

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

COMPLAINT NO. CC006000000110661

1. Arunesh Bhagwan Prasad Chopra &
2. Riddhima Chanda ..Complainants

Versus

Tata Housing Development Company Ltd ..Respondent

MahaRERA Regn. No. P51700000308

Coram:

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

Appearance:

Complainant: Adv.Satish Dedhia

Respondents :Adv.Deepak Poonmiya

**ORDER
(Dated 23.01.2021)**

1. Two complainants / allottees who had booked a flat with the respondent / promoter seek compensation from respondent.
2. As per detailed complaint, the complainants booked a flat in the project of the respondent No.173 in Tower K in project named Amantra Phase II at Village Ranjanoli, Tal. Bhiwandi, Dist. Thane. It is alleged that possession was promised in June, 2017. By email dated 15.10.2013, it was informed that it was 20:80 scheme. Respondent failed to deliver possession as per agreement despite collecting

money. Due to absence of requisite approvals, no agreement for sale was executed by the respondent. By email dated 15.10.2013, it was informed that possession will be given by June, 2017 though original promise was to give possession by 31.12.2015. Now the date is revised to 31.03.2018. Respondent received CC in stages. Respondent suppressed details of encumbrances from complainants which were disclosed on MahaRERA website. Complainants are required to pay heavy amount of brokerage. There is poor work regarding flooring levels. Respondent is demanding more than 20% of the amount without executing agreement. Therefore, complainants claim return of the amount paid with interest and compensation and the costs. They also claim loss of income at the rate of Rs.20,000/- per month.

3. The requisite details like the price that was agreed, and amount that is paid are not mentioned in the complaint for the reasons best known to the complainants. Exhibit B is the cost sheet. Accordingly total value is Rs.75,35,600/- Exhibit C is the payment details. Rs.2.50 lakhs were paid on 15.11.2013. Rs.13,54,477/- were paid on 02.01.2014. Rs.13,545/- were paid on 27.09.2014. Thus total amount paid was Rs.16,18,022/-. Allotment letter is Exhibit I. Accordingly, it was under 20:80 scheme. Flat no. 173 on 17th floor in Tower K having carpet area 666 sq. ft. was agreed to be sold for Rs.76,17,330/-. The allotment letter is dated 20.11.2013. Rs.2.50 lakhs was the application money. Total amount payable was shown as Rs.83,85,789/-. No date for possession is mentioned in the allotment letter.
4. The matter came up before Hon'ble Member on 25.11.2019 and 05.12.2019. Matter was transferred to AO, Mumbai. Roznama dated 17.02.2020 is similar. Due to Corona pandemic the matter came up

before me in virtual hearing on 12.10.2020. Respondent had uploaded reply affidavit on 08.10.2020. Arguments were heard on 14.10.2020. As I am working at Mumbai and Pune Offices in alternative weeks and due to huge pendency in this office, this matter is being decided now.

5. The respondent has alleged that the complaint is not tenable. Respondent called upon complainants to pay Rs.4,57,500/- towards stamp duty and Rs.30,000/- towards registration fee for the sake of executing registered agreement. Annexure A to E are the letters dated 09.12.2013, 07.12.2017, 03.02.2018, 17.03.2018 and email dated 02.04.2019. Complainants failed to make payment as per demand. Respondent has completed the project and received OC on 12.03.2018 from MMRDA. As per clause no.14 of the application form, any dispute is to be referred for arbitration. It is admitted that complainants booked flat K-1703 in the project Amantra at village Ranjanoli, for Rs.76,17,330/- including floor rises charges of Rs.6,18,336/- and premium of Rs.5,08,500/-. Complainants were required to pay taxes, deposit and maintenance separately. Allotment letter was issued on 20.11.2013. 20% of the amount was payable on 15.11.2013 i.e. Rs.2,40,495/-. By 30.12.2013, Rs.13,02,971/- were payable. Balance 80% i.e. Rs.61,73,864/- were payable, 1 month before possession. Since complainants did not pay stamp duty and registration charges, agreement could not be executed. OC has been received in respect of Tower A-10 on 12.03.2018 and possession was offered to the complainants. Complainants failed to make payment as per following demands :

