Respondent to re-plan the entire project, sanctions for which were granted only in 2013. Therefore, the Respondent lost a period of 10 months and that the said delay falls within the ambit of clause 9 of the said Agreement.

Therefore, he argued that as a result of (a), (b) and (c) above, the said Project and consequently the construction of the said apartment was delayed for reasons beyond the Respondent's control and that the Respondent has suffered a maximum delay of 31 months due to the aforesaid events, and thus as contemplated under clause 9 of the said Agreement, the date of possession stood extended by a period of 31 months.

6. Finally, he argued that despite being entitled to an extension of 31 (thirty-one) months owing to various delays in obtaining permissions (as specified herein) and 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.

7. The complainant, in alleging that the date of possession is 60 months from the date of the agreement plus a grace period of nine months, has failed to take into account the further extensions stipulated under clause 9 of the said agreement. Accordingly, there has been no delay as alleged by the complainants.

8. Further, 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.

9. 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.

10. Consequently, the matter is hereby disposed of.

(Gautam Chatterjee)
Chairperson, MahaRERA