

**BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI
(Presided over by Shri M.V. Kulkarni, Adjudicating Officer)
(Camp at Pune)**

Complaint No.CC0060000000055215

Sapna Ashok Gupta,
R/at B/105, Suny Side CHS Ltd.,
Off.New Link Road, Andheri (W),
Mumbai-400 053.

.. Complainant

Versus

Adarsh Industrial Estate Pvt.Ltd.,
Office at V.N. Sphere, Level Three,
Opp. Shoppers Stop,
Bandra (W), Mumbai-400 050

.. Respondent

**FINAL ORDER
(8th May, 2019)**

1. The Complainant, who had booked a flat with the Respondent/Bullder, seeks withdrawal from the project and refund of the amount with interest and compensation.
2. The Complainant has alleged that Respondent is the owner-cum-developer of the project named 'Link Park' at land CTS No.335/1 of village Valnai in Malad (W), in Mumbai. The Respondent entered into development agreement with Manchpada Rahivasi Sangh for construction of buildings comprising of residential flats, shops, offices, etc. The Complainant booked a flat bearing No. 2306 on 23rd floor for the price of Rs.88,61,900/-. During the month of April, 2013 to January, 2014, Complainant paid total sum of Rs. 57,65,924/- towards the price of the fiat. The Respondent issued allotment letter, dated 10th April, 2013. Respondent

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promised that construction will begin within 12 months. In case of default, Respondent agreed to pay interest @ 18% p.a. Five years have gone by and the Respondent has failed to start the construction work. The Complainant has therefore, filed this complaint.

3. The complaint came up before the Hon'ble Member on 12th November, 2018 and came to be transferred to the Adjudicating Officer. The matter came up before me on 18th December, 2018. The matter was adjourned for plea of the Respondent and written explanation by Respondent to 23rd Jan. 2019. On 23rd Jan. 2019, Respondent filed written explanation after pleading not guilty. The matter was adjourned to 25th Feb. 2019 for final hearing and further came to be adjourned to 26th March, 2019. Arguments for both sides were heard on that day. As I am working in Pune Office and Mumbai Office in alternative weeks, this matter is being decided now.
4. The Respondent has alleged that Complainant has filed this complaint to pressurize the Respondent. Respondent is in real estate business under the name "Ahuja Construction" since about 45 years. The Respondent undertook development of property CTS No. 335/1, admeasuring 8304 sq. mtrs., which was occupied by slum dwellers, under slum rehabilitation scheme. The project is registered with RERA by name 'Link Park', which is formerly known as 'Ahuja Maple View'. The Complainant was aware that Respondent was making efforts to develop said property as slum scheme and was entitled to sale component after completion of rehab component. The Complainant invested in Flat No. 2306 on 23rd floor admeasuring 724.41 sq. ft. carpet area in the building known as "Link Park". However, now Flat

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No.2508 is allotted of area admeasuring 1165 sq. ft. salable area to the Complainant. The Complainant has paid Rs. 55,44,000/- and allotment letter was issued to her on 10th April, 2013.. Allotment letter clearly states that final area will be intimated on finalization of the plans approved by competent authority. Allotment letter also states that if construction is not commenced within 12 months, then interest @ 18% p.a. will be payable till the commencement of construction. The Respondent has commenced the work before completion of 12 months by initiating construction of rehab component. The allotment letter does not give date of possession to the Complainant. In 2018, the Respondent informed the Complainant that the project name has changed from 'Ahuja Maple View' to 'Link Park' and Flat No.2508 was allotted to her instead of Flat No.2306 and the area was increased by 25 sq. ft. and revised from 1140 sq. ft. to 1165 sq. ft. salable area and the total consideration was Rs.91,50,125/-. Balance consideration of Rs. 36,06,125/- is payable by Complainant. The new flat is on 25th floor and excess amount towards floor rise charges are due and payable by Complainant.

5. The Respondent informed the Complainant to execute and register agreement for sale. Complainant has failed to do so till today for the best reasons known to her. Respondent has completed construction of 2 transit buildings. Rehab buildings are completed up to 6th floor and plinth work of sale component has commenced. Complainant is claiming back the amount invested on frivolous grounds. There is no delay in the complaint of the project. Complainant is aware of the date of possession i.e. 19th October, 2025, as disclosed to RERA. Complainant is not interested in execution of agreement, but interested in refund of the

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amount with interest. Respondent has invested huge amount for construction of the project. The complaint therefore, deserves to be dismissed.

6. On the rival contentions of the parties, following points arise for my determination. I have recorded my findings thereon for the reasons stated below.

POINTS

FINDINGS

- | | | |
|-----|---|------------------------|
| (1) | Has the Respondent failed to deliver possession of the flat to the Complainant without there being any circumstances beyond his control ? | .. In the Affirmative |
| (2) | Is the Complainant entitled to the reliefs claimed ? | .. In the Affirmative |
| (3) | What order ? | .. As per final order. |

REASONS

7. **POINT Nos.1 and 2** :- The Complainant has not placed on record letter of allotment of Flat No. 2306, dated 10th April, 2013. Undisputedly, the price for the flat having 724.41 sq. ft. carpet area was Rs. 88,61,900/-. Final area was to be intimated on finalization of plans and approval of the same by the competent authorities. The Complainant was not to sell or create third party rights for a period of 24 months. Construction of the property was to commence within 12 months. If construction did not commence within that period, after expiry of 12 months, the Complainant was entitled to interest @18% p.a. for the delayed period. Possession was to be handed over only after execution of formal agreement, payment of stamp duty and registration

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and on receipt of full and final consideration from Complainant.