Rs.69,49,242/- on 31.01.2019

Rs.79,815/- on 31.01.2019

Rs.1,94,444/- on 28.01.2019

Rs.15,459/- on 28.01.2019

Including society charges, deposit and MVAT. By letter dated 17.04.2019 complainants voluntarily cancelled the booking. As per clause 6B of the allotment, allottee was entitled for refund without interest subject to forfeiture of application money or actual money paid whichever is higher, subject to maximum of 19.05% of sale price. Date of possession was as per Annexure G. Therefore, complaint deserves to be dismissed.

6. 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 promoter?	Affirmative
2 If yes, has the respondent 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

7. **POINT Nos.1 to 3** :- At the outset, we will have to see what is the law laid down by the Hon'ble Bombay High Court regarding the jurisdiction of

the Adjudicating Officer appointed u/s 71 of Real Estate Regulation and Development Act.(Henceforth, RERA). Section 71 reads as follows:

- I. For the purpose of adjudging compensation, u/s 12, 14, 18 and 19, the authority shall appoint in consultation with appropriate government, one or more judicial officer as deemed necessary who is or has been a District Judge, to be an Adjudicating Officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard. Provided that any person whose complaint in respect of matter covered u/s 12,14, 18 and 19 is pending before consumer disputes redressal forum or the consumer disputes redressal commission or the national consumer redressal commission established u/s 9 of Consumer Protection Act on or before commencement of this Act, he may with the permission of such forum or commission as the case may be, withdraw the complaint, pending before it and file an application for adjudging compensation. Under sub section 1, complaint shall be dealt with by Adjudicating Officer as expeditiously as possible and dispose of the same within a period of 60 days from the date of the application.
- II. Provided that if any such application could not be disposed of within said period of 60 days, the AO shall record his reasons in writing for not disposing of the application within that period.
- III. While holding an inquiry, AO shall have power to summon and enforce attendance of any person acquainted with the facts and circumstances of the case, to give evidence or to produce any document which in the opinion of Adjudicating Officer, may be

useful for or relevant to the subject matter of enquiry and if in enquiry he is satisfied that person has failed to comply with provisions of any of the sections specified in sub-section 1, he may direct to pay such compensation or interest as the case may be, as he deems fit in accordance with the provisions of any of those sections.

8 .Section 72 reads that while adjudging the quantum of compensation, or interest as the case may be u/s 71, the AO shall have due regard to the following factors viz.

- a. The amount of disproportionate gain or unfair advantage wherever quantifiable, made as a result of the default;
- b. The amount of loss caused as result of the default;
- c. The repetitive nature of the default;
- d. Such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

9 .Section 31 provides for filing of complaints with the authority or the adjudicating officer.

(1) Any aggrieved person may file a complaint with the authority or the AO as the case may be for any violation or contravention of the provisions of this Act or Rules and Regulations made thereunder against any promoter or an allottee or real estate agent as the case may be.

(2) The form, manner and fees for filing complaint, under sub-section 1 shall be such as may be prescribed

10 .Section 12 provides for awarding compensation where any person makes an advance on the basis of information contained in advertisement etc. and sustains loss or damage by reason of incorrect / false statement.

Under the proviso, if the person affected, intends to withdraw from the proposed project, he shall be returned his entire investment alongwith interest at such rate as may be prescribed and compensation, in the manner provided under the Act.

11 .Section 14 provides for adherence to sanctioned plans and project specifications by the promoter and no alterations can be made without previous consent of that person except minor additions and alterations. Any other alterations and additions, are not permissible, without written consent of at least 2/3rd of allottees other than promoter. Under Sub-section 3 in case of structural defects etc. ,if it is brought to the notice of promoter, within a period of 5 years, by the allottee, from the date of handing over possession, it shall be duty of promoter to rectify such defects without further charge within 30 days and in the event of promoter's failure to rectify, such defects, within such time, aggrieved allottee is entitled to receive appropriate compensation in the manner as provided under this Act.

