

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
PUNE

Complaint No.CC005000000022430

- 1.Shweta Dattatray Uplanchiwar
2.Mr.Dattatray Gajananrao Uplanchiwar
3.Mrs.Mangal Dattatray Uplanchiwar .. Complainants

Address

Complainant No.1.
C-601, Shivalaya, CHS
Guru Mandir Road, Dombivalli-421201 &
Complainant No.2 & 3
Aromatic Wind, Flat No.906, Near HP Gas
Godwon, Shankar Kalat Nagar,Kala Khadak
Wakad, Pune-411057

Versus

1. Kakade VTP Associates (through its partners)
A. Mr.Anil Balasaheb Kakade
B. Mr.Vilas Thanmal Palresha .. Respondents

Office Address: - B-2/207,Gera Gardens,
2nd floor, Koregaon Park, Pune-411001

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

Appearance :
Complainants : Adv.Preeti Mohata
Respondents : Swati Jagtap & Milind Patange,
(A.R of respondents)

FINAL ORDER

26-07-2019

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1. Present complaint is initiated for refund of amount paid for booked flat together with interest and compensation thereon, in the light of Section-18 of The Real Estate (Regulation & Development) Act, 2016.
2. Complaint disclosing that complainants have booked flat No.1003 in Wing No.'C' of the project Urban Life situate at Kaatavi Taluka Maval District Pune for consideration of Rs.38,46,470/- with respondents vide agreement dated 14-09-2015. Proposed date of possession of the booked flat was on or before 31-05-2017. Complainants have paid total amount of Rs.35,25,734/- Including stamp duty, registration and other charges. However, respondents failed to deliver the actual possession of the booked flat within stipulated period. Therefore, the present complaint for refund of amounts together with interest and compensation as sought in the complaint.
3. Plea of respondents recorded. Respondents filed their written explanation and resisted the complaint claim on various grounds. Respondents admit execution of agreement for the said booked flat and amount of consideration mentioned therein. According to respondents that the complainants have paid Rs.32,83,334/- towards consideration, service tax and VAT for the said flat. As per agreement proposed date of possession was on or before 31-5-2017 but with grace period of six months i.e. till 30-11-2017. If respondents unable to give possession of the booked flat subject to reasons beyond their control then as per agreement the promoter shall be liable on demand to refund the amount

to the allottees with interest 9% per annum. Respondents have registered their project and date of completion of project on or before 31-12-2021. Respondents are ready and willing to give possession of the booked flat as the same is at completion stage. Thus, the claim of the complainants for refund, interest and compensation is not just and proper and but liable to dismiss.

4. On the above facts and circumstances of the matter the following points have arisen for my determination and findings thereon are as under:

POINTS	FINDINGS
1. Whether the complainants are entitled to refund of amounts paid by them to Respondents together with interest?	In the affirmative
2. Whether the complainants are further entitled to damages of Rs.5 lakhs?	In the negative
3. What order?	As per final order

REASONS

5. Point Nos.1 to 3: Admitted position between the parties that vide agreement dated 14-9-2015 complainants have booked flat No.1003 in 'C' Wing in the project Urban Life situate at Kaatavi in Pune district for consideration amount

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of Rs.38,46,470/- and proposed date of possession of the booked flat was or on before 31-05-2017.

6. According to complainants they have paid total amount of Rs.35,25,734/- inclusive of stamp duty, registration and other charges. On the contrary on behalf of respondents admitted that respondents have received amount of Rs.32,83,334/- and denied about the receipt of amount of Rs.35,25,734/-. Record reflecting that complainants have made payment by RTGS of Rs.2,22,400/-, Rs.3,00,000/- and Rs.4,95,159/- through IndusInd Bank and SBI, Chandrapur on dated 8-9-2015, 28-4-2015 and 23-7-2015 respectively. Complainants have further made cheque payments of Rs.3,84,647/- and Rs.16,732/- through Union Bank of India on dated 29-4-2016 and further made payment by NEFT Rs.20,000/- through IndusInd Bank on dated 8-9-2015. Accordingly complainants claim they have paid Rs.14,38,938/- by RTGS, Cheques and NEFT as aforesaid. According to complainants they have also made payment of Rs.20,86,796/- by way of Bank loan through PNB, Pune vide A/c No.HOU/PUN/0915/239507. So the complainants have paid total amount of Rs.35,25,734/- as aforesaid. Documents on record disclosing payment of Rs.2,22,400/- and Rs.20,000/- made to the respondents. According to complainants such payment is made for stamp duty and registration and legal fees. Ofcourse said amount of Rs.2,22,400/- and Rs.20,000/- includes the total payment of Rs.35,32,734/-. Arguments advanced on behalf of respondents that unless record is verified unable to state that total amount of Rs.35,25,734/- is made or not even though admitted that

