

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY  
AUTHORITY

CORUM : Shri M.V. KULKARNI, ADJUDICATING OFFICER, PUNE  
AT : PUNE

Complaint No. CC005000000011625

Mr. Pradeep H. Bhatia,  
R/at 2333, Clover Highlands,  
NIBM-Undri Road, Kondhwa,  
Pune-411 048.

.. Complainant

Versus

1. Marvel Omega Builders Pvt. Ltd.  
Through Managing Director.  
Having Office at 301-302, Jewel Tower,  
Lane No.5, Koregaon-Park,  
Pune-411 001.

2. Marvel Realtors & Developers Ltd.,  
Through Managing Director.  
Having Office at 301-302, Jewel Tower,  
Lane No.5, Koregaon-Park,  
Pune-411 001.

.. Respondents

Appearances :-

Complainant : Adv. Nadkarni  
Respondent : Adv. Amit Patil

**JUDGMENT**

(Delivered on 06.12.2018)

1. The Complainant, who had booked a Flat with the Respondents/Builders, seeks withdrawal from the project and refund of the amount paid with interest, as the Respondents failed to deliver possession of the flat as per agreement.

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2. The Complainant has alleged that he had booked flat No. 403 in Wing 'D' in the project of the Respondents "Marvel Cerise" at village Kharadi, Tal. Haveli, in Pune district. The consideration agreed was Rs. 78,77,750/-. The agreement was registered on 20<sup>th</sup> June, 2011. The Respondents agreed to deliver possession of the flat on or before 31<sup>st</sup> December, 2013. The Complainant made payments to the Respondents as per demands raised by Respondents from time to time. The Respondents did not carry out construction and did not deliver possession by 31<sup>st</sup> December, 2013 as per agreement. The Complainant therefore, approached National Consumer Dispute Redressal Commission on 10.10.2015. After enactment of the Real Estate (Regulation & Development) Act, 2016, ( hereinafter referred to as "RERA") , the complaint before the National Consumer Dispute Redressal Commission (NCDRC) was withdrawn on 28.03.2018 and was filed before the Maharashtra Real Estate Regulatory Authority ( hereinafter referred to as "the Authority"). In fact, the agreement was executed by Windshield and Marvel Promoter Company and they are amalgamated into Respondent Nos.1 and 2. The Complainant claims refund of Rs. 74,60,949/- paid to the Respondents and interest in addition, which takes the amount of Rs. 85,30,325/-.
3. The matter came before the Authority on 12.07.2018 and came to be transferred to Adjudicating Officer, Pune. On 08.08.2018 plea of the Respondents was recorded. The Respondents filed written explanation on 19.09.2018. Execution of agreement is admitted by Respondents. It is alleged that the stamp duty, registration fees, service tax and VAT are paid to the Government Authorities as per terms of

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the agreement. It is alleged that the Complainant is an investor and not a flat purchaser, which is clear from clause 47 of the agreement. The complaint is therefore, not tenable. Also RERA came into effect after execution of the agreement and therefore, provisions of RERA are not attracted. As per clause 46 of the agreement, only Civil Court is having jurisdiction to entertain the dispute. The Respondents have clear and good intention of completing the project and handing over possession to complainant on the date furnished to RERA. If majority of allottees are permitted to withdraw from the project, the Respondents will suffer an irreparable loss and will have to shut down the construction of the project. Section 32 of RERA provides for promotion of real estate sector and therefore, interests of the promoter are also required to be protected. No cause of action arose for filing of the complaint and the complaint deserves to be dismissed.

4. On the 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) Have the Respondents failed to deliver possession of the flat to the Complainant as per terms of Agreement without there being reasons beyond their control ? | .. In the Affirmative. |
| 2) Is the Complainant entitled to reliefs claimed ?  | .. In the Affirmative. |
| 3) What order ?  | .. As per final order. |

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### REASONS

5. **POINT Nos.1 and 2** :- The Complainant has placed the agreement, dated 28.06.2011 on record. The agreement was between Windshield Developers Pvt. Ltd. and the complainant. Flat No. 403 in the project "Marvel Cerise" was agreed to be sold to the complainant for a consideration of Rs. 78,77,750/-. As per clause 5(b), the promoter agreed to deliver possession of the flat on or before 31st December, 2013. That date is already gone by and the Respondent has defaulted in delivering possession of the flat as per agreement.
6. Relying in clause 47 of the agreement, the Respondents have alleged that the complainant is not a flat purchaser, but an investor. Clause 47 reads that, "Purchaser has informed the promoter that purchaser is an investor and hence purchaser reserves his right to claim stamp duty set off/adjustment of stamp duty paid by purchaser on these presents in terms of Article 5(g-a((ii) of Schedule I to the Bombay Stamp Act, 1958 in the event the purchaser assigns the benefit of this agreement to a subsequent purchaser". What is agreed is that the complainant will be seeking benefit of stamp duty set off in the event he sells the flat booked with the Respondents.
7. The real issue is, "whether the complainant is an allottee or not?". The agreement shows that Flat No. 403 in 'D' Wing in the project "Marvel Cerise" was agreed to be sold to the complainant for a consideration of Rs. 78,77,750/-. The consideration amount was to be paid stage-wise as per the progress of the construction. An investor is a person, who

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invests money with expectation of return of amount with profits. Generally such investment is not tagged to the purchase of the flat and may not be corresponding to the market price of the flat. Percentage of profit in a specific time span will be anticipated by an investor. Such characteristics are absent in the present transaction. There is no restriction that a bonafide flat purchaser cannot sell his flat during his lifetime. Such decisions are taken in due course of time as circumstances arise necessitating selling of the flat purchased to overcome calamities or to seek more convenient accommodation. That cannot be called a business view since inception. Therefore, the challenge raised by the Respondents cannot be accepted.

8. The Respondents have also challenged jurisdiction of Adjudicating Officer under RERA. On the contrary, Section 79 bars jurisdiction of civil court in the matters over which Authority or Adjudicating Officer are having jurisdiction. Clause 8 of the Agreement reads that it is <sup>is</sup> mutually agreed lumpsum consideration. The third schedule however shows stage-wise payment. Admittedly, the complainant has not paid the whole of the consideration. Therefore, arguments of Adv. Mr. Patil on behalf of Respondents cannot be accepted.
9. The agreement clause 5(b) shows that the date for delivering possession was 31.12.2013. Admittedly, the Respondents have not delivered possession of the flat till today. The Respondents claim that they would deliver possession on the date given to the Authority. The Respondents have extended the date for delivery of possession unilaterally. Such extension is not binding on the complainant. Absolutely no

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reason is coming forth why the promise to deliver possession by 31.12.2013 was not honoured. Consequently, the Respondents have failed to deliver possession of the flat as per agreement. I therefore, answer Point No.1 in the affirmative.

10. The Complainant has claimed that he has made total payment of Rs. 74,64,449/-. Out of it Rs. 67,89,998/- were paid towards price of the flat, Rs. 1,87,673/- were paid as service tax and Rs. 4,90,278/- were paid as VAT. The Respondents have alleged that stamp duty of Rs. 3,36,500/- and registration fees and service tax and VAT were paid to the Government Authorities and not to the Respondents. The agreed price of flat was Rs. 78,77,750/-. The complainant has placed following receipts on record.

| Sr.No. | Date       | Amount (Rs.) |
|--------|------------|--------------|
| 01     | 11.06.2011 | 7,00,000/-   |
| 02     | 15.11.2011 | 78,778/-     |
| 03     | 29.06.2011 | 14,35,550/-  |
| 04     | 06.12.2011 | 3,58,887/-   |
| 05     | 19.11.2011 | 54,990/-     |
| 06     | 28.01.2012 | 3,58,888/-   |
| 07     | 28.01.2012 | 9,242/-      |
| 08     | 10.03.2012 | 3,58,888/-   |
| 09     | 10.03.2012 | 9,241/-      |
| 10     | 16.04.2012 | 3,58,886/-   |
| 11     | 16.04.2012 | 9,241/-      |
| 12     | 05.05.2012 | 3,58,887/-   |
| 13     | 05.05.2012 | 11,089/-     |
| 14     | 19.05.2012 | 20,333/-     |

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|    |            |            |
|----|------------|------------|
| 15 | 19.05.2012 | 3,58,888/- |
| 16 | 04.06.2012 | 3,58,887/- |
| 17 | 04.06.2012 | 11,090/-   |
| 18 | 04.07.2012 | 3,58,888/- |
| 19 | 04.07.2012 | 9,241/-    |
| 20 | 16.07.2012 | 7,17,775/- |
| 21 | 16.07.2012 | 24,027/-   |
| 22 | 28.08.2012 | 11,090/-   |
| 23 | 28.08.2012 | 7,17,774/- |
| 24 | 28.08.2012 | 3,47,798/- |
| 25 | 28.08.2012 | 11,088/-   |

The total of the receipts placed by complainant on record comes to Rs.70,49,346/-. This amount is less than the amount claimed by complainant by Rs.4,00,000/-. The Respondents have claimed that Rs. 3,76,500/- stamp duty was paid to the government authorities. Perhaps by including this amount the complainant has paid total payment of Rs. 74,60,949/-. Complainant will be entitled to refund of this amount except the stamp duty, which can be refunded as per rules.

11. In the chart placed by the complainant on record in respect of payments that were made, he has claimed interest @ 15% p.a. and has claimed total amount of Rs. 85,30,325/-. Under Rule 18 of Maharashtra Real Estate (Regulation & Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest & Disclosure of Website) Rules, 2017, the rate of interest payable by the promoter to the allottees or by allottees to the promoter, as the case may be, shall be the State Bank of

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India's highest Marginal Cost Lending Rate + 2%. Hence the complainant will be entitled to recover interest at this rate. 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.
- (2) The Respondents to pay Rs. 74,60,949/- except the stamp duty, which is refunded as per rules, together with interest @ State Bank's highest MCLR + 2% i.e.  $8.70\% + 2\% = 10.70\%$  p.a. from the date of payments till realisation.
- (3) The Respondents to pay Rs.25,000/- to the Complainant as costs of this Complaint.
- (4) The Respondents to pay above amounts within 30 days from the date of this order.
- (5) The complainant to execute cancellation deed at the cost of the Respondents.

Pune  
Dated :-06/12/2018

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