

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

Complaint No. CC00600000057288

Mr. Yashwant Yamunappa Dawami
Mrs. Bharti Yashwant Dawami

..... Complainants

Versus

M/s. Lodha Impression Real Estate Pvt Ltd
(Lodha Developers Pvt Ltd)

..... Respondents

Project Registration No. P51800000294

Coram: Hon'ble Dr. Vijay Satbir Singh, Member – 1/MahaRERA

Adv. Sanjay Chaturvedi appeared for the complainants.

Adv. Akshay Pare appeared for the respondent.

ORDER

(13th August, 2019)

1. The complainants have filed this complaint seeking directions from MahaRERA to the respondent to cancel the booking application and refund the amount paid by them to the respondent as provided under section-18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "**the RERA Act, 2016**") and other relief as sought in this complaint in respect of booking of a flat No. 501, admeasuring 841 sq.ft., in the respondent's project known as "**Lodha Eternis Serena A**" bearing MahaRERA registration No. P51800000294 at Andheri (East), Mumbai.
2. This matter was heard finally on 10-06-2019, when both the parties appeared through their respective advocates and argued the case. During the hearings, the complainants have argued that they are the allottees and have jointly booked the said flat in the respondent's project and agreement for sale was also executed on 9-9-2016. As per the said agreement, the

Handwritten signature

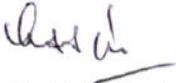
respondent was liable to handover possession of the said flat to the complainants on or before 30-04-2017 with a grace period of 18 months, which ended on 31-10-2018. However, till date the respondent has not handed over possession of the said flat to the complainants. The complainants have obtained loan for the said purchase and paying monthly EMI for the last two years. Till date the complainants have paid an amount of Rs. 2,28,27,460/- and stamp duty and registration charges which comes to 98% of the consideration amount. Hence, the complainants have filed this complaint seeking relief as prayed for in this complaint.

3. The respondent has filed a written submission on record and disputed the claim of the complainants, on the preliminary ground of maintainability of this complaint. The respondent has argued that the occupancy certificate of the project has been received on 17th December, 2018 and the complainants have failed and neglected to take possession of the same inspite of being offered by the respondent, vide letters dated 3-09-2018 and 19-12-2018. The respondent further argued that there is no delay in the offer of possession from the respondent as per clause No. 11.2 of the agreement for sale dated 9-9-2016. He was to handover possession of the said flat to the complainants within a period of 1 year from 30-04-2017 after obtaining occupancy certificate. Thereafter, the respondent was entitled for 18 months' grace period for obtaining occupancy certificate that comes to 31-03-2021. The date of offering possession after obtaining occupancy certificate must be read as 30-04-2018 and the respondent is entitled to a grace period of 18 + 18 months over and beyond the date i.e. 30-04-2018. He further argued that he has always informed the complainants about the stage of the project and has demanded the payment as per the terms and conditions of the agreement for sale. However, the complainants are in breach of their duties as provided under section-19(10) of the RERA Act, 2016 as they have failed to take



possession within 2 months from the date of occupancy certificate and therefore, they can not file this frivolous complaint for delayed possession.

4. The MahaRERA has examined the arguments advanced by both the parties as well as record. In the present case, admittedly, the complainants are the allottees in the respondent's project and have purchased the said flat by executing agreement for sale dated 9-09-2016. As per clause No.11.1 of the said agreement, the respondent has agreed to handover possession of the said flat to the complainants within a period of one year from the date of offer of possession i.e. 30-04-2018. As per clause No. 11.2 of the said agreement, the respondent was entitled to seek 18 months grace period that comes to 30-10-2019. However, it appears from the record that the respondent has obtained occupancy certificate for the said project on 18-12-2018. Therefore, the MahaRERA feels that the complaint is filed at premature stage. Moreover, the respondent has obtained occupancy certificate for the complainants' flat on 17-12-2018. Therefore, request of the complainants for grant of relief under section-18 of the RERA Act, 2016 can not be considered by MahaRERA, since after grant of occupancy certificate, section-18 would not come in picture.
5. In the light of these facts, the request of the complainants for cancellation of the booking application and refund of the amount paid by them to the respondent can not be considered. Hence, the complaint stands dismissed.


(Dr. Vijay Satbir Singh)
Member – 1/MahaRERA