

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

COMPLAINT NO. CC006000000078646

1. Shailendra Dwiwedi
2. Priti Shailendra Dwiwedi ..Complainants

Verses

Mateshwari Realtors ..Respondent

MahaRERA Regn. No. P51700010188

Coram:

Hon'ble Shri Madhav Kulkarni.
Adjudicating Officer, MahaRERA.

Appearance:

Complainant: Adv. Naveen Wandrekar
Respondent : CA Kirit Gada

**ORDER
(Dated 04.12.2019)**

1. The complainants/allottees husband and wife who had booked 3 flats with the respondent/promoter, seek withdrawal from the project and refund of money paid with interest as respondent failed to deliver possession as per agreement.
2. Complainants have alleged that they booked three flats nos. 703, 704 and 705 by registered agreement dated 23.09.2013 for a consideration of Rs.87,80,475/-. Promised date for delivery of possession was December, 2016. As the respondent failed to deliver possession, complainant filed complaint no. 55115. Respondent was directed to deliver possession by 31.12.2018. Respondent has failed to deliver possession. Therefore complainants seek refund of Rs.81,78,379/- together with interest.

3. Complaint came up before me on 26.06.2019. Matter was adjourned for plea of the respondent and written explanation by the respondent. Plea of the respondent was recorded on 24.07.2019 and he pleaded not guilty. Respondent filed written explanation. Matter was adjourned to 23.08.2019 for arguments. Arguments were heard on 23.08.2019. As I am working at Mumbai and Pune Offices in alternative weeks, and due to huge pendency in this office, this matter is being decided now.
4. In his written explanation, respondent has alleged that total consideration received in respect of flat nos. 703, 704 and 705 in B wing in Mateshwari Altura building is Rs.74,63,405/-. Complainant spent Rs.6,19,260/- for stamp duty, registration charges etc. and Rs.3,29,124/- for service tax and VAT. Rs.63,166/- in respect of flat no. 703, Rs.2,06,533/- in respect of flat no.704 and Rs.8,21,167/- in respect of flat no. 705 are due since September, 2018. Previous complaint no. 55115 was settled amicably. Respondent undertook to pay Rs.9,00,000/- as lumpsum compensation and paid it on 24.09.2018 and also allotted 3 car parking spaces to the complainants. It was agreed that if the project was further delayed, rent of Rs.6,000/- per p.m. will be paid to the customer. At the time of settlement, complainants were aware that revised date of completion was 31.12.2022 and it was agreed in the settlement. There was case pending in the court of Civil Judge, Sr. Division, Thane since 2013. Plaintiff's application in that suit was rejected. There was matter with SDO which was decided in favour of the respondent. Matter before Additional Collector, Thane was also decided in favour of the respondent. There was issue of inheritance between land owners and their family members. Mutual understanding was arrived at on 26.06.2018. Due to this dispute, financial institutions stopped disbursing loans to customers.

Project is delayed for the above reasons. Respondent undertakes to complete the project within next 6 to 8 months. Complaint therefore, deserves to be dismissed.

5. Following points arise for my determination. I have noted my findings against them for the reasons stated below:

| POINTS | FINDINGS |
|---|---------------------|
| 1 Has the respondent failed to deliver possession of the flat to the complainants as per agreement, without there being circumstances beyond his control? | Affirmative |
| 2 Are the complainants entitled to the reliefs claimed? | Affirmative |
| 3 What Order? | As per final Order. |

REASONS

6. **Point Nos. 1 & 2** – Complainants claim to have booked 3 flats at a time in the project of the respondent which appear to be adjacent to each other. Complainants have not placed on record, copies of the agreements for the reasons best known to them. Price of each flat is not given separately in the complaint. Neither the location is mentioned in the complaint. It appears that agreements were executed on 23.09.2013 and possession was promised by December, 2016. According to respondent, complainants have paid Rs.74,63,405/- towards consideration of the flats and are still to pay Rs.6,19,260/-. It means that the total consideration of 3 flats was Rs.80,82,665/-. Why the price of each flat could not be separately mentioned by the complainants is not understood. Since agreements are not there on record, agreed date for delivery of possession could not be ascertained.
7. There is no dispute that earlier complaint no. 55115 was filed by the complainants. Copy of Final Order in that complaint is

placed on record by the respondent. One undertaking was also given by the respondent on 23.08.2018. Final Order was passed on the same date. The complaint was in respect of flat no. 703. Respondent agreed to hand over possession on or before 31.12.2018. Complainant accepted the said undertaking. Complaint therefore, came to be disposed of. It is the contention of the respondent that date for delivery of possession as 31.12.2022 was accepted by the complainants. That does not appear to be the case.

8. Respondent claims that respondent has paid lumpsum compensation of Rs.9 lakhs on 24.09.2018, which was due till December, 2018. Thereafter, he agreed to pay rent of Rs.6,000/- p.m. per flat. There is such a wording in the undertaking dated 23.08.2018, However, it is not signed by the complainants nor it is mentioned in the Final Order passed by the Hon'ble Member.
9. The defence of the respondent that since a Civil Suit was pending and also matter was pending before Revenue Authorities, project got delayed. This defence is not substantiated. It appears no stay order was passed or no injunction was granted against the respondent. Temporary injunction application against respondent was rejected. Challenge to mutation was also rejected. There was no reason for the respondent to delay completion of the project. If the respondent has paid compensation to the complainant, that will be adjusted in the amount awarded to the complainants. One thing is certain that respondent has failed to deliver possession as per agreement without there being circumstances beyond his control. I therefore, answer point no. 1 in affirmative.
10. According to the respondent, complainants have paid in all Rs.74,63,405/- towards the price of 3 flats. Further, Rs.6,19,260/- were spent towards stamp duty. Further Rs.3,59,124/- were spent

towards service tax and VAT etc. Thus admittedly, complainants paid Rs.84,41,789/- under the promise to receive possession of 3 flats booked with the respondent. Complainants have restricted their claim to Rs.81,78,379/-. Whether this is inclusive of stamp duty or not is not made clear. So far as stamp duty is concerned, complainants will be entitled to refund of stamp duty as per rules. Except that amount complainants will be entitled to refund of the balance amount together with interest as per rule 18 of Maharashtra Rules. I therefore, answer point no. 2 in the affirmative and proceed to pass following Order.

ORDER

1. The complainants are allowed to withdraw from the project.
2. Respondent to pay Rs.84,41,789/- to the complainants, except stamp duty amount, which can be refunded as per rules, and Rs.9,00,000/- already paid to the complainants together with interest @10.35% p.a. from the date of payments till final realisation.
3. The respondent to pay Rs.20,000/- to the complainants as costs of this complaint.
4. Complainants to pay deficit court fees in respect of claims in respect of flat nos. 704 and 705 as per Rules.
5. The complainants to execute cancellation deeds at the cost of the respondent.
6. Charge of the above amount is kept on the flats booked by complainants.
7. The respondent to pay above amounts within 30 days from the date of this Order.

Mumbai

Date : 04.12.2019

MH signed on 19.12.2019
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA