

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

1. COMPLAINT NO: CC006000000044441
Narayanan Venkitraman
2. COMPLAINT NO: CC006000000055616
Netra Venkateshwaran and Venkateshwaran Krishnan
3. COMPLAINT NO: CC006000000055814
Rajkumar K Sharma

... Complainants

Versus

The Bombay Dyeing and Manufacturing Company Limited
MahaRERA Regn. No. P51900008726

... Respondent

Coram: Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant no. 1 was represented by Mr. Makarand Raut, Adv.
Complainants no. 2 were represented by Mr. Sarthak Diwan, Adv.
Complainant no. 3 was represented by Mr. Sanjay Chaturvedi, Adv. (i/b Sanjay Chaturvedi Associates).

Respondent was represented by advocates of M/s. Negandhi, Shah & Himayatullah and advocates of M/s. Crawford Bayley and Co.

Order

January 25, 2019

1. The Complainants have booked apartments in the Respondent's project 'ICC' situated at Wadala, Mumbai in 2012 - 2013 via booking application letters. The Complainants stated the Respondent has made false assurances regarding the amenities as annexed in the booking application, and moreover has even made changes to the carpet area and overall layout to the project. Therefore, they prayed that the Respondent be directed to refund the entire amount paid along with interest and compensation as per the provisions of Section 12 of the Real Estate (Regulation and Development) Act, 2016 (herein after referred to as the *said Act*).
2. The learned counsel for the Respondent submitted that the Respondent is willing to execute and register the agreement for sale and that the project is being developed as per the sanctioned



plans and approvals which have been disclosed at the time of registering the incomplete project with MahaRERA, when the Act came into effect. Thereafter, they said, they have not made any changes which may be construed as violation of Section 14 of the Act.

3. Multiple opportunities were given to the parties to settle the matter amicably.
4. During the course of the hearing, the Complainants submitted that the draft agreement sent by the Respondent is contrary to the provisions of RERA's model form of agreement. Further, they submitted that since the Respondent has failed to provide clarity on the completion timeline and has caused delay in handing over possession of the apartments with OC till date, the Complainants have refused to enter into an agreement for sale, and seek to withdraw from the project with compensation and interest, as per the provisions of Section 12 of the said Act.
5. The learned counsel for the Respondent submitted that the development work of the registered project is at an advanced stage and they are committed to complete the project in accordance with the sanctioned plans and approvals which have been disclosed at the time of registering with MahaRERA and also as per the revised timeline given at the time of registration. He further added that the Respondent shall execute and register the agreement for sale strictly as per the provisions of the said Act and the rules and regulations made thereunder.
6. Section 4 (2)(1)(D) of the said Act reads as follows:

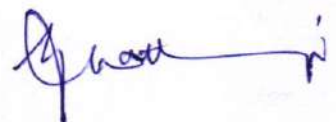
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(D) that seventy per cent of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:

Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:

Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.



Keeping in mind the larger interest of approximately 520 allottees of the said project, allowing bulk withdrawal from the MahaRERA registered project to so many complainants at this stage would mean jeopardising the project completion. Money for the refund will have to be taken out from the separate account, which is meant specifically for the completion of the project and would eventually slow down the progress of the project work especially at a stage where the project is nearing completion with more than 80% of the super structure work completed.

7. Section 4 (2)(1)(C) of the said Act reads as follows:

...

(1) (C) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: — the time period within which he undertakes to complete the project or phase thereof, as the case may be;

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 reads as:

...

The promoter shall also disclose the original time period disclosed to the allottees, for completion of the project at the time of sale including the delay and the time period within which he undertakes to complete the pending project, which shall be commensurate with the extent of development already completed.

...

The promoter is entitled to prescribe a fresh time limit for getting the remaining development work completed, which in the instant case as per the declaration of the promoter binds him to complete the balance work by August, 2019.

8. In the *Neel Kamal Realtors Suburban Pvt. Ltd. and anr. Vs. Union of India and others*, the Honourable High Court in para 115 of its order (hereinafter referred to as the *said Order*) has held that the object and purpose of this Act is to complete the development work within the stipulated time frame. Also, as per para 86 of the same order, promoter is entitled to prescribe a fresh time limit for getting the remaining development work completed, which in the instant case as per the declaration of the promoter binds him to complete the balance work by August, 2019. Further, in para 122 of the said order, the Honourable High Court has observed that the provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect.

9. Section 12 of the said Act reads as below:

12. Where any person makes an advance or a deposit on the basis of the information




contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

Therefore, the provisions of Section 12 of the said Act cannot be retrospectively applied to transactions that transpired before the said Act came into force. Further, the Complainants have failed to show that they have sustained any loss or damage by reason of an alleged incorrect, false statement made by the Respondent and therefore Section 12 of the said Act is not applicable in the present case.

10. In view of the above facts, since the parties were already at an advanced stage of negotiations and the draft agreement for sale has already been exchanged between the parties post the enforcement of the said Act, the parties are advised to execute and register the agreements for sale, as per the provisions of Section 13 of the Real Estate (Regulation and Development) Act 2016 and the rules and regulations made thereunder within 30 days from the date of this Order.
11. Alternatively, if the Complainants intend to withdraw from the said project then such withdrawal shall be guided by the terms and conditions of the allotment letter.
12. Consequently, the matters are hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA