

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

Complaint No.CC005000000022018

**1.Rahul Bharat Vedpathak
2.Reshma Rahul Vedpathak .. Complainants**

Versus

**1.Dreams Constructions Pvt Ltd
2.Umesh Ambardekar
3.Ramesh G Mehta
4.Preeti Patil .. Respondents**

**Coram : Shri.W.K.Kanbarkar
Hon'ble Adjudicating Officer**

FINAL ORDER

27-03-2019

1. Present complaint is moved for refund of amount together with interest thereon for the booked flat, in the light of Section-18 of The Real Estate (Regulation & Development) Act, 2016.
2. Complaint speaks that the complainants have booked flat No.403 in 'D' Wing in the project "Dreams Solace" situate at Hadapsar vide agreement dated 16-01-2016 for price of Rs.35,88,700/-. In pursuance of said registered agreement for sale payment of Rs.32,11,063/- was made to the respondents. As per

WKK

said agreement date of possession of the booked flat was scheduled on or before June, 2017. However, the respondents have failed to perform part of their contract and to deliver the actual possession of the booked flat within stipulated period inspite of demand. Therefore, the present complaint seeking permission to withdraw from the said project and further for refund of amounts paid to the respondents together with interest thereon and compensation.

3. Plea of the respondents recorded. Respondents have filed written explanation and resisted the complaint claim on various grounds. Admitted that as per agreement dated 16-1-2016 flat No.403 in 'D' Wing in Dreams Solace situate at Hadapsar, was booked by the complainants with the respondents for price of Rs.35,88,700/- and possession was to be delivered on or before June, 2017.
4. According to respondents agreement for sale dated 16-1-2016 was registered under the MOFA Act prior to RERA Act and hence complaint false under MOFA Act and not under RERA Act. Possession of the booked flat was to be given on or before June, 2017 as per agreement under the MOFA Act. As per MOFA Act grace period of six months provided and thereby possession was to be delivered on or before December, 2017. After RERA Act came into force on 1st May, 2017 project of the respondents registered

WKK

with RERA Authority and thereby revised date of delivery of possession by 30-6-2019.

5. On account of impact of demonetisation, GST, financial restructure due to RERA Act and critical market situations project delayed and thereby respondents are not liable.
6. Present complaint seeks reliefs for withdrawal from the project and for refund of amounts paid and if the said reliefs are granted may cause injustice to the respondents. Respondents are always ready and willing to complete the construction of the project appropriately. Thus, the present complaint is not maintainable under law and same liable to dismiss.
7. On the above controversial contentions, the following points have arisen for my determination and findings thereon are as under:

| POINTS | FINDINGS |
|---|--------------------|
| 1. Whether the complainants are entitled to withdraw from the project and further for refund of amounts paid by them together with interest thereon & compensation as sought? | In the affirmative |
| 2. What order? | As per final order |

WKK

REASONS

8. Point No.1 & 2: Admitted position that the complainants have booked flat No.403 in 'D' Wing in the project "Dreams Solace" situate at Hadapsar vide agreement for sale dated 16-1-2016 for price of Rs.35,88,700/- and out of said amount complainants have paid Rs.32,11,063/- to the respondents. So also admitted that the complainants have borne stamp duty of Rs.2,15,200/- and registration charges of Rs.30,840/-.
9. Respondents have denied maintainability of the present complaint on the ground that the RERA Act came into force on 1st May, 2017 and before that MOFA Act was applicable for the said project and hence present complaint under RERA Act is not maintainable and the same is liable to dismiss. Parties have entered into agreement for sale on dated 16-6-2016 and possession of the booked flat was to be delivered on or before June, 2017. Moreover, provisions of Section-18 of the RERA Act, speaks, as, "if the promoter fails to complete or is unable to give possession of an apartment, building or plot in accordance with terms of the agreement for sale." So obviously the present complaint falls within the purview of RERA Act. Therefore, when the respondents / developers have failed to perform part of their contract in pursuance of said agreement for sale then obviously the provisions of RERA Act are

WKK

applicable. On the contrary the contentions of the respondents that the provisions of MOFA Act are applicable and not RERA Act is not maintainable under the law in view of the aforesaid discussions.

