

BEFORE THE ADJUCATING OFFICER WITH
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC0060000000012532

Umma Tekchandani ... Complainant

Versus

P.G. Enterprises ... Respondent.

MahaRERA Regn No. : P51800002838

Coram: Shri Madhav Kulkarni,
Hon'ble Adjudicating
Officer.

Appearance:

Complainant: Umma Tekchandani
present with Adv.

Respondent: N.S. Rao with Adv.

ORDER
(Date: 1st August, 2018)

1. The Complainant who had booked a flat with the builder / Respondent, prays for refund of full amount paid to the Promoters with interest @ 12% per annum and compensation of Rs. 5 lakhs as the Respondent failed to deliver possession of the flat, as per Agreement.
2. The matter came up before the Hon'ble Chairperson MahaRERA on 19th of March, 2018. By observing that the Complainant wants to withdraw from the Project with compensation and interest, the matter came to be referred to Adjudicating Officer. The matter came up before me on

19/3/2018


24th April, 2018 and Amendment Application was moved by Complainant to incorporate prayer about delivery of possession.

3. The Complainant has alleged that she entered into Agreement with the Respondent on 7/8 th December, 2014 for purchase of Flat No. 201 in the Building 'Om Palace' situated at Rajan Pada, Mittal College Road, Malad (West), Taluka Borivali, Mumbai 400 064. The price was Rs.39 lakhs out of which Complainant has paid 96% amount. She has also paid stamp duty and registration fees of Rs.2,42,380/-. The Respondent had promised to deliver possession of flat on or before 31st of March, 2016 in clause 10 of the Agreement. In clause 10 and 11, he promised to refund full amount with interest @ 9% per annum in case of failure to deliver possession by 31st March, 2016. The possession has been delayed by 21 months as on 31st of December, 2017 and is further expected to be delayed as MahaRERA is showing date of delivered possession as 30th June, 2019. As per clause 5 of the Agreement, the allottee was supposed to be paid interest @18% per annum on the delayed amount. The Complainant is therefore entitled for refund of the amount paid with interest @12% per annum and compensation for delayed possession to the extent of Rs.5 Lakhs as loss is suffered due to escalation in real estate prices.
4. As stated earlier, the Complainant made an application for amendment of the complaint on 24th April, 2018. She sought substitution of the prayer for refund of full amount with handing over possession of the flat at the earliest and interest on the total amount paid by allottee till the date of possession.
5. The Respondent resisted the complaint and Amendment Application by filing Affidavit and say on 22nd of May, 2018 and 19th of June 2018. On 12th of June, 2018 the Complainant had filed an application to the effect that Amendment Application was not required. In his affidavit, the Respondent alleged that the Complainant had

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expressed her intention to withdraw. The amendment changes nature of relief. There is no provision for amendment / substitution in RERA Act. The Amendment makes a fundamental change in the character of the suit. Under Specific Relief Act, such prayer is not tenable.

6. The Agreement was under the provisions of Maharashtra Ownership of Flats Act, 1963, therefore, RERA is not applicable. The Complainant has misrepresented that her prayer for Amendment is already allowed by Authority which is not the case. The Complainant is not a genuine purchaser but an Investor in the property. She has no interest in actual property. She was interested in financing the Project. She has paid almost the entire consideration at the very threshold. In the alleged delay of 21 months in handing over possession, not even once did the Complainant ask for status of the Project. The Complainant was paid a monthly amount of Rs.1,50,000/- in cash per month. Whole of her amount has been refunded except Rs. 5 lakhs. The Complainant started demanding exorbitant sums. The Complainant is a real estate broker. Her Income Tax statement reveals her net worth. Trusting the words of the Complainant, the Respondent gave the amount to her in cash without obtaining receipts. The Complainant cannot claim possession and her prayer is bad in law. Since Complainant is an Investor, RERA Authority does not have jurisdiction. The complaint therefore deserves to be dismissed.
7. On the basis of the rival contentions of the parties, following points arise for my determination, I have noted my findings against them for the reasons stated below:

<u>Points</u>	<u>Findings</u>
1. Has the Respondent committed Default in handing over the Possession of the flat as per Agreement ?	Yes 

