

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

COMPLAINT NO. CC006000000054855

1. Robin Agarwal
2. Bhanwarlal S Agarwal
3. Seema Bhanwarlal Agarwal ..Complainants

Versus

1. C.C.I. Projects Pvt. Ltd.
2. Cable Corporation of India Limited ..Respondents

MahaRERA Regn. No. P51800003067

Coram:

Hon'ble Shri Madhav Kulkarni.
Adjudicating Officer, MahaRERA.

Appearance:

Complainants: Mr.B.L.Agarwal
Respondents : Adv Abir Patel

**ORDER
(Dated 08.10.2020)**

1. Three complainants / allottees who had booked a flat with respondents / promoters seek withdrawal from the project and refund of the amount paid with interest and compensation.
2. The complainants have alleged that they booked flat no. 31-D on 31st floor of A wing in the project of the respondents Winter Green at village Magathane , Tal . Borivali, Mumbai for a consideration of Rs.2,28,53,745/- Agreement was registered on 8.8.2014. As per clause no. 17, possession was promised on or before February, 2016. Complainants have paid

Rs.2,17,18,858/- i.e. approx... 95% of the consideration amount. Complainants have also paid Rs.11.43 lakhs for stamp duty Rs.33,320/- for registration Rs.7,84.686/- for the service tax Rs.2,28,537/- for VAT. Complainants paid 11,236/- for HDFC loan processing and Rs.14,800/- as mortgage charges. Complainants availed housing loan facility from HDFC. Complainants have paid Rs.10,76,353/- to HDFC till 31.03.2018. Vide email dated 15.04.2015, promoter informed complainants that there will be delay in delivering possession. Complainants by email dated 8.05.2015 objected to it. Respondents have indulged in unprofessional conduct and complainants have lost opportunity due to that reason. On MahaRERA website date for delivery of possession is shown as December, 2019. It is contrary to all previous representations. Complainants vide letter dated 10.05.2018 and 14.05.2018 expressed to withdraw from project and sought refund of Rs. 2,17,11,058/- and various amounts that were paid and interest at the rate of 18% p.a. Respondents gave vague reply. Respondent no.2 is made formal party and all reliefs are claimed from respondent no. 1.

3. The matter came up before Hon'ble Chairperson on 23.7.2018 and came to be transferred to Adjudicating Officer. The matter came up before me on 10.10.2018. Respondent representative Anushree Ambekar appeared with advocate Abir Patel. Her plea was recorded. Matter was adjourned to 21.11.2018 for written explanation by respondent no. 1. Written explanation was filed by respondent. Matter was taken up on 27.11.2018. On 27.11.2018, at Mumbai when I held my sitting there after completing sitting at Pune, nobody from respondents was present. Arguments for complainants were heard. Judgement was delivered by me on 22.01.2019. Respondent 1 was directed to refund amount to the

complainants together with interest within 30 days. Thereafter, complainants filed application in respect of non-compliance. Show cause notice was issued to respondent no. 1 calling upon him to appear on 16.07.2019. Application was moved by respondent no. 1 to set aside ex-parte judgement and to hear the matter afresh on the ground that respondent had no notice of the date of hearing. Said application was taken up on 30.08.2019 and was adjourned for arguments to 20.09.2019. By order dated 25.09.2019, respondent was permitted to file reply and advance arguments subject to depositing 30% of the amount as per final order on or before next date. The matter came up on 14.10.2019, 22.10.2019, 13.11.2019 and then on 05.12.2019. As respondent had deposited amount, his reply was taken on record. Complainants also filed affidavit. Matter was adjourned to 14.01.2020. On that day arguments were heard. As I am working at Mumbai and Pune Offices in alternative weeks and due to huge pendency in this office and due to lockdown conditions due to Corona Pandemic, this matter is being decided now.

4. The respondent 1 has alleged that complaint is afterthought. Complainants have made payments upto March, 2018. By letter dated 15.04.2015, 14.03.2017 and 19.08.2017 complainants were informed that owing to unforeseen circumstances, possession date was revised. Clause 18 of agreement provides for extension of time under circumstances specified there in. Complainants have already brought to end the agreement before filing of the complaint. Therefore, the terms of agreement are not binding on the parties. The mitigating circumstances, are mentioned in Exhibit-D. Respondent has completed 95% of the work Possession with OC will be issued by June, 2020. The court cannot rewrite

the contract entered into by parties. Complainants have decided to invest in various flats including flat no. 31-D in A wing in Rivali Park for a consideration of Rs.2,28,53,745/-. Complainants made payments. By letter dated 15.04.2015 complainants were informed that owing to number of issues including change in development control regulations, expected date of possession was March, 2018. By letter dated 8.5.2015, Complainants sought change of allotment to White spring complex, but it did not materialize. Complainants continued to make payments .By letter dated 14.03.2017, complainants were informed that possession will be delivered by December, 2018. Complainants made payments upto March, 2018. By letter dated 10.05.2018, Complainants sought exit from the project. Again by letter dated 14.05.2018, complaints sought exit from project and claimed interest of Rs.77,70,312-. By letter dated 21.06.2018, respondent requested complainants to continue in the project as it was nearing completion. As per clause no. 17 of the agreement, respondent is entitled for automatic extensions of 29 months. Complainants have acquiesced to the extension and cannot now deny that. The complaint therefore, deserves to be dismissed.