12 .Under Section 18 (1), if the promoter fails, to complete or is unable to give possession of an apartment, plot or building,

- (a) in accordance with terms of agreement for sale or as the case maybe duly completed by the date specified there in or
- (b) due to dis-continuance of his business as a developer, on account of suspension, for revocation of 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 refund the amount received by him in respect of the apartment, etc, with interest at

such rate as may be prescribed in this behalf including compensation in the manner provided under this Act. Under the proviso, if allottee does not intend to withdraw, he shall be paid, interest for every month of delay, at such rate as may be prescribed. Under sub-section 2 promoter shall compensate allottee in case of any loss caused due to defective title to the land. Under Sub- section 3 if the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

13 .Section 19, provides for rights and duties of the allottee and under Sub-section 4 he shall be entitled to claim refund, with interest and compensation, if promoter fails to comply or is unable to give possession of apartment etc. in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of registration under the provisions of this Act.

14 .Hon'ble Appellate Tribunal, has taken a view in the matter of Pankaj Agarwal that adjudicating officer has no jurisdiction to grant refund of the amount with interest and has power only to grant compensation and that jurisdiction vests only with the authority.

15 .However, observations of Hon'ble Bombay High Court will have to be seen. In the case of Lavasa Corporation Ltd. Vs. Jitendra Tulsiani, in 2nd appeal, 9717 of 2018 with Civil Application No. 683 of 2018, in para 76 Hon'ble High Court has observed as follows :

Moreover, if the Appellant is permitted to raise such defence, it would be as good as allowing Adjudicating Authority established under RERA, to go behind the registration certificate for holding that said registration under RERA, is not applicable to the project of the appellant. Can the Adjudicating Authority, do so? The answer has to be in the negative, if the scheme of RERA, is considered. It is pertinent to note that under RERA, there are two different authorities established; one is real estate regulatory authority defined u/s 2 (1) and established u/s 20 of the RERA. It is conferred with the jurisdiction to entertain the application, for registration of the projects. As can be seen from, provisions Section 3 and 4 of "RERA, application for registration of real estate project is to be made to real estate regulatory authority established under chapter 5 which deals with establishment and incorporation of the authority.....

As per para 77- "as against it, the adjudicating authority under the RERA is defined, in Section 2(a) as Adjudicating Officer appointed under sub-section 1 of Section 71. This Adjudicating Authority as can be seen from Section 71(1) of the Act is established for the purpose of adjudging compensation under Section 12,14,18 and 19 of the said Act.

Section 31 provides that the complaints are to be filed by aggrieved persons, under RERA with the AA for any violation or contravention of the provisions of this Act.

As per para 78- therefore, the authority which grants registration under RERA is different than the authority which is established to adjudicate the grievances of the aggrieved persons under the said Act. One authority cannot encroach on the jurisdiction exercised or to be

exercised by another authority. Here in the case, the registration certificate to the appellant is granted by the Regulatory Authority, established u/s 20 of the said Act and now the appellant is calling upon the AA established u/s 71 of the RERA to go behind registration certificate and to hold that provisions of RERA are not applicable to the appellant.

Hon'ble High Court framed point no. 2 as- whether appellate tribunal has committed an error in holding that AA under RERA has jurisdiction to entertain the complaints filed by respondent u/s 18 of the RERA?

Point no. 3 was framed as- whether Adjudicating Authority under RERA can go behind registration certificate of the appellant so as to hold that it has no jurisdiction, though the project is registered under the said Act? Hon'ble High Court answered point no. 2 and 3 in the negative. In para 62, reference is made to Judgement of Hon'ble Apex Court in the case of TELCO Vs. State (2000)5 SCC 346 about the interpretation of enactment viz. that which will achieve the object of the Act.

