

**BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY, MUMBAI**

Complaint No.CC006000000023931

Mrs. Vasudha Arun Puranik,
Through Power of Attorney Holder
Mrs. Prachi w/o. Pritam Khawale,
LBS Marg, Ghatkopar (W),
Mumbai-400 086.

.. Complainant

Versus

1. M/s. Shree Aryadurga Developers Pvt. Ltd.
2. Mr. Rajendra Murlidhar Padhye
3. Mrs. Rekha Rajendra Padhye

.. Respondents

**Coram : Shri M.V. Kulkarni
Hon'ble Adjudicating Officer**

Appearance :-

Complainant : Adv. Datta Solankar
Respondent Nos.1 to 3 : Adv. Neeta Waghmare

FINAL ORDER
(08.03.2019)

1. The Complainant, who had booked a flat with the Respondents/Builders, seeks withdrawal from the project and seeks refund of the amount paid with interest.

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2. The Complainant has alleged that she booked Flat No. 504 having carpet area of 608 sq. ft. in the project of the Respondents "Guru Ganesh" at Mulund (East), Mumbai. Agreement for sale was executed on 23.3.2012. The Respondents then revised the building plan and allotted Flat No. 601 to the Complainant by entering into an agreement for sale on 12.01.2016 with M/s Shree Aryadurga Developers Pvt. Ltd. and the flat was having area of 796 sq. ft. with stilt parking. The Complainant has paid Rs. 55,90,000/- out of the agreed consideration of Rs. 1,08,43,000/-. As per clause 9 of the agreement, promoter had agreed to hand over possession of the flat on or before 3rd December, 2017. While registering the project with RERA, promoter has changed the date for completion as 31.10.2019. The promoter has changed the date for possession without intimation to the Complainant, which shows negligence and ignorance on the part of the promoter. The Complainant has therefore, filed this complaint.
3. The matter came up before Hon'ble Chairperson on 1st June, 2018 and the matter came to be transferred to the Adjudicating Officer. The matter came up before me on 11th Sept. 2018. It was adjourned to 24th October, 2018 for recording plea of the Respondents and written explanation by Respondents. Respondent no.2 again pleaded inability to attend on 24th Oct. 2018 being down with dengue. Respondent No.3 failed to

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attend. An exparte order was passed against her. Respondent No.2 was granted time till 19th Oct. 2018 on cost of Rs. 3000/- as no medical certificate was placed on record. Plea of Respondent No.2 was recorded on 19th Oct. 2018 and Respondent No.2 also filed his written explanation. Complainant filed rejoinder. The matter was adjourned for final arguments to 17th Dec. 2018. On that day Respondent filed rejoinder to rejoinder filed by Complainant. Also adjournment was prayed for. Final arguments were heard on 20th Feb. 2019. As I am working at Pune and Mumbai Offices in alternative weeks, this matter is being decided now.

4. Vide written explanation filed by Respondent Nos.1 and 2, the Respondents have alleged that Complainant has not come with clean hands. The Respondents No.1 Company, of which Respondent no.2 is a director, is in construction business since 1985. Respondents entered into development agreement with Guru Ganesh Cooperative Housing Society Ltd. At CTS No.878-B, Sant Dnyaneshwar Road, Mulund (East), Mumbai on 10th Oct. 2011, which was registered. In Nov. 2011 Complainant approached the Respondents with intent to book a flat. Accordingly, Complainant booked Flat No. 504 with carpet area of 608 sq. ft. and paid Rs. 35,00,000/- by cheques in the year 2012. Agreement was registered on 23.03.2012. The Respondents

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applied for sanction of plan to Municipal Corporation of Greater Mumbai (MCGM) on 19th Dec. 2012. The plan was approved on 19th Jan. 2015. The Respondents had applied for commencement certificate on 19th Dec. 2012. Commencement Certificate was received on 20th Nov. 2015. N.O.C. from Mumbai Fire Brigade was received on 16th July, 2014. Title Certificate was received on 16th March, 2015. The Respondent started accepting bookings in the year 2015. The Complainant requested to allot Flat No. 602 having carpet area 791 sq. ft. In Dec. 2015 Complainant approached Respondents and requested to allot Flat No. 601 having carpet area of 796 sq ft. The rate agreed was same as that which prevailed at the time of previous booking. The total consideration agreed was Rs. 1,08,43,000/- including that for one stilt parking. The Complainant agreed to cancel the old agreement and agreed for execution of fresh agreement for Flat No.601. After repeated requests, Complaint gave a cheque for Rs. 5,00,000/- on 7th Jan. 2016 and fresh agreement came to be executed on 12.01.2016. Te Complainant further issued cheque for Rs. 5,00,000/-, dated 13.01.2016, Rs. 5,00,000/-, dated 16.01.2016 and Rs. 5,90,000/-, dated 30.05.2016. The Complainant has thus paid Rs. 55,90,000/- till this date.

