

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

**Complaint No.CC005000000010557**

**Swapnil and Preeti Mitkari      .. Complainants**

**Versus**

**Marva Builder**

**.. Respondent**

**Coram : Shri M.V. Kulkarni  
Hon'ble Adjudicating Officer**

**Appearance :**

**Complainant :      In person**

**Respondent 1.      Advocate Kutkar**

**FINAL ORDER**

**13-08-2018**

1. The complainants who had booked a flat with respondent/developer seek refund of the money paid with interest and penalty as respondent failed to deliver possession as per agreement. Since I am working at Mumbai & Pune offices in alternate weeks as per availability of dias and due to non availability of stenographer, this judgement is being delivered now.

*13-8-2018*

2. The complainant<sup>✓</sup> has<sup>✓</sup> alleged that they had booked a flat No.A3-303 in Marvel Izara Project at Undri with respondent. It is alleged that complainants were promised possession by 30-09-2017. Other necessary details are required to be fished out from the documents annexed to the complaint. Agreement was signed on 21-09-2015. The area of the flat is 159.32 sq.mtrs. The price agreed is shown as Rs.1,02,38,000/- Total amount paid is shown as Rs.9,33,710.30/- Date of delivery of possession mentioned in the agreement is 30-09-2017. Since possession is not delivered, complainant<sup>✓</sup> seeks<sup>✓</sup> refund of total amount paid alongwith interest and compensation.
3. Respondent No.1<sup>✓</sup> filed written explanation on 29-05-2018. It is alleged that since agreement was entered into on 21-09-2015 the complainant is not an allottee under RERA act. The project has been delayed due to reasons beyond the control of the respondent. The complainant is well aware about the term in the agreement in that respect. As per RERA the revised date for possession is 31-12-2020. The amounts which are paid to the government cannot be claimed back by complainant. The respondent is on the verge of completing the project. Section 32 of the RERA contemplates growth and promotion of Real Estate Sector. Hence such complaints cannot be allowed which would cause irreparable loss to the respondent. The complaint is filed to harass the respondents<sup>✓</sup> and it deserves to be dismissed.
4. On the basis of rival contentions of the parties, following points arise for my determination. I have noted my findings against them for the reasons stated below:

<sup>✓</sup>  
3-8-2018



POINTS	FINDINGS
1. Have the respondents failed to deliver possession of flat to the complainant without circumstances beyond their control?	Yes
2. Is the complainant entitled to the reliefs claimed?	Yes
3. What order?	As per final order.

### REASONS

5. Point Nos.1 & 2 The complainants', Advocate Kutkar for respondent made submissions on expected lines. The project of the respondents is ongoing project and is registered with MahaRERA. It is now well settled that the provisions of RERA are applicable to all on going projects. Hence objection raised by respondent No.1 cannot be accepted. The complainants are very much allottees.
6. The respondent has alleged that delay in delivery of possession is caused by reason beyond his control. The respondent could not even mention the reason. The question of such reason being beyond his control, therefore does not arise. It is only a defence taken for the sake of defence and it is not acceptable. So also respondent claims that as per RERA record revised date of possession is 31-12-2020. The respondent has not taken consent of the complainant for such extension of date of delivery of possession. Such unilateral act on the part of respondent is not binding on the complainant.
8. Respondent solicited my attention to Section 32 of the RERA. No doubt the provisions of the act and functions of

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the authority include promotion of real estate sector. A bonafide promoter deserves a sympathetic approach. Here the respondent is not showing any bonafides in not fulfilling promise to deliver possession of the flat booked by complainant<sup>s</sup> despite accepting huge amounts from them. Clearly the delay on the part of respondents<sup>w</sup> appears deliberate.

10. The complainant has placed on record copies of receipts in respect of payments made by her. Accordingly, following amounts were paid Rs.8023 dated 25-6-15, Rs.19076 dated 17-7-15, Rs.1888524 dated 20-7-15, Rs.80119 dated 17-7-15, Rs.20069.52 dated 14-10-15, Rs.472131 dated 14-10-15, Rs.4769 dated 15-10-15, Rs.19990.28 dated 3-11-15, Rs.472,131 dated 5-11-15, Rs.4769 dated 19-11-15, Rs.20029.80 date 19-11-15, Rs.472131 dated 19-11-15, Rs.4769 dated 28-12-15, Rs.20745.15 dated 28-12-15, Rs.472131 dated 28-12-15, Rs.4769 dated 30-12-15, Rs.20745 dated 30-12-15, Rs.472131 dated 30-12-15, Rs.4769 dated 25-1-16, Rs.20745 dated 25-1-16, Rs.472131 dated 25-1-16, Rs.4769 dated 12-2-16, Rs.20745 dated 12-2-16, Rs.472131 dated 12-2-16, Rs.4769 dated 10-3-16, Rs.20745 dated 10-3-16, Rs.472131 dated 10-3-16, Rs.4769 dated 5-4-16, Rs.20745 dated 5-4-16, Rs.472131 dated 5-4-16, Rs.4769 dated 5-7-16, Rs.21461.25 dated 5-7-16, Rs.472131 dated 19-7-16, Rs.9538 dated 7-1-17, Rs.944262 dated 7-1-17, Rs.41490.30 dated 8-2-17. The total comes to Rs.93,36,710.30. So far as stamp duty is concerned, on cancellation of agreement part of it is refundable. The complainants would not be entitled to the

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refundable amount. I therefore answer point no.1 and 2 in the affirmative and proceed to pass following order.

**ORDER**

1. The respondents shall refund Rs.93,36,710.30 to the complainant which were received from them with interest @ the State Bank of India highest Marginal Cost of Lending Rate plus two percent per annum prevailing as on date, which is refundable from the date of payment till actual realisation - (minus) the stamp duty which can be recovered by the complainant.
2. The respondents shall pay costs of Rs.20,000/- to the complainant.
3. The respondent shall pay above amount within 30 days from the date of issue of this order.

Pune  
Date :- 13.08.2018

*MV* 13-8-2018  
(M.V.Kulkarni)  
Adjudicating Officer,  
MahaRERA