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payment of Rs.32,83,334/- received by the respondents. Complainants have established that they made payment Rs.35,25,734/-.

7. As per agreement proposed date of possession of the booked flat was on or before 31-05-2017 with grace period of six months and the grounds mentioned in page 38 para-21 of the agreement for delay of possession are to be considered. However, except the ground of force majeure, the other grounds/causes cannot be said to be beyond the control of the developers. On behalf of respondents also content that project is about to complete and the respondents are ready and willing to give possession of the booked flat and hence taking into consideration the grounds of delay the claim of the complainants not maintainable and the same liable to dismiss. Date of completion of project registered on MahaRERA authority website 31-12-2021. However, as per aforesaid agreement proposed date of delivery of possession of booked flat was on or before 31-05-2017. Completion certificate of the project in dispute is yet to obtain by the promoter. On behalf of complainants argued that complainants are compelled to stay in the rented premises and they have spent some amount for that purpose. It appears that the complainants have lost hopes to get the possession of the booked flat. Hence under such circumstances complainants are entitled to refund of Rs.35,25,734/- excluding stamp duty of Rs.1,92,400/- which is refundable to the complainants in accordance with law i.e. Rs.33,33,334/- together with simple interest @ 10.75% p.a. from the date of actual payments till its

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realisation of the entire amounts by the complainants. Ofcourse argued on behalf of respondents that stamp duty, registration amount are statutory payments and promoters are not liable for refund of the same. Record disclosing that Rs.2,22,400/- are paid towards stamp duty and registration and Rs.20,000/- are paid for legal fees by the complainants towards booked flat. Amount of registration for the agreement and also amount of legal fees borne by the complainants for the booked flat and hence he is entitle to refund of even such amounts.

8. Complainants are claiming 21% interest but agreement is silent for such rate of interest. Complainants are further claiming compensation of Rs.5 lakhs towards the payment of interest and payment of rent and on other counts but such claim is not maintainable as not substantiated towards the payment of rent and on other counts. As regards payment of interest, the same is considered alongwith refund of amounts appropriately as aforesaid. Thus, the point No.1 is answered as affirmative and point No.2 in the negative and point No.3 accordingly. In the result pass the following order.

ORDER

1. The complainants are allowed to withdraw from the said 'Urban Life' project.
2. Respondents shall refund amount of Rs.35,25,734/- except stamp duty of Rs.1,92,400/-i.e. Rs.33,33,334/- which is refundable as per law, together with simple

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interest @ State Bank of India's Highest Marginal Cost of Lending Rate + 2% p.a. prevailing as on date i.e., 8.75% = 10.75% p.a from the date of actual payments till realisation of the entire amount by the complainants

3. Complainants are entitled to refund of amount of stamp duty of Rs.1,92,400/- under the provisions of Maharashtra Stamp (Amendment) Act, 2015 but in case of failure to get such amount then the respondents shall pay Rs.1,92,400/- in lieu of stamp duty in accordance with law.
4. Respondents shall pay Rs.25,000/- to the complainants as cost of this proceeding.
5. Respondents shall pay the aforesaid amounts within 30 days from the date of this order.
6. The charge of the aforesaid amounts shall be kept on the flat in dispute.
7. The complainants to execute cancellation deed of the agreement after receipt of all the aforesaid amounts, at the cost of respondents.
8. Complaint towards claim of compensation of Rs.5 lakhs stands dismissed.

Pune
Date :- 26.07.2019

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(W.K.Kanbarkar)
Adjudicating Officer,
MahaRERA, Pune