

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

Complaint No.CC005000000010802

Sharda Sneh Sindhu Singh .. Complainant

Versus

Marvel Realtors & Developers Ltd .. Respondents

Coram : Shri M.V. Kulkarni

Hon'ble Adjudicating Officer

Appearance :

Complainant : Advocate Shri.Ravindra Mangire

RespondentS : Advocate Shri.Amit Patil

FINAL ORDER

06-09-2018

1. The Complainant who had booked flat with the respondent/developer seeks refund of the amount by withdrawing from the project which prayer is incorporated after amending the complaint, because the respondent failed to deliver possession of the flat in terms of agreement.
2. The complainant in her proforma complaint alleged that she booked flat No.503 in 'D' building in the project of respondent Marvel Cerise, Kharadi Road, Pune. Agreement in that respect was executed on 29-9-2011. The respondent agreed to deliver possession of the flat on or before 31-12-

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6-9-2018

2014. The complainant made full payment of the price of flat Rs.83,19,000/- by February 2013. The complainant is therefore entitled to claim interest at the rate of 12% per annum on this amount until the respondent delivers possession of the flat. A direction was sought to the respondent to hand over possession of the flat to the complainant as she had paid entire price. She claimed Rs.58,27,479/- as interest component and Rs.25,00,000/- as damages. As stated earlier by amending the complaint the complainant now seeks refund of the total amount with interest and compensation.

3. The respondent has resisted the complaint by filling written explanation on 11-7-2018. It is alleged that RERA does not have retrospective effect. As this is transaction effected prior to coming into force of RERA, this complaint is not tenable. Marvel Omega builders Pvt Ltd was formerly known as Windshield Developers Pvt Ltd. and Windshield Developers Pvt Ltd amalgamated with Marvel Omega Builders Pvt Ltd and ✓ Marvel Realtors and Developers Ltd was subsequently known as Marvel Promoters and Developers Pvt Ltd. As per order of the Company Law Tribunal Marvel Promoters and Developers was amalgamated with Marvel Realtors and Developers Pvt Ltd. Most of the work of the flat is completed and complainant would be put in possession as per the date mentioned in the RERA. Section-32 of the RERA gives authority to facilitate the growth and promotion of the Real Estate sector. Hence no cause of action arose for filing of the complaint. The complaint therefore deserves to be dismissed.

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6-7-2018

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:

POINTS

FINDINGS

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| 1. Has the respondent failed to deliver possession of flat to the complainant as per agreement without circumstances beyond his control? | Yes |
| 2. Is the complainant entitled to the reliefs claimed? | Yes |
| 3. What order? | As per final order. |

REASONS

5. Point No.1 & 2: As stated earlier initially the complainant prayed for direction to the respondent to deliver possession of the flat and to pay interest and compensation. While deciding the amendment application vide order dated 27-6-2018, I observed that prayer of refund of earnest money as an alternative prayer is permissible under law, namely Specific Relief Act. Consequently I allowed the complainant to change prayer to withdrawal from the project and refund of the amount. The complainant has placed on record copy of agreement dated 29-9-2011. Accordingly the

27-9-2018

respondent agreed to sell flat No.503 in 'D' Wing in the Project of Marvel Cerise admeasuring 114.45 sq.mtrs + balcony total 148.64 sq.mtrs. The consideration agreed was Rs.83,19,000/-. In clause V (B) the respondent agreed to deliver the possession on 31-12-2013. There is no dispute that respondent has not delivered possession of the flat to the complainant till today. There is a delay of almost 5 years in delivering possession.

6. The complainant has claimed that [✓]she has paid entire amount of Rs.83,19,000/- to the respondent. The respondent is not denying having received the consideration amount. Infact he has not put up any defence. He has only asserted that he will deliver possession on the date communicated to RERA. However, there is a clear default in delivering possession as per terms of the agreement. The complainant has placed on record her bank statement and chart about payments made to respondent. Receipts obtained from the respondent are not placed on record. But the payments are not denied by the respondent. Consequently the complainant is entitled to refund the amount paid by her with interest. I therefore answer point No.1 & 2 in the affirmative and proceed to pass following order.

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f.a. 2018

ORDER

1. The complainant is permitted to withdraw from the project and respondent shall repay Rs.83,19,000/- received from the complainant with interest @ the State Bank of India Highest Marginal Cost of Lending Rate plus two percent per annum prevailing as on date i.e., $8.65\% + 2\% = 10.65\%$ from the date of payment.
2. The respondents shall pay Rs.50,000/- as costs to the complainant.
3. The complainant shall execute cancellation deed at the cost of respondent.
4. Charge of the above amounts shall be kept on the flat booked by complainant.
5. The respondent shall pay above amount within 30 days from the date of issue of this order.

Pune
Date :- 06.9.2018


(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA