

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000110752

Chaula Yagneshkumar Desai

Anand Bedekar

...

Complainants

Versus

Skystar Buildcon Pvt. Ltd

MahaRERA Regn: P51800001281

...

Respondent

Coram

Hon'ble Shri Gautam Chatterjee, Chairperson

Complainants were represented by Mr. Tanuj Lodha, Adv.

Respondent represented by Mr. Bhoumick Vaidya, Adv., a/w Ms. Sona Phogaat, Adv., i/b Kanga and Co., Ms. Parul Merchant (DGM Legal)

Order

July, 2020

1. The Complainants have stated that they have purchased apartment bearing no: 1104-Tower II in the Respondent's Project Sunteck City Avenue 1 located at Goregaon, Mumbai for which they entered into an agreement for sale dated June 22, 2017, wherein the date of handing over possession was stipulated as 54 months from date of execution of the said agreement. The Complainant alleged that at the time of booking the apartment in July 2012, the date of possession promised was December, 2016 and accordingly, the Respondent has failed to deliver possession of the said apartment on time. Further, they have alleged that they were forced to enter into an agreement for sale with the revised timeline, which the Complainant claims to have signed under protest, as it contained unilateral revision in commercial terms. They have also alleged that the Respondent has falsely and high-handedly collected Rs.

228611 towards interest on delay from the Complainants, despite protest and has failed to pass the complete Input Tax Credit of GST. Therefore, they prayed the Respondent be directed to pay them interest for the delayed possession, refund of interest collected and pass on the input credit tax.

2. On the first date of hearing on December 11, 2019, the learned counsel for the Respondent denying the allegations of the Complainants submitted that the Complainant's case is premature and is liable to be dismissed as the date of handing over possession of the said apartment as per the said registered agreement for sale is 54 months from date of execution of the said agreement plus 9 months' grace period from the date of the Agreement dated June 22, 2017. He also filed the affidavit in reply on behalf of the Respondent.
3. Time was given to the parties to settle the matter amicably.
4. On the next date of hearing, the Respondent sought an adjournment via email dated Feb 25, 2020 and the hearing was adjourned. Hearing could not be conducted on the next date of March 31, 2020 due to the nation-wide lockdown due to Covid 19.
5. Complaint was then listed for virtual hearing on July 9, 2020 through video conference as per MahaRERA Circular no: 27/2020.
6. The Complainants have uploaded their written arguments on July 9, 2020.
7. The learned counsel for the Complainants argued that the Respondent not only coerced the Complainants into signing the agreement for sale with unilateral terms but also charged interest on delay even though the Respondent failed to handover possession of the apartment within the timeline agreed between the parties at the time of booking the said apartment. He further argued that the Respondents have failed to pass on the complete input tax credit of GST.
8. The learned counsel for the Respondent argued that the Complainants have agreed to take possession of the said apartment by September, 2022 as per the agreement for sale

executed between the parties. However, the Respondent while registering the said project had provided the completion date of the said project as March 31, 2020, which is much earlier than the date of possession agreed as per the agreement for sale executed between the parties. Further, he submitted that the Respondent has applied for part occupancy certificate for the said project in March, 2020 and that the same will be obtained shortly. Further, referring to clause 52 of the said Agreement for Sale, he submitted that the clause provides inter alia that the said Agreement for Sale shall supersede all earlier documents executed between the parties which may be inconsistent with the said Agreement for Sale.

9. Heard both parties at length.
10. Though the time period for handing over possession mentioned in the agreement for sale is the year 2022, as per the provisions of Section 4(2)(l)(C) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the *Act*) read with Rule 4 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 the revised date of possession for an ongoing project has to be commensurate with the extent of balance development. On review of the Respondent's MahaRERA registration it is observed that the Respondent had put March, 2020 as the revised proposed date of completion which is a reasonable time period for completion of the project. Therefore, the time period for handing over possession of the Complainants' apartment, should be read as March, 2020. However, as per MahaRERA Order No 14 /2020, the said timeline stands revised to September 30, 2020 due to the Force Majeure period. Thereafter, the Respondent has sought one-year extension under Section 6 of the Act to extend the project validity to March, 2021 and in addition, as per MahaRERA Order No 14 /2020, the said timeline now stands revised by further six months to September 2021.
11. In view of the above, the Respondent shall handover possession of the said apartment, with Occupancy Certificate, to the Complainants before the period ending September 30, 2020 which is a reasonable time period in accordance with Section 4(2)(l)(C) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the *Act*) read with Rule 4 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 and read with MahaRERA Order No 14 / 2020 by which the dates of possession shall be deemed to be extended by the Force Majeure period of six months.

12. It is also felt that Rs. 228611, towards the interest on delay, charged by the Respondent, is unfair especially since the project was originally meant to be completed by 2016. Therefore, the Respondent shall adjust this amount collected from the Complainants against the final amounts to be paid by the Complainants at the time of receiving possession of their apartment. The Respondent shall pass on the GST input credit tax to the Complainants, as applicable. If the Respondent fails to hand over possession before September 30, 2020, the Respondent shall be liable to pay interest on delay from October 1, 2020 onwards till the date of possession, on the total amount paid by the Complainants, as the provisions of the Act and rules made thereunder.
13. Consequently, the matter is hereby disposed of.

(Gautam Chatterjee)
Chairperson, MahaRERA