

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

Complaint No. CC006000000100525

Mr. Sudhir Ruparelia

Mrs. Jyotsna Ruparelia

Mr. Rajiv Ruparelia

.... Complainants

Versus

1. M/s. Indiabulls Intrastate Limited

2. M/s. Indiabulls Housing Finance Limited

.... Respondents

Project Registration No. **P51900000473**

Coram: Dr. Vijay Satbir Singh, Hon'ble Member – I/MahaRERA

Adv. Veena Saldanha appeared for the complainant.

Adv. Abir Patel appeared for the respondent No.1.

Adv. Nitin Moraskar a/w Adv. Tejas Mahamuni appeared for the respondent No. 2.

ORDER

(13th February, 2020)

1. The complainants have filed this complaint seeking refund of the entire amount paid by them to the respondents under the provisions of Section-18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA") with respect to the booking of a flat in the respondents' project known as "**Indiabulls Blu**" bearing MahaRERA registration No. P51900000473 at Worli, Mumbai.
2. This complaint was heard on several occasions and the same was finally heard on 15/01/2020, when both the parties appeared and made their submissions.
3. It is the case of the complainants that, that they have booked the said flat admeasuring 1966 sq. ft. carpet area along with three car parking spaces for total consideration amount of Rs. 16,22,00,000/- by signing booking application form. At the time of booking, the respondent No. 1-promoter has represented that the said building is nearing completion and possession of the said flat would be given on or before August 2018. However, in spite of

repeated requests, the respondents have failed to provide the date of possession in the said booking application form. The complainants further stated that, they are Non-residing Indians (NRIs), and are not well aware about the process of acquiring property in India.

4. The respondent No. 1 represented that, the loan for purchasing the said flat shall be disbursed by the respondent No. 2 on instalment basis till possession. The respondent No. 1 shall pay the EMI and interest thereon and believing the said representation made by the respondent No. 1, the complainant, on 13/03/2016 have paid an amount of Rs. 1,62,20,000/- and also paid Value Added Tax (VAT) for which the respondent No.1 has duly issued receipts.
5. The Respondent No. 1 has stated that, the respondent No. 2 disbursed the amount of Rs. 3,24,40,000/- and requested the complainant to pay TDS and accordingly, the complainants have paid the same. The respondent No. 1 had withdrawn the money from the respondent No. 2 a total amount of Rs. 16,35,98,258/- for the complainants' flat which is over the agreed cost of the flat. Although on 08/07/2017, the project was completed upto 60%, the respondent No. 1 has represented that, the project is completed upto 90%. However, while registering the project with MahaRERA, the respondent No. 1 has postponed the date of completion to 31/12/2020. It shows that, the project is incomplete and for the completion of remaining 10% work, it will take around 21 months which is not acceptable for the complainants.
6. Thereafter, on 16/02/2019, the respondent No. 1 had informed that, the project/ building is ready and he has obtained the occupancy certificate for the said building from the concerned competent authority and the complainants can take the possession of their flat. However, when the complainants have inspected their flat, it was observed that, the flat was not ready with required amenities as agreed by the respondent No. 1. Therefore, the complainants have sought refund of their amount without any deduction. At that time, the respondent No. 1 had informed that, they have obtained the

part occupancy certificate on 15/09/2018 on certain terms and conditions. Therefore, the complainants are seeking refund of their entire amount along with interest and compensation u/s 18 of the RERA.

7. The respondent No.1 has filed his reply and resisted the claim of the complainants on the ground that, the present complaint is not maintainable and it is filed at belated stage after obtaining the part occupancy certificate and possession being offered on 06/02/2019 subject to executing agreement for sale and making payment of outstanding dues. Hence, the complaint is not maintainable under Section-18 of the RERA.
8. The respondent No. 1 further stated that, the provisions of Section-18 will not be applied when the possession is offered and occupation certificate has been obtained. Further, there is no agreed date of possession between the parties since the complainants have failed to sign agreement for sale despite being called upon on several times. Further, complaint under Section-31 can be filed if there is any violation of any provision of RERA.
9. In the present case, the complainants have not shown as to what provision of RERA has been violated by the respondent No. 1. The respondent No. 1 further stated that, on 13/06/2017, 22/06/2017, 31/07/2018, 30/11/2018, 18/09/2018 and 16/04/2019, the complainants were called upon to execute an agreement for sale but, they did not come forward and thereby violated the provisions of Section-13. The respondents further stated that, the complainants have paid up to 20% under subvention scheme and till the possession has been offered, they have paid pre-EMI interest up to date. The complainants having enjoyed pre-EMI interest period now cannot be allowed to back out from the contract.
10. Further, the complainants being allottees are liable to make payment as per the Section 19(6) of the RERA. By letter dated 16/07/2019, the complainants claim was recalled by the respondent No. 2 for default in making timely payment. It shows, the intention of the complainants to enjoy the interest

free period of subvention and now since they are liable to pay the EMI Interest they have started making default in payments. The respondent No. 1 therefore, prayed for dismissal of this complaint.

11. The MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case, the complainants are seeking refund along with interest and compensation under Section-18 of the RERA. Admittedly, there is no registered agreement for sale nor any allotment letter issued showing any date of possession. Further, the respondent-promoter has already obtained part occupancy certificate for the complainants' flat and possession has also been offered to the complainants on February 2019. In this regard, it is necessary to read the provision of Section-18 of the RERA, which read as under:

"Sec 18: (1) 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; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, 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.


----- he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

12. As per the aforesaid provision of the RERA, it is clear that, the Section-18 will apply if the promoter fails to complete the project and handover the possession of the flat to the allottees. However, in the instant case, the respondent has completed the project and had obtained the part occupancy

certificate for the complainants' flat on 15/09/2018 and he also offered possession of the flat to the complainants along with Occupancy Certificate on 16/02/2019. Therefore, the provisions of Section-18 will not be applicable in this case. Hence, the complainants cannot seek refund of the amount paid by them to the respondents in such a completed project. It is also pertinent to note that, money paid by the complainants has already been utilised for the construction of their residential unit.

13. In the present case, the MahaRERA has also observed that, the complainants have booked the said flat under subvention scheme by availing the loan from the Respondent No. 2 as per the agreed terms between the parties, the respondent No. 1 was liable to pay the pre-EMI interest till the possession is handed over to the complainant.
14. In view of these aforesaid facts, the MahaRERA directs the respondents to execute the registered agreement for sale with the complainants within a period of 30 days from the date of this order. The respondent is also directed to handover the possession of their unit.
15. With the above directions, the complaint stands disposed of.

महा-रेरा


(Dr. Vijay Satbir Singh)
Member – 1/MahaRERA