

**BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,  
PUNE  
Complaint No.CC005000000010678**

**Dr.Arun Arora  
Mrs.Aruna Arora**

**.. ComplainantS**

**Versus**

**Marvel Sigma Homes Pvt Ltd**

**.. Respondent**

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

**Appearance :**

**Complainant : Mr.Milind Deshpande representative  
Respondent : Advocate Amit Patil**

**FINAL ORDER**

**13-08-2018**

- 1.** The complainants who had booked a flat with respondent/developer seeks 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 dais and due to non availability of stenographer, this judgement is being delivered now.
- 2.** The complainants have alleged that they had booked a flat No.A-801 in Marvel Kyra A & B Building Project at

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Hadapsar with respondent. It is alleged that complainant was promised possession by 30-06-2017. Other necessary details are required to be fished out from the documents annexed to the complaint. Agreement was signed on 26-02-2015. The area of the flat is 277.19 sq.mtrs. The price agreed is shown as Rs.3,41,21,500/- Total amount paid is shown as Rs.3,17,70,986/- Date of delivery of possession mentioned in the agreement is 30-06-2017. Since possession is not delivered, complainant seeks refund of total amount paid alongwith interest and compensation.

3. Respondent No.1 filed written explanation on 19-04-2018. It is alleged that since agreement was entered into on 26-02-2015 the complainant is not an allottee under RERA act. The project has been delayed due to reasons beyond the control of the respondent i.e., obstruction by co-promoters. 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 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:

13-8-2018

**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 Advocate Milind Deshpande for complainant, 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 cannot be accepted. The complainant is very much an allottee.
6. The respondent has alleged that delay in delivery of possession is cause by reason beyond his control. The question of such reason being beyond his control, ~~therefore~~ does not arise. It is only a defence taken for the ~~safe~~ of defence and it is not acceptable. So also respondent No.1 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 No.1 is not binding on the complainant.

*13.8.2018*



7. Respondent No.1 solicited my attention to Section 32 of the RERA. No doubt the provisions of the act and functions of the authority include promotion of real estate sector. A bonafide promoter deserves a sympathetic approach. Here the respondents are not showing any bonafides in not fulfilling promise to deliver possession of the flat booked by complainant despite accepting huge amounts from them. Clearly the delay on the part of respondents appears deliberate.
8. The complainant has placed on record copies of receipts in respect of payments made by them. Accordingly, Rs.16,39,514.25 were paid on 1-8-2016 and Rs.74,523.37 were paid on 1-8-2016. The total comes to Rs.17,14,037.62 Bank statement is also placed on record. So far as stamp duty is concerned, on cancellation of agreement part of it is refundable. The complainant would not be entitled to the 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.3,17,70,986/- to the complainant which were received from her 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.

13-8-2016

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

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