5. As per clause No.9 of the agreement, agreed date for handing over possession was Dec. 2017. The

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Respondents have registered the project with RERA on 18.08.2017 and declared the date of completion as 31.10.2019. The Complainant sent a notice on 06.02.2018 demanding cancellation and refund of entire amount. The Respondents then had series of meetings with Complainant and tried to resolve the issue. The Respondents were ready to refund the amount. Under clause 9(iv), Respondents were entitled to reasonable extension of time for handing over possession due to reason beyond control of the Respondents viz. changes in govt. policies regarding TDR for 6 mtrs. wide road and new FSI Policy. From 2009 to 2012 there was boom in real estate market and increase in cost of cement, raw material and labour charges. At present real estate is through worst phase.

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

POINTS

FINDINGS

- (1) Have the Respondents failed to deliver possession of the flat to the Complainant as per agreement, without there being circumstances beyond their control ?

In the Affirmative

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- (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** :- There is no dispute that the original agreement between the parties was for purchase of Flat No. 504 on 5th floor. It appears that there was a proposal for re-development of the building "Guru Ganesh Cooperative Housing Society Ltd." at Mulund (East). That agreement was dated 23rd March, 2012. The Complainant appears to have paid Rs. 35,00,000/- at that time. The reconstructed building was to have Ground + 7 floors. The price agreed was Rs. 75,00,000/-. There is also no dispute that this plan was given up by the parties.
8. It is the contention of the Respondents that the development agreement with the society was entered into on 10th Oct. 2011. However, Respondents applied for sanction of the plan on 19th Dec. 2012 and the plan was sanctioned on 19th Jan. 2015. It means that before execution of agreement in favour of the Complainant on 23.03.2012, the Respondents had even not applied for sanction of the plan to MCGM. The Complainant has filed this complaint through her power of attorney because of her old age. The Respondents

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have alleged that the Complainant changed her mind and opted for Flat No. 602 in 2015. She again changed her mind and opted for Flat No. 601 with carpet area of 796 sq. ft. in Dec. 2015 and consequently agreement in that respect came to be executed on 12.01.2016. It appears that earlier the Complainant had paid Rs. 40,00,000/- to the Respondents towards the price of the flat to be purchased. That amount has been adjusted as price of the Flat No. 601. The price of Flat No. 601 was agreed at Rs. 1,08,43,000/-. It is the contention of the Respondents that this flat was offered at the same rate which was agreed when the Flat No. 504 was offered to the complainant. What is clear is that there was renovation of agreement and the agreement, dated 12.01.2016 had replaced the earlier agreement. Only the consideration amount received earlier was to be taken as part of the consideration of the new flat, of which price was mutually agreed. What is required to be stated is that after the execution of agreement on 12.01.2016, the earlier agreement ceases to have in force.

9. Under clause 9 of the agreement, dated 12.01.2016, agreed date for deliver of possession was 3rd of Dec. 2017. The Respondents contend that while registering the project with MahaRERA, date for completion has been given as 31st Oct. 2019. This extension has been done by the Respondents unilaterally without the

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consent of the Complainant and therefore, not binding on the Complainant. The clause in the agreement provides for reasonable extension of time under certain circumstance like force majeure. The Respondents have made a vague plea that there were changes in Govt. policies regarding TDR for 6 mtrs. wide road as well as FSI policy. The Respondents have alleged that there was boom in real estate market from 2009 to 2012 and the material cost and labour cost and other expenses had increased and thereafter there is a slump. The initial agreement was of the year 2012 i.e. within the alleged boom period. The price was fixed at that time. The Respondents cannot make any grievance about the price now. The Respondents are in the real estate business since the year 1985 and must be aware of all the tricks of the trade. After accepting considerable amount from the Complainant, the Respondents have failed to keep their words and deliver possession of the flat booked to the Complainant. No justification at all is coming forth from the Respondents to tilt the scales in their favour. I am therefore, having no hesitation in answering Point No.1 in the affirmative.

10. There is no dispute that Complainant had earlier paid Rs. 40,00,000/-. After the execution of new agreement, Complainant has paid Rs. 15,90,000/- i.e. total Rs. 55,90,000/-. It appears that the dispute

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arose between the parties over the rate of interest that could be charged by the Complainant in the event of refund of the amount. The Complainant has been claiming interest @ 18% p.a. The Complainant will be entitled to recover interest as provided under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosure of Website) Rules, 2017 i.e. at State Bank of India's highest Marginal Cost Lending Rate + 2 %, which is 10.70%. The Complainant will be entitled to claim interest on Rs.40,00,000/- from the date of second agreement, dated 12th Jan. 2016 and on further amounts paid from the dates on which those amounts were paid. 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 repay Rs. 55,90,000/- to the Complainant together with interest on Rs.40,00,000/- from 12.01.2016 and on remaining amounts from the dates of their payments until realisation of the amount @ 10.70% p.a.

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- (3) The Respondents to pay Rs.20,000/- to the Complainant as costs of this complaint.
- (4) The Complainant to execute cancellation deed at the cost of the Respondents.
- (5) The Respondents to pay the aforesaid amounts within 30 days from the date of this order.

Mumbai (Camp at Pune)
Dated :- 08/03/2019


(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA