

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

Complaint No: CC006000000100514

Mr. Rajesh Rohit Mehta & Mr. Devang Mehta Complainant

Versus

Indiabulls Properties Private Limited Respondent

MahaRERA Regn. No: P51900000467

Coram: Shri. Gautam Chatterjee, Chairperson

Complainants were represented by Mr. Rohit Mehta, Mr. Ramesh Prabhu, CA.

Respondent represented by Mr. Abir Patel, Adv, i.b. Wadia Ghandy & Co. along with Mr. Soham Hatkar, Authorised Representative.

Order

October 13, 2020

1. The Complainants have stated that they booked flat No. 2505 on 25th floor of Indiabulls Skyforest A2 project on 26th April, 2013 through booking form based on Advertisement brochure, under interest subvention scheme of 20.80 from IHFL. The Complainants paid substantial consideration amount and also paid the insurance premium to ICICI LAMBORD GIC LTD due to the interest subvention schemed offered by the Respondents. They have alleged violation of Section 12, 14, 18 and 19 of the Real Estate (Regulation and Development) Act, 2016 (RERA) by the Respondent. They have prayed that the Complainant be allowed to withdraw from the project and Respondent may be directed to refund the amount paid with interest, directed to pay the amount of the insurance premium paid to ICICI LAMBORD GIC LTD due to the interest subvention schemed offered by the Respondent with interest and the compensation for the loss incurred by the Complainant due to unfair trade practices adopted by the Respondent. The Respondent may be directed to clear the outstanding loan of IHFC with applicable interest taken as disbursement in the name of the Complainant and submit no due certificate from IHFL. IHFL may be directed to recover their amount disbursed with interest under tripartite agreement from the Respondent and not from the Complainant.
2. Final hearing was held on September 29, 2020 through video conference as per MahaRERA Circular no: 27/2020. The Respondent was given two weeks' time to respond to the affidavit sur rejoinder filed by the Complainant on September, 28, 2020 and the matter, thereafter, was closed for orders.

3. The Complainants in their September 28 affidavit have submitted that as per email dated 2nd January, 2014, the area statement of the flat is as under:
 - a) All the duplex apartments with private terrace
 - b) Carpet area lower floor 732 sq.feet
 - c) Carpet Area of upper floor 822.sq. feet
 - d) Total Carpet Area 1,554 Sq. Feet
 - e) Terrace area 1,180 Sq. Feet
 - f) Saleable Area 3,668 Sq. feet.

They added that now the Respondent is offering 1174 RERA Carpet area which includes internal wall. The Respondent is denying private terrace area of 1180 sq. feet offered to Complainant. The e-brochure clearly states that "The residences are soul satisfying 3/4/5/6 BHK Duplexes with sprawling terraces and private double-height sun decks attached to the living -room and bed rooms. "but in realty there is no private terrace. Thus the Respondent is in violation of section 12 of RERA. They further added that the Respondent had agreed to give flat within 3 years from booking i.e by December, 2016. On enquiry, the Respondent by an email dated 17th March, 2016 indicated that the possession will be given by December, 2018. Now when the project is registered with MahaRERA, revised extended possession date has been mentioned on MahaRERA website as 30th March, 2023. The Complainants did not book the flat to get the possession after 10 years. They have concluded that the Respondent denied to provide tripartite loan agreement as interest subvention is a joint business arrangement between the Respondent and Indiabulls Housing Finance Ltd (IHFL).


4. The Respondents in their affidavit dated August 22, 2020 have, interalia, stated as follows:
 - a) Complainants have prayed for a refund of the monies paid by them, along with interest, they have conveniently avoided mentioning to the authority that they have sub vented their right to take a refund, in the event that they cancel the apartment, in favour of Indiabulls Housing Finance Limited("IHFL") in terms of the tripartite agreement dated 29" September 2013. IHFL, despite having the first right to refund in the event of a cancellation, have deliberately been left out of this complaint, thereby making complaint liable for dismissal for non-joinder of necessary party.
 - b) On the issue of subvention, it is also pertinent to note that under the tripartite agreement, the Respondent, on the understanding that the Complainants were genuine flat owners interested in possession, agreed to bear and pay the pre-emi interest on behalf of the Complainants, until possession of the flat was offered, The Complainants, under the subvention scheme, have paid 18.93% of the consideration. The balance of 75% has been financed by IHFL, the pre-emi interest on which, has been paid by the Respondent and further balance is to be paid at the time of possession. In the event that the Complainants cancel the booking, the Respondent stands to lose the entire aforesaid amount and would also be compelled to sell the flat at a lower rate than that agreed with the Complainants, since the real estate markets have conceded. The Respondent would be entitled to a forfeiture, in terms of the Provisional

Application Form dated 26th April, 2013 ("said Form"), in the event of a cancellation by the Complainants.

- c) The Complainants have alleged that there has been a drastic reduction in the area of the flat which is patently false. It is pertinent to note that as per the definition of carpet area stated in the said Form, the carpet area of the subject flat would be 1554 square feet. If the carpet area of the subject flat is calculated as per the provisions of ("RERA"), the carpet area is 1,174.46 square feet. In addition, thereto, the subject flat also has appurtenant area of 1318.15 square feet. There is thus, no physical reduction in carpet area whatsoever. The subject flat has been constructed as per the sanctioned plans itself and that there is no violation of any of the provisions of the RERA, as alleged or at all.
- d) Though the Complainants allege that there has been a delay in possession, they have failed to produce any cogent document to prove their claim. While by email dated 10th March, 2016 (Page 70 of the Complaint) the Complainants were called to execute an agreement for sale and by subsequent email dated 17th March, 2016 informed that the possession date proposed be stated in the agreement would be December, 2018, the Complainants never came forward to execute this agreement for sale and therefore the parties could never agree on the possession date. Subsequently, by email dated 26th February, 2019 (Page 73 of Complaint), the Complainants have themselves addressed an email querying about the possession date and requested for draft agreement for sale for execution. This, therefore, proves that the parties never agreed to the possession date of December, 2018 informed in email dated 17th March, 2016. In the note to relevant clause (Page 42) of the said Form, the parties have agreed that the date of intimation of receipt of occupation certificate shall be the agreed date of possession between the parties. Therefore, on account of the Complainants' failure to sign an agreement for sale till date, the terms of the said Form will apply.
- e) The Complainants were not desirous of signing the agreement for sale. If that were so, the Complainants do not explain as to how they did not do so when called upon in the year 2016 and again on 4th September 2017, 27th March 2018, 4th September 2018 and 30th November 2018, as well. The Complainants, who are non-resident Indians, are only looking to try and engineer an exit since the property prices have corrected in Mumbai.
- f) The tripartite agreement was signed between the Complainants, the Respondent and IHFL. Since IHFL is the financier, the original signed Tripartite Agreement would be with IHFL and not this Respondent.
- g) There is no violation of section 12 or any other provision of the RERA, on part of the Respondent. The terms of the said Form, which govern the transaction between the parties, has never been breached by the Respondent, however, the Complainants, by failing to execute an agreement for sale despite being called upon time and again, have breached clause 1.4 of the said Form. Further, so far as the Complainants reliance on a brochure is concerned, the Complainants have not produced or procured the brochure, as the Respondent never used the same for making any representation of any nature whatsoever to the Complainants. Without prejudice, I say that even the brochure has a clear disclaimer stating that the contents therein are for representation purposes only and subject to change. There was no representation made on the basis of any brochure to the Complainants. The only agreed terms subsisting between the parties are specified in the said Form, which makes no mention of a separate area for terrace.

5. Based on the submissions made both by the Complainant and the Respondent, the following Order is passed:
- a) The parties have exchanged the draft agreement for sale a number of times starting from the year 2016 but failed to come to an agreement and execute and register the same. The Respondent has on affidavit stated that physically there is no change or reduction in the carpet area of the subject flat. Further, there is no terrace area mentioned in the said Form of booking and the subject flat has been constructed as per the sanctioned plans itself. Moreover, for want of an executed agreement for sale, delay, as mentioned in section 18, will have to be determined on the basis of the revised time-period of completion as given in the MahaRERA registration read with Rule 4 (2) of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017. Therefore, violation of the provisions of section 12, 14 or 18 of the RERA, as alleged by the Complainant, is not established.
 - b) The parties are advised to execute and register the agreement for sale wherein the area of the apartment shall be strictly in accordance with the area mentioned in the booking form. The cancellation, if any, of the booking of the apartment made on 26th April, 2013 will be guided by the terms and conditions of the booking form which is agreed upon by both the parties. The cancellation of the said booking, if any, will be further guided by the terms and conditions of the tripartite agreement entered upon between the Complainant, the Respondent and Indiabulls Housing Finance Limited(“IHFL”)
6. The matter is disposed of accordingly

Gautam
Chatterjee

 Digitally signed by Gautam
Chatterjee
Date: 2020.10.13 12:30:25 +05'30'

(Gautam Chatterjee)
Chairperson, MahaRERA