

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
PUNE

Complaint No. CC0050000000010732

Ganpati B. Desai

.. Complainant

Versus

M/s. Rajmata Constructions.

.. Respondent

Coram : Shri S.B. Bhale

Hon'ble Adjudicating Officer

FINAL ORDER

10th APRIL, 2018

1. The Complainants have filed this complaint under the provisions of Section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the **RERA Act**). It is their contention that they had entered into an Agreement with the Respondents to purchase a flat under the project of "Rajmata Sindhunagar" at 178, Fursungi, Tal. Haveli, District Pune in the year 2009. Under that agreement, the Complainants had paid entire amount of Rs. 2,34,000/- till 31.12.2009 as a complete part of 20% booking. After this, they also paid the Respondent an amount demanded on time to time, maintenance, parking, extra work, Stamp duty, registration charges, VAT, MSEB charges and other miscellaneous charges totally amounting to Rs. 7,78,533/-. Therefore, they paid the interest per EMI from time to time to the bank to the sum of Rs. 19,585/- + Rs.10,476/- + Rs.915/- = Rs. 39,576/- and home rent paid

from Jan. 2015 till the date to the sum of Rs. 1,16,512/-. It is also contended that subsequently the Respondent has registered the official project with MahaRERA bearing Registration No. P52100014060. After registering the project with MahaRERA, the Respondent had agreed to hand over possession of the booked flat No.9 in B Wing, 2nd floor to the Complainant and mentioned that the proposed date of completion of the project is 31.12.2014. However, further under the registered agreement, the Respondent has agreed to hand over the possession on or before 18.01.2015. Since the Respondents have failed to deliver the possession in time, as agreed under the Agreement. Now they want to withdraw from the project. Thus the Complainants have claimed refund of the amount received to the Respondent with interest and compensation.

2. On the aforesaid contents of the complaint, I have recorded plea of the Respondent on 15.03.2018, to which they pleaded not guilty. The Respondent also filed on record the written submission or explanation in support of their case on 15.03.2018. It is averred by the Respondent in the written explanation that they are the complainants who failed to make payments in time in terms of the agreement, project is delayed on their own failure. In terms of the agreement, the Complainants were liable to pay the amount of Rs. 3,94,740/- on or before 18.10.2013 to the Respondent as the slab was to be casted and the further construction to be continued. They failed to make the payments in time despite of notices and lastly their agreement was also terminated by issuing the notice dated 01.02.2018. After termination of the said Agreement, the Respondent have

10.4.18

filed Special Civil Suit No. 320/2018 against the Complainants, which is pending before the Court of Civil Judge, Sr. Division, Pune. By this suit, the Respondents had claimed the relief of declaration in respect of cancellation of agreement, dated 08.10.2013 and perpetual injunction, etc. After filing that suit, the Complainants have filed this false and frivolous complaint before this Authority claiming the reliefs, to which they are not entitled to. This complaint is liable to be dismissed.

3. On the aforesaid facts and circumstances of the case, following points arise for determination and I am going to record my findings thereon as under.

POINTS

FINDINGS

- | | | |
|-----|---|------------------------|
| (1) | Whether the Respondents have failed to deliver the possession of the Apartment booked by the Complainants in the project stated above in terms of the Agreement ? | ..In the Affirmative |
| (2) | Whether the complainants are entitled to claim refund of the amount paid by them under the agreement to the Respondents along with interest and Compensation under the provisions of RERA Act ? | .. In the Affirmative |
| (3) | What order ? | .. As per final order. |

