

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

**Virtual Hearing held through video conference as per  
MahaRERA Circular No.: 27/2020**

**COMPLAINT NO: CC006000000194664**

Mr. Anuj Nangpal and Mrs. Ekta Kumar ...Complainant

Vs

Indiabulls Properties Private Limited ...Respondent

**MahaRERA Project Registration No. P51900000467**

**Order**

January 27, 2021

*(Date of Hearing: 23rd September, 2021: Matter Reserved for Order)*

**Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA**

Advocate Tanuj Lodha present for Complainant

Advocate Abir Patel present for Respondent

1. The Complainant is a home buyers and Allottee within the meaning of Section 2(d) of the Real Estate (Regulation and Development) Act, 2016 ("Said Act") and the Respondent is Promoter/Developer within the meaning of Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016. The Respondent has registered their project "Sky Forest" under section 5 of the Real Estate (Regulation and Development) Act, 2016 ("RERA") bearing MAHARERA **Registration No. P51900000467** (hereinafter referred to as the "said Project").

2. The Complainant seek the following reliefs:

*"a. That the Complainants be allowed to withdraw from the Project and the Respondent be directed to refund to the Complainants Rs. 2,28,97,964/- along with interest as per the RERA Act. [ sec 12, 18 of RERA Act]*

*b. That the Respondent be directed to settle IBHFL in full for funds received towards loan under subvention and relieve the Complainants of any obligation towards IBHFL. c. The Respondent be directed to furnish collateral security cheques, FD etc. required by IBHFL to release the collateral security cheques, FD etc. of the Complainants with IBHFL.*

*Ajoy Mehta*

- d. That the Respondent be directed to Indemnify the Complainants against any future liability from IBHFL.
- e. The Respondent be directed to pay Rs 10,00,000 towards mental harassment and Rs 500,000 towards costs.
- f. The Respondent be penalized 5% for project cost for violating various provisions of RERA Act. (S.7, S.12, S.18 read with S.61 of RERA Act)
- g. That as per the provisions of section 69 of RERA Act 2016, the promoters, directors, key management personnel of Respondent be punished for the offences they have committed under the Act. v
- h. That, the Hon'ble MAHARERA to protect the interest of the Complainant, provide any other relief provided under the Real Estate (Regulation and Development Act), 2016."

3. The following roznama as passed by this Authority on 23rd September, 2021:

*"The Complainant states that Agreement for Sale was entered into on 19th May, 2016, as per which the date of possession was December 2018 however they now find that the RERA website gives the date of possession as 30th March, 2023. The Complainant further contends that the mitigating circumstances are within the purview of the Respondent and the delays have taken place not due to matters beyond the control of the Respondent. The Complainant contends that against the consideration of over Rs 8 Cr that has been paid, the loan is approximately Rs.6 Cr and Rs. 2 Cr is from his personal sources. The Complainant desires that the money be refunded together with interest in view of delayed possession. The Complainant also clarifies that he seeks refund only to the extent of the amount paid by him. The Complainant states however that the bank loan against his name should also be settled in full. The Respondent states that the tripartite agreement was entered on 12th September, 2013, in which the first right of refund is to the finance company and that the finance company is not made a party and therefore the complaint is not complete due to non-rejoinder of parties. The Respondent further contends that December 2018 was the date of possession however the Agreement allowed him 9 months grace which takes it to September 2019 (further grace period was also allowed under clause 15 for mitigating circumstances). The Respondent contends that delay is due to PPL not been taken over by the planning authority in lieu of which he was entitled to FSI. The Respondent further contends that the Section 12 and Section 18 cannot travel together. The Complainant however states that the Hon'ble High Court has held that these are two separate matters. The Respondent further contends that the Pre EMIs are paid by him specifically to de-risk the buyer upto the date of possession. If the Complainant is allowed to withdraw he will be put to loss on the Pre EMIs paid by him and the same should be refunded to him by the Complainant. Both Parties are at the liberty to file Written Submission by 4th October subsequent to which the matter will be Reserved for Order."*

4. The submissions of the Complainant are as follows:

- a. An apartment No. 1703, on 17th & 18th (Duplex) floor, wing A2, alongwith two covered car parks, admeasuring 1681 sq. ft of carpet area, terrace area 795 sq.ft and total saleable area 3485 sq.ft. ("Said Apartment") in the sale building

known as "Sky Forest" in the Project vide an Booking Summary Sheet and Application form dated 6th August, 2013. Later in an Agreement for Sale dated 19th May, 2016 ("Said Agreement") the carpet area of the apartment was mentioned as 1376.93 sq.ft with two car parking spaces.

- b. The total consideration amount of the said Apartment was Rs. 7,98,10,000/- (Rupees Seven crore Ninety eight lakhs ten thousand only) (Exclusive of taxes). The Respondent further collected the amount of Rs. 8,52,43,425/- (Rupees Eight Crore Fifty Two Lakhs Forty three thousand Four hundred and twenty five only) out of which the Complainants own contribution is Rs.2,28,97,964/- (Rupees Two Crore Twenty eight Lakhs Ninety Seven Thousand Nine hundred and Sixty Four only) and the Loan disbursement by the bank is Rs. 6,23,45,361/- (Rupees Six crore Twenty three lakhs Forty five thousand three hundred and sixty one only).
- c. The possession of the said apartment was to be delivered by the Respondent on December, 2018, as per the clause 55 of the Agreement.
- d. A Tripartite Agreement dated 19th September, 2013, was entered between the Respondent, the Complainant and the IndiaBulls Housing Finance Limited (hereinafter referred as "IBHFL"). The Complainant submitted the collateral Security cheque of Rs. 72,06,900/- (Rupees Seventy Two Lakhs Six thousand and nine hundred only).
- e. Further as per the Cost Sheet shared by the Respondent vide email dated 19th February, 2016, reflected the comparison of the old and new area of the flat as 1665 sq.ft alongwith terrace of 870 sq.ft whereas in the Agreement for Sale the carpet area is mentioned as 1376.93 sq.ft.
- f. The Respondent has failed to give the possession of the apartment by the promised date of December 2018 and unilaterally extended the possession date to 30th March 2023.
- g. Further as per the clause 13 of the tripartite agreement on cancellation or default, the Respondent is also liable to return the fund received from IBHFL.
- h. Further as per Clause 3 of the Tripartite Agreement the pre - EMI interest shall be borne and paid by the developer till the possession of the said premises.

5. The submissions of the Respondent are as follows:
- a. The Respondent states that the Agreement for sale was executed on 19th May, 2016, the Complainants has only paid a sum of Rs. 1,60,31,000/- (Rupees One Crore Sixty Lakhs Thirty One Thousand only) whereas a sum of Rs. 6,23,45,361/- (Rupees Six Crore Twenty Three Lakhs Forty Five Thousand Three hundred and Sixty one only) has been disbursed by Indiabulls Housing Finance Limited ("IBHFL").
  - b. As per the Clause 13 of the Tripartite Agreement dated 12th September, 2013, the Complainant have subrogated unto IBHFL, the first right to any refund upon the Complainants cancelling the transaction. Further the Complainant has not made IBHFL a party to this complaint and is seeking the entire refund, the present complaint be dismissed for deliberate non-joinder of necessary parties.
  - c. The date of possession mentioned in the Agreement for sale dated 19th May, 2016, was December, 2018, with a further grace period of 9 months, making possession date September, 2019, this is enumerated under clause 55 of the Agreement.
  - d. Further the construction timeline of the project was disrupted as a result delayed by the Development Plan and Traffic department in taking the handover of the Public Parking Lot ("PPL") due to which the Respondent could not apply for the Further Commencement Certificate (CC) as the no objection report of the Development Plan and Traffic department of the Municipal Corporation of Greater Mumbai was an important requirement for the same.
  - e. The Respondent further states that the project is nearing the stage of finishing the work. The date of completion declared by the Respondent on the website of the Maharashtra Real Estate Regulatory Authority is 30th September, 2023.
  - f. Further the Complainants are alleging the delay since 2018, wherein they neither terminated the said Agreement nor asked the Respondent to stop paying the pre - EMI.