10. In accordance with agreement for sale possession of the booked flat was to be delivered on before June, 2017. However, RERA Act came into force on 1st May, 2017 and the respondents have registered their project with their RERA Authority and thereby got revised date of possession by 30-6-2019. So respondents contending that the possession of the booked flat is to be delivered on or before 30-6-2019 and not by on or before June, 2017 and hence the present complaint even on that count is also not maintainable. Just to mention that project is registered with the RERA Authority with revised date of possession by 30-6-2019 just as procedural aspect. Apart from such position when as per the agreement for sale possession of the booked flat was to be delivered on before June, 2017 then for any revised date for delivery of possession of the booked flat then their must be consent document with the allottee of the flat but such is not the case on record. Therefore, contention of the respondents is that with the RERA Authority registered revised date of possession by 30-6-2019 and therefore the present complaint is not maintainable under the RERA Act is also not maintainable under the Act.

WKK

11. Further point canvassed on behalf of respondents that on account of impact of GST, demonetisation and financial restructure due to RERA Act and also on account of critical market situations in the Real Estate project could not be completed timely even though respondents are always ready and willing to complete the project appropriately and hence even on count also the present complaint is not maintainable. When under the agreement for sale it was obligatory on the part of the developers / respondents to perform their part of contract appropriately and thereby to deliver the possession of the booked premises within stipulated period and if the developers/respondents failed to perform their part of contract in that regard, then they cannot take advantage of grounds like so called impact of demonetisation, GST and critical market situations etc., in the Real Estate and thereby to run from the clutches of RERA Act.
12. Under the provisions of Section-18 of the RERA Act in case if the developer fails to perform obligations under the agreement then the allottee is at liberty to withdraw from the project. Complainants seeking relief for withdrawal from the said project and their such prayer is maintainable. Once the complainants allottees are withdrawn from the project then the developers of the project are under obligation to refund the amounts whatever received by them together with interest and compensation

WKK

appropriately thereon for the act committed by the developer. Respondents without just and proper cause have failed to deliver the actual possession of the booked flat to the complainants. Complainants have made payment of Rs.32,11,063/- and also they have borne stamp duty charges of Rs.2,15,200/- and registration charges of Rs.30,840/-. Under such circumstances complainants are entitled to withdraw from said "Dreams Solace" project of the respondents and further entitled for refund of Rs.32,41,903/- inclusive of registration charges of Rs.30,840/- and part payment of Rs.32,11,063/-, exclusive of stamp duty of Rs.2,15,200/-, together with State Bank of India's highest marginal cost of lending rates 8.75% plus 2% total 10.75% p.a. from the date of payment till its realisation by the complainants. Respondents shall further pay Rs.20,000/- as cost of the proceedings to the complainants. Thus, point No.1 and 2 answered accordingly. In the result pass the following order.

ORDER

1. Complainants are hereby entitled to withdraw from "Dreams Solace" project and thereby respondents shall refund Rs.32,41,903/- inclusive of registration charges of Rs.30,840/- and payment of part price of Rs.32,11,063/-, together with interest thereon at State Bank of India's highest marginal cost of lending

WKK

rate 8.75% plus 2% i.e., 10.75% p.a. from the date of payments till its realisation by the complainants.

2. Respondents shall pay Rs.20,000/- as cost of this proceeding to the complainants.
3. Respondents shall further pay the aforesaid amounts to the complainants within 30 days from the date of this order.
4. The charge of the aforesaid amounts shall be kept on the flat in dispute.
5. The complainants shall execute cancellation deed in favour of respondents at the cost of respondents.

Pune
Date :- 27-03-2019

W.K. Kanbarkar
27-03-2019
(W.K.Kanbarkar)
Adjudicating Officer
MahaRERA