REASONS

6. **POINT Nos.1 and 2 :-** Heard Shrikant Desai, the son of the Complainants on their behalf, whereas Mr. Bidkar, Adv. For the Respondents. Perused papers filed on record.
7. On perusal of the papers, it seems that the project named Rajmata Sindhunagari is continued since 2009 and lingering till the date. It also seems that subsequently the Respondents have registered this project with MahaRERA bearing Registration No. P52114060. It is also fact that after the aforesaid registration, the Respondents have failed to hand over possession of the booked flat to the Complainants in terms of the agreement as on 31.12.2014 or 18.01.2015. In these circumstances and without any hesitation, it can be said that the Complainants have made out their case to withdraw from the project and claiming refund of entire amount alleged to have been paid with interest and compensation, etc.
8. It is the case of the Respondents that the entire project is lingering due to non-payment of due instalments of Rs. 3,94,740/- by the Complainants on or before 08.10.2013 to the Respondents. Further the question remains the filing of Special Civil Suit No. 320/2018 by the Respondents against the Complainants, which is pending before the Court of Civil Judge, Sr. Division, Pune is bar to proceed with the complaint further. The simple answer to the aforesaid question will be in the negative. In short, it can be said that the civil suit named above seems to be the created litigation for no reason. The Real Estate (Regulation and Development) Act, 2016 is a special enactment and mere pendency of civil suit stated above cannot affect the

2018
10-11-18

jurisdiction of this forum to proceed with this complaint as per law. Despite of written submission or explanation, no such specific case is made out by the Respondent to deny the claim of the Complainants. Delay seems to be of fatal since 2009 and onwards. Therefore, the Complainants availed an option to withdraw from the project and claimed refund of the amount with interest and compensation in view of the provisions of Section 18(1) of the RERA. By filing of receipts, the proof of payment of entire amount, it seems that the entire amount paid by the Complainants to the Respondents is Rs. 7,78,533/- inclusive of stamp duty. The amount paid by the Complainants towards the stamp duty appears to be Rs. 1,05,350/-. No doubt about it that the Complainants can reimburse the amount of the stamp duty to some extent or in proportionate. In any case, the amount paid towards the stamp duty cannot be fully reimbursed. Even after deducting the amount of stamp duty, the average amount which the Respondents are liable to pay to the Complainants comes to Rs.6,78,533/-. In addition to that, the Respondents are also liable to pay the amount of Rs. 50,000/- to the Complainant towards the loss of reimbursement in stamp duty amount. In addition to that, the Complainants are claiming the interest per EMI from time to time to the bank to the sum of Rs. 19,585/-, Rs. 10,476 + Rs. 915 = Rs. 39,576/-. Since the Complainants are claiming the refund of amount with interest at the prescribed rate in the legal provisions and rules of the RERA, It can be seen that they are receiving more interest over the amount paid by them to the Respondents, which the Complainants are entitled to refund. As per the MCLR of State Bank of India, the rate of interest is currently 8.05% +

RTI
10-4-16

2%. Thus the Complainants are entitled to receive the entire amount which the Respondents have received i.e. Rs. 6,78,533/- + Rs. 50,000/- = Rs. 7,28,533/-. The Complainants are entitled to receive the aforesaid amount of Rs. 7,28,533/- with simple interest @ 10.05% p.a. since the date of making the payments from time to time till the realisation of the same. Therefore, the claim of Complainants towards the EMIS to the sum of Rs. 39,576/- cannot be considered. In addition to that, the Complainants are entitled to receive the cost of the litigation to the sum of Rs. 15,000/- from the Respondents.

9. With this and for the foregoing reasons and facts and circumstances of the case, I proceed to pass the following order by answering Point Nos.1 and 2 in the affirmative.

ORDER

- (1) The Respondents are directed to pay the amount of Rs. 7,28,533/- to the Complainants along with simple interest @ 10.05% p.a. from the date of receipt of payments from time to time till realisation of the entire amount.
- (2) The Respondents are also directed to pay cost of Rs.15,000/- of this litigation.
- (3) Charge of the entire amount be kept on the booked flat by the Complainant in the project named Rajmata Sindhunagari at 178, Fursungi, Tal. Haveli, District Pune till the realisation of the entire amount.

26/3
10-4-18

- (4) The Respondents are directed to pay the aforesaid amount as ordered to the Complainants within one month since the date of this order.
- (5) On realisation of their claim, the Complainants shall execute the Deed of Cancellation of Agreement in favour of the Respondents at the Respondents' cost.

Pune
Date :- 10.04.2018

S. B. Bhale
10.4.18
(S. B. Bhale)
Adjudicating Officer,
MaharERA, Pune