5. Following points arise for my determination, I have noted my findings against them for the reasons stated below:

POINTS	FINDINGS
1 Are the complainants allottees and respondent No. 1 promoter?	Affirmative
2 If yes, has the respondent1 failed to deliver possession as per agreement, without there being circumstances beyond his control?	Affirmative
3 Are the complainants entitled to the reliefs claimed?	Affirmative

4 What Order?

As per final
Order.

REASONS

6. **Point Nos. 1 to 3** - Complainants have placed on record, copy of agreement dated 8.08.2014. Flat no. 31-D in A wings, in the complex Rivali park was agreed to be sold for s.2,28,43,745/-. In the complaint, name of the building is given as Wintergreen. It appears that building wintergreen is part of the project Rivali park.
7. Respondent alleged that by letter dated 8.05.2015 complainants sought change to white spring complex, but it did not materialise. Therefore, parties stuck to original agreement. Therefore, complainants are admittedly allottees. I will discuss the effect of alleged termination on the part of complaints in the later paras. I therefore, answer point no.1 in the affirmative.
8. As per clause 17 of the agreement, possession of the premises was to be given to the purchaser on or before Feb. 2016. Usual circumstances under which the promoter was entitled for extension of time are also mentioned. Respondent has tried to defend the delay on the grounds mentioned in Ex. D annexed to the written explanation.
9. The grounds are as follows :
 - a. CC application 5.2.2011 Receipt dated 29.03.2012 Total period 13 months.
 - b. CC application 15.02.2014. Receipt dated 9.06.2014. Total period 4 months.
 - c. CFO application dated 21.12.2012, receipt dated 07.05.2013. Total period 5 months.

- d. Tree NOC application 13.08.2012, receipt dated 5.5.2013, total period 5 months.
- e. Hydraulic Engineer NOC application dated 29.03.012 receipt dated 13.09.2012 total period 6 months.
- f. High-rise building application 23.11.2013 receipt dated 01.04.2014, total period 4 months.
- g. Nalla remark application 19.09.2014, receipt 29.01.2015, total period 4 month.
- h. Sand banned from 27.03.2014 to 27.02.2015. Total period 11 months.,
- i. Project manager G Corp Developers Pvt Ltd. 11.5.2016 to 12.12.2016 – total period 5 months
- j. Pratibha industries 18.11.2014, to 31.05.2015, total period 6 months.
- k. Demonetization – 8.11.2016 to 30.12.2.16 – 3 months.
- l. GST 01.07.2017 - 3 months.
- m. Plus 6 months from Nallah remarks.

Taking the total to 29 months.

10. Since the date of agreement is 08.08.2014, the incidents that occurred before that date were well within the knowledge of the respondent. The factors like Nallah remarks, sand ban, appointment of project manager, have occurred well before the deadline for delivery of possession in February, 2016. Respondent is a professional builder, and was required to anticipate all these contingencies before giving date for possession and accepting amounts from complainants. The demonetization and GST regime occurred long after date for possession as per agreement was gone by. They might have caused ripples for few months. That in itself is no justification to delay the project for long.

11. The respondent has alleged that complainants sent termination letters and terminated the agreement. Admittedly respondent no.1 has not accepted the termination and not repaid the amounts to the complainants. On the other hand it is alleged that respondent accepted payments from complainants until March 2018 after requesting them to continue. Hence alleged withdrawal does not carry any value.
12. Exhibit D to the complaint shows payments made by complainants last payment of Rs.11,31,264/- was made on 18.03.2018. This payment was made about 2 years and one month after the date for possession was gone by. It means that complainants had accepted that possession will be delayed. Thereafter on 10.05.2018 and 14.05.2018, complainants expressed desire to withdraw from the project. No reasons have been cited in those communications. This is on the background that last instalment was paid on 18.03.2018. One thing is certain that the term as to delivery of possession was renovated. As per agreement, possession was expected within about 19 months since execution of agreement. It is well settled that possession must be given by promoter within reasonable time. If we calculate 19 months, from 18.03.2018, possession was required to be delivered in October, 2019. Complainants cannot be made to wait for ever to receive possession. Already more than 6 years have gone by and respondent has not obtained OC and delivered possession. I therefore, hold that respondent failed to deliver possession as per agreement. I therefore, answer point no.2 in the affirmative.
13. In view of the findings as above, there is no need to interfere in the order passed earlier. I therefore answer point 3 in the affirmative and proceed to pass following order:

ORDER

- 1) Complainants are allowed to withdraw from the project.
- 2) Respondent1 to pay Rs.2,39,00,601/- except stamp duty which can be refunded as per rules, plus Rs.71,036/- together with interest @10.40 p.a. from the date of payments till final realisation.
- 3) Respondent 1 to pay Rs.20,000/- to the complainants as costs of this complaint.
- 4) Complainants to execute Cancellation Deed at the cost of the respondent.
- 5) Charge of above amount is kept on the flat booked by complainants.
- 6) Respondent No. 1 to pay above amounts within 30 days from the date of this Order.

Mumbai

Date : 08.10.2020

(Madhav Kulkarni)
Adjudicating Officer
MahaRERA