BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Complaint No. CC006000000196316 (NC)

Abdul Malik Usmani **..Complainant/s**

Vs

Moonshine Realtors Pvt. Ltd. **..Respondent/s**

MahaRERA Project Registration No. P51700008927

Coram: Shri Ashok Alaspurkar
Hon'ble, Adjudicating Officer,
MahaRERA.

Appearance:
Complainant/s : Appeared in person
a/w Adv. Zaki Shaikh
Respondent/s : None appeared

O R D E R
(03.06.2024)

1. The complainant has booked Flat No. 501 B-wing in the respondent's registered project known as "**SANIYA HEIGHTS**" bearing MahaRERA Registration No. **P51700008927** located at Village Bhiwandi, Dist Thane. The registered agreement for sale was executed on 24.03.2017. The possession was agreed to be given by December 2018. The complainant has paid an amount of Rs. 15,00,000/- and the loan amount of Rs. 41,34,123/- has also been disbursed to the respondent by DHFL Ltd. Since there was delay in delivery of possession the complainant filed the present complaint for refund of consideration and the interest thereon. After hearing the complainant the Hon'ble Member-1 passed order dated 31.03.20223 which is as follows:

17. In view of the aforesaid facts, the following order is passed:

a) The present complaint is partly allowed.

b) The respondent promoter is also directed to refund the entire money paid by the complainant towards the consideration of the said flat at the rate of SBI's Highest Marginal Cost Lending Rate (MCLR) plus 2% as prescribed under the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016 and the Rules made thereunder, from the date of payment till the actual realisation of the said money to the complainant.

c) Needless to state here that the actual amount as provided under section 18 of the RERA means the amounts paid by the complainant towards the consideration of the said flat only, excluding the stamp duty, registration charges and taxes etc., paid to the government.

d) However, in view of the mitigating circumstances beyond the control of the respondent promoter and also to ensure that the said project is not jeopardised due to the outflow of finances and is completed keeping in mind the interest of the other buyers of the said project at large, the amount of refund along with interest payable by the respondent to the complainant be paid within a period of 6 months in six equal instalments. Till then, the complainant shall have claim on the said flat.

e) The complainant is also directed to execute a cancellation deed before the payment of last instalment.

f) The respondent is directed to settle the issues with the Bank under the subvention scheme as per its letter dated 28-04-2017.

g) With regard to the payment of interest to the complainant, the

MahaRERA further directs that the respondent promoter is entitled to claim the benefit of "moratorium period" as mentioned in the Notifications/ Orders nos. 13 and 14 dated 2nd April 2020 and 18th May 2020 issued by the MahaRERA and the Notification/ Order which may be issued in this regard from time to time.

h) Further, the respondent is also directed to take immediate steps for seeking extension of the said project within 30 days from the date of this order failing which the respondent shall be liable to pay penalty of Rs.1,00,000/-under section 63 of the RERA.

2. The complainant reported non compliance on 03.07.2023. The matter was pending before the Hon'ble Authority. The said execution has been transferred to the Adjudicating Officer in pursuance of the order of delegation of Powers dated 05.04.2023.

3. Considering the direction in the order the complainant is entitled to recover the paid consideration of Rs. 56,34,123/- and interest at the rate of MCLR plus 2% from the date of the payment. It appears from the record that the respondent has received the above said total amount on or about date of execution of agreement for sale i.e. 24.03.2017. However, the moratorium period as per the notification mentioned in Clause (g) will have to be considered. The interest is payable till actual realisation of the above said amount to the complainant. It appears from the submission on behalf of the complainant that the interest has not been paid nor any of the installment has been paid as yet. Therefore, the interest on the said amount of Rs. 56,34,123/- w.e.f. 24.03.2017 till 31.05.2024 considering the moratorium period comes to Rs. 35,40,853/-

4. The complainant is also entitled to recover further interest from 01.06.2024 on the said amount till the amount is recovered and realized by the complainant.

5. By Clause (f) the respondent is directed to settle issues with the Bank under the subventions scheme. It appears from the submission of the complainant that the respondent has committed default and proceeding u/s 138 of NI Act are taken by financial institution. So far as these aspects are concerned the complainant right as per subvention scheme is protected. However, the said matter can not be decided by this forum and that too in the execution proceeding. The separate forums are provided for adjudication of the said issues.

6. Since the project has been lapsed w.e.f. 30.12.2021. The respondent was directed to seek extension of the project within 30 days of the date of the order (31.03.2022). The respondent seems to have taken steps in the month of May 2023 and the project is extended till 31.12.2024. Since the said direction is compiled and there is no default to that extent the penalty can not be recovered.

7. Considering the total circumstances following order is passed.

ORDER

1. Issue warrant u/s 40 (1) read with Rule 3 of RERA for recovery of amount of Rs. 56,34,123/- and the interest amount of Rs. 35,40,853/- and also for recovery of interest at MCLR plus 2% on the amount of Rs. 56,34,123/- from 01.06.2024 till the amount is recovered and realised by the complainant.

2. With these directions, the present execution proceeding is hereby disposed of.

3. No order as to costs.

Date : 03.06.2024
Mumbai

(Ashok Alaspurkar)
Adjudicating Officer,
MahaRERA