6. From the above facts, the following issue is framed for consideration:
- a. *Whether the Complainant is entitled for refund U/s. 18 of the Act ?*
7. Before dealing with the facts in these complaints, it is pertinent to examine "Possession" as contemplated U/s. 18 of the said Act.

*"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."*

From the plain reading of section 18 it is clear that in the event the Promoter (Respondent herein) fails to handover possession as per the terms of the agreement for sale by the specified date therein, the Allottee (Complainant herein) has a choice either to withdraw from the said Project or stay with the Project. Further, in case the Allottee (Complainant herein) chooses to stay and not withdraw from the said Project, he is entitled to claim interest for every month of delay till handing over possession at such rate as may be prescribed from the Promoter (Respondent herein).

8. Thus, in the present complaint following observations are noteworthy:
- a. The RERA proposed date of completion of the project is 30th September, 2019 and the revised proposed date of completion is 30th March, 2023.
- b. The said agreement was entered and executed on 19th May, 2016, wherein the date of possession was mentioned as December, 2018, with a nine month grace taking the completion to September, 2019.

- c. It is pertinent to note that in a matter of Agreement for Sale executed in ongoing projects before commencement of the Act, the due date of possession specified in the Agreement for Sale will prevail over the completion date declared by the Respondent in MahaRERA. The purpose of the Act is to implement such agreements for sale executed in ongoing projects and not to re-write those agreements and change the date of possession therein. The Act also does not provide for any retrospective amendments to the executed agreement.
- d. Thus from the above it is clear that since the Agreement for Sale was executed on 19th May, 2016, the date of completion mentioned in sacrosanct. The date of Completion thus is 30th September, 2019. It is an admitted fact by both the parties that the developer has not been able to deliver possession on the agreed date. In view of this the Complainant is eligible to get relief under section 18 of the Act. Thus the issue mentioned in para 6 (a) is answered in the affirmative.

The question remains as to what is the quantum of refund.

- e. The payment is from two sources namely one from the Complainant is Rs. 2,28,97,964/- (Rupees Two Crore Twenty eight Lakhs Ninety Seven Thousand Nine hundred and Sixty Four only) and two from a loan from the finance company amounting to Rs. 6,23,45,361/- (Rupees Six crore Twenty three lakhs Forty five thousand three hundred and sixty one only) for which the Complainant had provided the collateral.
- f. The loan from the finance company is governed by the Tripartite Agreement between the Complainant, finance company and the developer. The finance company (IBHFL) is not a party in this case. They have not been heard. However their interest will stand protected by the Tripartite Agreement. It is also observed the Clause 14 of the tripartite agreement,

*"Further that the parties agree that in case of cancellation of the allotment, for any reason whatsoever, including but not limited to the reason more particularly enumerated in this agreement, the Builder shall refund all money received from IHFL without any protest and demure."*

*R. J. Hall*

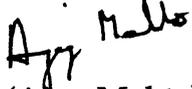
g. Thus the Complainant is allowed to exit from the project and is entitled to a refund of Rs. 2,28,97,964/- (Rupees Two Crore Twenty eight Lakhs Ninety Seven Thousand Nine hundred and Sixty Four only) paid from his own resources together with interest upto the date of full refund.

The component of loan advanced by the finance company shall be dealt with as per the covenants in the Tripartite Agreement between Complainant, Respondent and IBHFL. The Parties will enter into a cancellation deed at the time of refund.

### FINAL ORDER

Thus, the present complaint is allowed. The Complainants are allowed to withdraw from the project and are entitled to get the refund of the amount paid by them from their resources from the Respondent at the rate as prescribed *under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules 2017*. Further, the Component that has come from the finance company (IBHFL) shall be settled as per the Tripartite Agreement. Further, the complainants shall execute the Deed of Cancellation of Agreement for sale.

No order as to Cost.

  
(Ajoy Mehta)  
Chairperson, MahaRERA