16 .Then there is landmark judgement of Division Bench of Hon'ble Bombay High Court in the case of Neelkamal Realtors Vs. Union of India. Writ Petition no.2737 of 2017 dated 06.12.2017.The validity of whole of the RERA was scrutinised by the Hon'ble Bench. Except the provision u/s 46 (1)(b), all other provisions have been upheld.

The discussion on jurisdiction of Adjudicating Officer by Hon'ble Justice N.H.Patil, starts from paragraph 124. It reads – the entire scheme of RERA is required to be kept in mind. It is already submitted during the course of hearing that in many cases, helpless allottees had approached the consumer

forum, High Court, Apex Court. In a given fact situation of the case, the courts have been passing orders by moulding reliefs by granting interest, compensation to the allottees and issuing the directions for the timely completion of the project, transit accommodation during completion of project, so on and so forth. Under the RERA, now this function is assigned to the Authority, Tribunal. An Appeal lies to the High Court. Under one umbrella, under one regulation and under one law, all the issues are tried to be resolved. Provisions of Section 71 refer to power to adjudicate. District Judge is conferred with power to adjudicate compensation u/s 12, 14, 18 and 19. A promoter could very well put up his case before the adjudicator, who deals with the issues in the light of the fact situation of each case. Therefore, there should not any apprehension that mechanically compensation would be awarded against a promoter on failure to complete the development work.

The proviso to section 71(1) provides that any person whose complaint in respect of matters covered under sections 12,14,18 and 19, is pending before consumer disputes redressal forum, or consumer disputes redressal commission or the national consumer redressal commission, established under Section 9 of Consumer Protection Act, on or before commencement of this Act, he may with the permission of such forum or commission as the case may be withdraw the complaint pending before it and file an application before the AO under this Act.

Para 125 reads that- the proviso to Section 71(1) as quoted above, is clear indicator that even pending complaint, before consumer forum could be transferred to adjudicator under RERA. A submission was advanced that allottee is free to approach whatever forum in respect of defaults committed if any, in compliance with agreement of sale entered into between the

promoter and allottee prior to registration of RERA. In view of scheme of RERA we find that this contention of Petitioners cannot be upheld. It would be unreasonable to expect allottee to resort to proceedings in different forums prior to registration of project in respect of the agreement executed prior to the registration under RERA and post registration. Under the scheme of RERA, the adjudicatory mechanism is prescribed under one umbrella. We do not notice any illegality in the same.

Section 71(1) is framed in the larger interest of consumers. The adjudicator who would be a judicial member of the rank of district judge would be dealing with all issues and the pleas, raised by promoter, allottee and other stake holders before adjudicating claim for compensation. The orders are subject to judicial review by higher forum. Therefore, promoter should have no apprehension that they would be remediless or there is no scope under scheme of RERA for consideration of their claim.

Para 126 reads - another plea, raised is, as to why a promoter shall pay interest for the past contractual rights, in case of failure, to complete the project after registration under RERA, till possession is handed over. Under the scheme of RERA, it is clear by now that a promoter has to self assess and declare time period during which he would complete the project. But in case, in spite of making genuine efforts, a promoter fails to complete the project, which the concerned authority, adjudicator, forums , tribunal would certainly look in to genuine cases and mould their reliefs accordingly. We do not find that on that count provisions of Section 18(1)(a) are to be declared as contrary and violative of Article 14, 19(g) The payment of interest u/s 18 is compensatory in nature.

The provisions of Section 18 must be read with Sections 71 and 72. The adjudicator would consider each case on its merits and unless such cases emerge and decisions are taken by authority, it would not be appropriate at this stage to hypothetically consider a situation and decide constitutional validity of statutory provisions.

Para 127 reads - it was submitted on behalf of Union of India that MOFA provides for interest to be paid in certain cases (Section 8) and constitutional courts too had granted interest to flat purchaser in case of defaults by the promoter. The requirement to pay interest u/s 18 is not penal since payment of interest is compensatory in nature due to delay suffered by the flat purchaser...

