

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

COMPLAINT NO: CC006000000079309

Rakhi M Raj ... Complainant.

COMPLAINT NO: CC006000000079310

Rekha Ramkishan Verma ... Complainant.

Versus

M/s. Ravi Developments. ... Respondents.

MahaRERA Regn: P51700011796

Coram: Shri B.D. Kapadnis,
Hon'ble Member II.

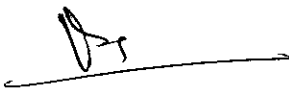
Appearance:

Complainant: Adv. Amreen Karim.

Respondents: Adv. Krishna Agarwal.

FINAL ORDER
18th November 2019.

Ms. Rakhi M. Raj has booked flat no. 1502 situated on 15th floor and Ms. Rekha Verma has booked flat no. 1302 on 13th floor of B-wing of respondents' registered project 'Gaurav Aster', Gaurav Valley, Phase-II, Mira Road (East), District Thane. Both the complainants have booked the flats in the year 2012 and the respondents agreed to hand over the possession of those flats in the year 2013. Since the respondents have failed to hand over the possession of the flats on agreed dates, the complainants have filed these



complaints under Section 18 of RERA for seeking interest on their investments for delayed possession.


2. The respondents have pleaded not guilty. They have filed the reply, to contend that they proposed to construct the building comprising of ground + 16 floors. They have obtained the commencement certificate upto 10th floor on 11.01.2016. They moved Mira-Bhyander Municipal Corporation (MBMC) for amalgamation of 18 layouts and regularisation of unauthorised occupation. On 18.02.2017 MBMC granted their application and directed to pay the various payments. The respondents thereafter showed their willingness to pay the part of them and sought time for payment of remaining balance. However, on 29.07.2017, they received a letter from the Town Planer informing them that their application for planning proposal was deficient as the land was not converted to non-agriculture purpose, environmental clearance was not taken, NOC of Fire Fighting Department was not obtained, the documents relating to ownership of land were not produced, the reservation in layout and D.P.Road to be transferred to MBMC by registered documents were not transferred and the NOC for extension of time from ULC was not submitted. The respondents therefore, filed Writ Petition No. 800 of 2018 to challenge the said order before the Hon'ble High Court. Thereafter their Licenced Surveyor submitted the revised building proposal for amended layout on 19.06.2018 and therefore, the Writ Petition was withdrawn by the respondents. Thereafter Estate Investment Co. Ltd. took the objection and therefore, the commencement certificate was delayed. Lastly, on its withdrawal BMMC issued commencement certificate on 30.3.2019 for constructing floors above 10th floor. They contended that Gaurav Aster Co.op. Housing Society Ltd. has filled complaint no. CC006/78618 for similar reliefs, it is pending. The



respondents contend that the complaint is pre-mature and request to dismiss the complaint.

3. The complainants have produced the agreements for sale executed by the respondents in their favour. The respondents have not mentioned the date of possession as it is left blank. The agreements have been executed when the parties were governed by the Maharashtra Ownership Flats Act 1963, Sections 3(2)(f) and 4 (1A)(a)(ii) provide that the promoters shall contend in the agreement for sale the date by which the possession of the flat is to be handed over to the purchaser. Thus, the respondents have contravened these provisions of law by leaving the date of possession blank. In this context Fortune Infrastructure-v/s-Trevor D'lima (2018) 5 SCC 442 attracts my attention wherein the Hon'ble Supreme Court has held that when there is no mention of date of possession in the agreement for sale, the reasonable time to hand over the possession of the flat would be three years. The agreement in favour of Ms. Rakhi has been executed on 14.03.2012 and therefore, the respondents were liable to hand over the possession of the flat on or before 13th March 2015. The agreement for sale in favour of Ms. Rekha has been executed on ~~02.02.2013~~ ^{16.02.2012} and therefore, the respondents were liable to hand over the possession of the flat on or before ~~01.02.2016~~ ^{15.02.2015}. I hold that these are the agreed dates of possession and respondents are estopped from denying them.

4. The respondents have not handed over the possession of the flats on the above agreed dates. The facts pleaded by the respondents do show that they moved MBMC on 18.01.2016 for commencement certificate for constructing the floors above 10th floor. It means that prior thereto, within the agreed period they did not take the permissions/approvals for constructing the floors on which the complainants booked flats are to be constructed. The respondents have referred to the fact that on 02.02.2013

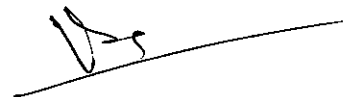


the fit out possession was handed over to the complainants but before they could take it, these floors have been demolished by the MBMC they being unauthorised. In this circumstance, I find that the complainants cannot be blamed. The respondents being the promoter having experience in the field were expected to take the proper approvals before agreeing to sell the flats. In Neelkamal Realtors-v/s- Union of India, the Hon'ble High Court has also observed that having sufficient experience in the open market, the promoter is expected to have fair assessment of time required in completing the project. Therefore, I find that the reasons assigned by the respondents for delayed possession cannot be said to be genuine to extend the time. This is the factual aspect of the matter.

5. The other side of the legal aspect is, as per Section 8(b) of MOFA, the period of completion cannot be extended beyond six months even for the reasons which were beyond the control of the promoter causing delay in completion. In these cases, more than 6 months have passed after agreed dates of possession and hence, even if it is taken for granted the reasons assigned by the respondents are true and genuine, they will not come to their help.

6. Section 18 of RERA provides that the allottees can claim interest on their investments if the promoter fails to hand over the possession of the flat on the agreed date. Therefore, the complainants are entitled to get interest on their investments for delayed possession. The respondents have referred to the complaint filed by the society of allottees. It seeks relief under Section 7 & 8 of RERA for completion of the project and for providing the agreed amenities. So this case will not come to debar the complainants from claiming their relief.

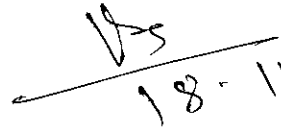
7. Ms. Rakhi and Ms. Rekha have filed their payment statements showing that before the agreed date of possession each of them paid Rs.



25,50,000/- to the respondents. Therefore, the complainants are entitled to get interest on their investment from the next date of possession at prescribed rate till getting possession of their flats with occupation certificate. The prescribed rate is 2% above SBI's highest MCLR which is 8.4% at present. Each complainant is entitled to get Rs. 20,000/- towards the cost of the complaint. Parties are permitted to adjust their current dues and balance amount shall be paid to whom it is due. Order be complied with as directed.


Mumbai.

Date: 18.11.2019.


18.11.19

(B. D. Kapadnis)
Member II, MahaRERA,
Mumbai.

* Corrected 43 39 of RERA


Member II
30.12.19