8. It is the contention of the Respondent that in the year 2018, Respondent changed allotment to the Complainant from Flat No.2306 to Flat No.2506. Respondent has admitted that Complainant has paid Rs. 55,44,000/-, which means that he is denying payment of Rs.57,65,924/-. Admittedly, no agreement has been registered . It is the contention of the Respondent that the construction of rehab part started within 12 months since allotment letter was issued to the Complainant. There is no dispute that flat allotted to the Complainant is from sale component, which is also a part of the slum rehabilitation project. Allotment letter, dated 10th April, 2013 is however, silent on this aspect. It is the contention of the Respondent that since construction at the site had begun, the Complainant did not enforce her right to claim interest @ 18% p.a. for the delayed period. It is the contention of the Respondent that Complainant is not a genuine purchaser, but is an investor.
9. The Respondent has placed on record copy of Government of India's Circular No.151/2/2012-ST, dated 10th Feb. 2012, which is on the subject of service tax on construction services. Point No.2.3 In that circular is about investment model. Accordingly, in this model, before commencement of the project, the same is on offer to investors. Either a specified area of construction is earmarked or a flat of a specified area is allotted to the investors and as it happens in some places, additionally the investor may also be promised a fixed rate of interest. After a certain specified period an investor has the option either to exit from the

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project on receipt of the amount invested along with interest or he can re-sell the said allotment to another buyer or retain the flat for his own use. As per clarification, in this model, after 1st July, 2010, investment amount shall be treated as consideration paid in advance for construction service to be provided by builder/developer to the investor and the said amount would be subject to service tax. If the investor decides to exit from the project at a later date, either before or after issuance of completion certificate, the builder/developer would be entitled to take credit under rule 6(3) of the Service Tax Rules, 1994 to the extent he has refunded the original amount. If the builder/developer resells the flat before issuance of completion certificate, again tax liability would arise.

10. To add to this complication, the Respondent alleges to have changed allotment to the Complainant from Flat No.2306 to Flat No.2506 in 2018. However, Complainant has not admitted this fact and her complaint is for withdrawal from allotment of Flat No.2306. The Respondent has not placed on record any document about Complainant acknowledging change of allotment to Flat No.2508. Even otherwise, the contention of the Respondent goes to establish that the Complainant never intended to sell her flat in a short span. She started making payment from April, 2013. Till January, 2014 she has made payment of Rs. 57,65,924/-. Now 6 years have gone by and all that is alleged by the Respondent is that of the sale component plinth work has commenced. Respondent has completed rehab building up to 6th floor and has completed construction of 2 transit buildings. He has communicated date of completion to MahaRERA as 19th October, 2025. It means Complainant has to wait for another 6 years to get possession of the flat booked by her.

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The Respondent also claims to have changed her allotment from Flat No.2306 to Flat No. 2506. The thrust of the Respondent was that the Complainant was a promoter having invested huge amount for a short span with a motive of receiving handsome interest. Admittedly, the Respondent has not paid any interest amount to the Complainant, who has waited for possession of her flat for more than 6 years.

11. It is true that in the allotment letter, no date for delivery of possession has been given. Under Section 46 of the Contract Act, when no time is specified in the contract, the performance must be performed within reasonable time. Six years was sufficient time for the Respondent to deliver possession to the Complainant. Respondent claims to be a professional builder with huge experience. Therefore, no excuses are available to him. But Respondent claims that he called upon the Complainant for execution of agreement and it is the Complainant who has avoided to participate in the execution of the agreement. What the Respondent appears to mean is that the Complainant failed to pay the stamp duty and registration charges, which are generally borne by the flat purchaser. However, no evidence at all is adduced by the Respondent to prove that he called upon the Complainant for execution of agreement. On the other hand, Respondent has accepted almost entire consideration amount from the Complainant and the progress of construction is almost nil. Even though it is a slum rehabilitation project and some hitches are bound to be there in some projects, the Respondent was duty bound to make the things clear to the Complainant and obtain her consent from time to time. The Respondent has failed to prove that he did that act to justify the delay in delivery of possession. I therefore, hold that Respondent failed to

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deliver possession without circumstances beyond his control and Complainant is entitled to refund of amount with interest as per Rule 18 Maharashtra Real Estate (Regulation & Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest & Disclosure of Website) Rules, 2017. I therefore, answer Point No.2 in the affirmative and proceed to pass following order.

ORDER

- (1) The Complainant is allowed to withdraw from the project of the Respondent.
- (2) The Respondent to pay amount of Rs.57,65,924/- to the Complainant together with interest @ 10.75% p.a. from the date of payments till final realisation.
- (3) The Respondent to pay Rs.20,000/- to the Complainant as cost of this proceedings.
- (4) The Respondent to pay all above amounts within 30 days from the date of this order.

Camp Pune
Date :- 8.05.2019

M.V. Kulkarni
8-5-2019
(M.V. Kulkarni)
Adjudicating Officer,
MahaRERA, Pune