2. Is the Complainant entitled for?
Refund of money and compensation? Yes

3. What Order? As per Final Order

REASONS

8. Point 1 & 2: At the outset, I must make it clear that I am appointed as Adjudicating Officer under Section 71 of the RERA, 2016. The power under Section 71 to be exercised by the Adjudicating Officer is to adjudge compensation under Section 12, 14, 18 and 19 of the RERA, 2016. I am therefore of the view that I am not empowered to direct the Respondent / Promoter to hand over possession of the flat booked by the Complainant. Consequently, the question whether amendment of complaint sought by the Complainant was allowed or not allowed becomes irrelevant. I will therefore, consider the original prayer in the complaint i.e. refund of all the amount paid by Complainant to the Promoter with interest and compensation.
9. The Respondent has taken a defence that since the Agreement was entered into prior to the coming into force of RERA 2016, the provisions of RERA are not applicable to the present case and the Agreement was under provisions of Maharashtra Ownership of Flats Act, 1963. Now it is well settled that RERA 2016 is applicable to ongoing projects and therefore the Agreement being registered in the year 2014 is of no consequence. The matter is therefore very much covered by the provisions of RERA, 2016.
10. The next challenge posed by the Respondent is that the Complainant is not a genuine purchaser but an Investor in the property. Shri Deokar, Ld. Counsel for Complainant drew my attention to the draft of consent terms sent on behalf of Respondent which are filed in this complaint. The Respondent agreed to refund the consideration amount of Rs.39 Lakhs received from the Complainant together with

1-8-2016

interest calculated @ 8.65% per annum. On the other hand, It is submitted on behalf of the Respondent by Adv. Giriraj that the Complainant is a real estate broker and therefore paid almost the entire consideration amount at one go. The Complainant never sent application seeking possession of the flat booked. It all shows that the Complainant is not a genuine flat purchaser but an Investor.

11. The Complainant has alleged that she paid Rs.39 Lakhs which is 93% of the consideration. As usual, the date of payment is missing in the complaint. The Respondent admits having received this amount. There is also no dispute that Complainant paid Rs.2,46,318/- towards stamp duty and registration fees. There is also no dispute that agreed date for delivery of possession was 31st of March 2016 and the Respondent has not delivered possession of the flat till today. Even accepting for a moment the contention of the Respondent that the Complainant made payment at one go, that will itself not lead to inference that the Complainant is an Investor and not a genuine purchaser. A person having funds with him can make payment at one go to reduce his burden of making payment in the future. It is true that when the amount is to be paid towards purchase of a flat, it is generally paid in instalments as per progress of the construction. In this complaint, some photographs have been placed on record showing partial construction. When the photographs were snapped is not known, whether that was the position at the time of booking is also not known.
12. An Investor is a person who expects returns at a desired rate which could be speculative. On the other hand, a person purchasing a flat with an idea that in future, the flat will be sold with handsome gains cannot be called an Investor. An Investor will have definite period in his mind for the returns to start coming. In the case at hand what exactly was the intention of the Complainant in respect of alleged investment is not explained by the Respondent. Merely because 93% consideration amount was paid and

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there being no evidence as to on what date the payment was made, I hold that Respondent failed to prove that Complainant was an Investor expecting certain returns from certain date

13. It is the contention of the Respondent that he has paid back all the money to the Complainant except Rs.5 Lakhs. The Respondent is relying on the figure of compensation of Rs.5 Lakhs claimed by the Complainant. It is the contention of the Respondent that he returned the amount in cash in monthly instalments of Rs.1,50,000/-. Trusting in the words of the Complainant the Respondent made those payments without obtaining any receipts. The Respondent is a builder and such a defence about making payment without obtaining receipt is not at all tenable. This is a defence just taken for the sake of defence and deserves to be rejected.
14. In view of discussion above, Complainant will be entitled to withdraw from the Project and to refund of the amount paid by him except the stamp duty which can be refunded. She will be entitled to recover interest on this amount from the Respondent @ the State Bank of India highest Marginal Cost of Lending Rate plus two percent per annum prevailing as on date, from the date of making payment. So far as monetary loss is concerned, the interest awarded on the amount paid to the builder compensates this loss. So far as mental agony suffered by the Complainant is concerned a further amount of Rs.50,000/- will suffice the purpose. In addition the Complainant will be entitled to costs of Rs.25,000/- I, therefore answer on point Nos.1 & 2 in the affirmative and proceed to pass following order:-

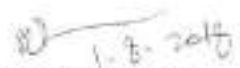
ORDER

1. By withdrawing from the Project, the Complainant is entitled to recover Rs. 41,42,380/- minus the stamp duty which is refundable together with interest @ the State Bank of India highest Marginal Cost of Lending Rate plus two percent per annum prevailing as on date, which is

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refundable from the date of payment till actual realisation.

2. The Respondent shall pay Rs.50,000/- to the Complainant as compensation for mental agony.
3. The Respondent shall pay costs of Rs.25,000/- to the Complainant.
4. The Respondent shall pay the above amount within 30 days from the date of issue of this order.


(M. V. Kulkarni)
Adjudicating Officer, MahaRERA
Mumbai.

Place: Mumbai

Date: 1st August, 2018.