17 .Hon'ble Justice Ketkar in para 264 has observed as- so far as challenge to Section 59, 60, 61, 63, 64 are concerned, these provisions fall in chapter VIII entitling offences, penalties, and adjudication..... Payment of interest and compensation, u/s 12, 14, 18 and 19 needs to be adjudicated by AO as per Section 71. The amount of interest and compensation is payable by the promoter to the allottee or by allottee to the promoter u/s 19 (7). As against this under Section 76 the sums realised by way of penalties imposed by appellate tribunal or the authority in the union territories, are to be credited to the consolidated fund..... Section 76 does not include determination of AO u/s 71 of RERA. This is also pointer to indicate that the interest and compensation determined by AO u/s 12, 14, 18 and 19 is not by way of penalty but is essentially compensatory in nature

18 .There is no definition of compensation given in this Act.In general terms it would mean making good loss suffered due to financial stress,physical stress

or mental stress. Also there is no specific provision empowering authority to award refund. They are only the general powers under section 37 and 38..

19 .In my humble opinion as laid down by Hon'ble Bombay High Court in the Lavasa case and Neelkamal case, the main functions of the authority are to register real estate project and to extend the registration or otherwise, encourage timely completion of real estate projects and to inflict penalty in case of default in compliance of the provisions of this enactment. The AO on the other hand is to lessen the burden of the authority in awarding compensation in case of default under the provisions of the enactment. Therefore, Section 31 permits aggrieved person, by violation or contravention of provisions of this Act or Rules and Regulations made thereunder to file a complaint with the authority or the AO. The complaint for compensation u/s 12, 14, 18 and 19 can be directly filed with the AO in case of violation or contravention of the provisions of the Act, rules and regulations. Section 72 clause b mandates the amount of loss caused as a result of the default as a factor to be considered while adjudging quantum of compensation or interest by AO. Sub-clause c mandates considering the repetitive nature of the default. In my humble opinion the amount that the allottee pays to the promoter is the loss suffered in the event of default by promoter which can be awarded by the AO with interest. Awarding interest is also provided under Section 71 sub-section 3. The default of the promoter will be repeated everyday till the allottee receives either possession and amenities as per promise or gets back the amounts paid by him. The only question appears to be one of nomenclature and there is no legal bar to award compensation by AO u/s 72 sub-section a to d.

20 .The complainants have claimed that they booked flat no. 173 in Tower K of the project of the respondent Amantra at village Ranjanoli Tal. Bhiwandi, Dist., Thane. Requite necessary details are not mentioned in the complaint for the reasons best known to the complainants. Payment details show that Rs.2.50 lakhs were paid on 15.11.2013, Rs.13,54,477 on 02.01.2014 and Rs.13,545/- on 27.09.2014 i.e.total Rs.16,18,022/-. Allotment letter dated 20.05.2013 is also in respect of flat no. 173. It is the respondent who has claimed that complainants booked flat no. 1703. However, it is clear that flat booked was no. 173. Complainants are allottees and respondent is promoter. I therefore, answer point no. 1 in the affirmative.

21 .The price agreed as per allotment letter was Rs.76,17,330/- and application money was Rs.2.50 lakhs. Allotment letter is dated 20.11.2013. The complainants appears to have made initial payment as per demand. As stated earlier, no date of possession is mentioned in the allotment letter. It is well settled that a promoter must deliver possession within 2 to 3 years when no possession date is mentioned, since booking by an allottee by making initial payment. It is the contention of the complainants that initially date for possession was given as 31.12.2015 i.e. in the span of about 24 months since the initial payment. On the other hand it is the contention of the respondent that OC is received on 12.03.2018 and well before MahaRERA record about possession date as 31.03.2018. Therefore, there is no delay in delivering possession. Both the complainants and the respondents are blaming each other for the failure to execute a registered agreement.

22 .It is the contention of the complainants that respondent failed to disclose several litigations which became clear on going through the MahaRERA portal. Also respondent deliberately omitted to give date for delivery of possession. On the other hand, respondent claims that

respondent gave letter in the year 2013 asking the complainants to make payment for stamp duty and registration charges. As per disclosure on MahaRERA portal, there was regular civil suit no. 668 of 2011 and special civil suit no.1021 of 2011 filed by Mansukhlal Somaria as well as WP 11001 of 2016, then RCS 594 of 2009 filed by Ratan B Patil. There were borrowings from various banks by creating charge.

23 .Exhibit G is the cancellation letter dated 17.04.2019 which according to complainants was obtained by playing fraud. In fact there is no signature of the complainants on this letter. At Exhibit F there is correspondence. 1st mail is dated 15.10.2013 from the respondent giving details of the flat. Then there is email dated 28.03.2019 about the amnesty scheme. Then letter dated 17.04.2019.

24 .On behalf of respondent letter dated 09.12.2013 in respect of stamp duty and registration charges is placed on record. It was informed that whole process will take around 30 days from the receipt of demand draft. Therefore, there was request to avoid any delay. Then there is letter dated 7.12.2017 calling upon complainants to pay stamp duty and registration charges and charges for association formation. 2nd reminder letter is dated 03.02.2018. It is clear that the reminder for stamp duty and registration charges came about 4 years after issuance of allotment letter. Complainants have uploaded IOD dated 26.11.2013 and CC dated 25.08.2010, further CC dated 26.06.2015 government approval dated 25.02.2016, Environment clearance dated 21.12.2015, Consent to operate from MPCB dated 15.06.2016. Then proposal status list in respect of new proposals dated 13.06.2017. Environment clearance was applied for in December, 2015. Final NOC from government came on 25.02.2016. One thing is clear that when the allotment letter was issued, practically no

permission was there in the hands of the respondent. It was due to this reason, that respondent did not pursue the matter of registration of agreement for about 4 years.

25 .Respondent had accepted about 20% of the price from complainants by January, 2014. The complainants must have made this payment by believing in the word that possession will be delivered within 2 to 3 years. It is after about 3 years that the approvals started coming. Complainants cannot be made to wait for so long. On the other hand respondent is bent upon deducting cancellation charges for the cancellation of booking. As stated earlier, respondent was required to deliver possession within 2 to 3 years since January, 2014. Also there were litigations. Had the respondent disclosing the litigations, complainants would not have booked the flat and made payments. Consequently, complaints cannot be blamed for the non-execution of the agreement and for the delay in delivering possession. Complainants could not be expected to wait till March, 2018. The respondent did not disclose the status about approvals for about 4 years. Now respondent cannot force complainants to complete the transaction and must blame himself for the failure to execute the agreement. I therefore, answer point no. 2 in the affirmative.

26 .Complainants have made a total payment of Rs.16,18,022/-. This is the loss suffered by complainants and as compensation they are entitled to get this amount with interest at the rate of 10.40% p.a. from the date of payments. The complainants are claiming loss of income at the rate of Rs.25,000/- from June, 2017. How the complainants lost such income is not understood. Already interest is being granted as compensation. Complainants are resident of Noida, Uttar Pradesh. Therefore, towards the loss of income and mental harassment, complainants are entitled to Rs.1

lakhs. I therefore, answer point no. 3 in the affirmative and proceed to pass following order:

ORDER

- 1) Respondent to pay Rs.16,18,022/- to the complainants together with interest @10.40 p.a. from the date of payments till final realization as the loss suffered u/s 71(3) and 72(b) and (c) of RERA.
- 2) Respondent to pay one lakh to the complainant towards loss of income and mental harassment.
- 3) Respondent to pay Rs.20,000/- to the complainants as costs of this complaint.
- 4) Respondent to pay above amounts within 30 days from the date of this Order.

Mumbai
Date : 23.01.2021

(Madhav Kulkarni)
Adjudicating Officer
MahaRERA