

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY

CORUM : Shri W.K. Kanbarkar, Adjudicating Officer, Pune

AT : PUNE

Complaint No. CC005000000022224

Rajashree Ganpat Pise,
R/o. A/P Katewadi, Indapur Road,
Baramati, Tal. Baramati,
District Pune-413 102

.. Complainant

Versus

- 1) R.V. Realty
(Vastushodh & Relicon)
Through its partners.
- 2) Mr. Dhananjay Shivajirao Nimbalkar.
- 3) Mr. Miliind Dhansingh Jadhav.
- 4) Mr. Rohit Dhansing Jadhav
- 5) Mr. Sachin Balkrishna Kulkarni.
- 6) Mr. Nitin Balkrishna Kulkarni.

Having Office at 101, Lotus Plaza,
Opp. Karishma Society, Karve Road,
Kothrud, Pune-411 038.

.. Respondents

Appearance :-

Complainant : Adv. V.M. Patil

Respondent : Vijay Shirpurkar

Adv. Mane-Deshmukh.

FINAL ORDER

(Delivered on 28.02.2019)

1. The present complaint is filed by the allottee/complainant against the promoter-respondent for refund of entire amount paid by her towards the consideration of the flat booked by

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her in the project of respondents viz. "Urban Gram Baramati" being constructed at the site bearing Gat No. 134/1 and 134/2 situate at village Jalochi, Tal. Baramati, Distict Pune, together with interest, under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "the Act"), on the ground that respondents have failed to hand over possession of the booked flat on the date agreed in the agreement.

2. It is the case of the complainant that she booked Flat No. 502 on 5th floor in A-2 Wing admeasuring about 84.07 sq. mtr. built up area with terrace of 5.20 sq. mtrs. in the project of the respondents at the land described above and accordingly registered an agreement, dated 24.07.2015, by which she has paid an amount of Rs. 3,61,163/- at the time of agreement. The total consideration of the booked was agreed at Rs. 24,07,750/-. The Respondents have agreed to deliver possession of the said flat within 36 months from the date of execution of the agreement. The complainant has availed housing loan from Union Bank, Baramati Branch and the bank has disbursed more than 90% amount out of total consideration to the respondents. Recently the complainant got the information from RERA website that the respondents have mentioned false date of completion of the said project, contrary to the agreement between her and respondent. It is alleged that the respondents have cheated the complainant and therefore, the respondents are liable to pay compensation of Rs. 10 Lakhs to the complainant. The complainant has paid Rs. 16,85,812/- to the respondent and claimed refund of said amount together with interest @ 12% p.a. from 24.07.2018

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and compensation of Rs. 10 Lakhs for mental agony and breach agreement.

3. The Respondents have filed their reply on 21.02.2019, whereby they resisted the complaint on various grounds. It has been pleaded by the respondents that from the year 2015 there is over worldwide recession in all industries including construction industry, as a result, there was no sale of units at all. The respondents are one of the victims of said recession, as he was unable to sale the remaining flats and raise funds for completing the project. At the time of enforcement of the Act, the construction of the project carried out by the respondents was completed near about 60% and respondents registered the said project with the Maharashtra Real Estate Regulation Authority (hereinafter referred to as "the Authority") wherein the date of possession was mentioned as 2020. The project of the respondents is already completed to the extent of 90% and they are ready to give possession of the flat to the complainant within four months subject to reasonable compensation for delayed possession. The received amount was invested in the construction of flat of complainant and therefore, the respondents are not able to pay entire consideration amount to the complainant. It is admitted that the bank has disbursed amount of Rs. 16,85,812/- and created first charge on the booked flat. The stamp duty, registration charges and other charges are paid to the government on behalf of complainant and respondent is not liable to pay the same. If the complaint is allowed, the respondents will suffer huge monetary loss. The Respondent referred two decisions, one of the Authority on the point jeopardy on account of bulk withdrawal from the project

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completed more than 80% and the second is of the Hon'ble High Court on the point of entitlement of promoter to prescribe fresh time limit for getting the remaining development work completed. With these defences, it has been prayed that the complaint is liable to be dismissed. The decisions relied on by the respondents are discussed hereunder.

4. Plea of the Respondents through authorized representative has been recorded on 25.02.2019, by which the respondents denied the claim of the complainant. Heard Adv. V.M. Patil on behalf of Complainant and Adv. Mane-Deshmukh on behalf of Respondents.
5. On the basis of rival contentions of the parties, following points arise for my determination. I have recorded my findings against them for the reasons stated below.

POINTS

FINDINGS

- | | |
|---|------------------------|
| 1. Have the Respondents failed to deliver possession of the booked flat to the complainant without there being reasons beyond their control ? | .. In the Affirmative, |
| 2. Is the complainant entitled to the reliefs claimed ? | .. In the Affirmative. |
| 3. What order ? | .. As per final order. |

REASONS

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6. **POINT Nos.1 and 2** :- The complainant has placed on record the agreement, dated 24.07.2015 in support of her complaint. As per the said agreement, the complainant has booked residential flat No. 502, admeasuring 84.07 sq. mtr. for the total consideration of Rs. 24,07,750/- excluding the VAT and service tax in the project of the Respondents. The complainant has paid Rs. 3,61,163/- to the Respondents at the time of execution of said agreement. Execution of agreement and receipt of amount paid by complainant at the time of agreement are not disputed by the respondents. The registration certificate issued by the Authority to the Respondent for the project in question has been produced on record, wherein the registration of the said project is valid from 31.07.2017 to 31.07.2020. The complainant has not produced on record the disbursement letter from the bank to show the housing loan sanctioned in the name of complainant has been disbursed for the said flat by the bank to the Respondents. She has however, produced on record two receipts for Rs. 3,11,163/- and Rs. 50,000/- passed by the respondents. As against this, the respondents have filed on record certificate of the Architects, dated 19.02.2019 showing the stage of building A-2 wherein the flat is booked by the complainant.
7. So far as the payment made by the complainant to the respondents against the booked flat, It has been argued on behalf of the complainant that she has paid actual amount of Rs. 21,62,000/- to the respondents excluding the stamp duty and registration charges. The disbursement of housing loan

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through Union Bank of India of Rs. 16,85,812/- and rest of the amount paid by complainant has been admitted on behalf of respondents at the time of arguments. In view of this, there is no dispute that the complainant has paid total Rs. 21,62,000/- to the complainants excluding the stamp duty and registration charges to the respondents against the total consideration of the booked flat.

8. As per the term and condition No.(11) of the agreement, the respondent has agreed to deliver possession of the booked flat to the complainant within 36 months from the date of execution of the agreement. It has been specifically agreed by the respondents that in case the respondents failed to deliver possession within the agreed time limit, and if the purchaser claims refund of entire amount, the respondents shall pay entire amount to the purchaser with interest @ 9% p.a. from the date of actual payment, subject to conditions mentioned therein. It is a factual aspect that after 36 months from the date of execution of the agreement between the parties, the respondent has not delivered possession of the booked flat to the complainant. Two reasons put forth by the respondents in their reply as well as in the arguments that they could not complete the construction of the booked flat within the agreed time limit as per the agreement, one is worldwide recession in the construction industry in the year 2015 and the other is the date extended with the Authority till 31.07.2020. As regards the first reason, the condition No.11 of the agreement do not bear such proviso that in case of recession in the business, the promoter has right to extend the limit for handing over possession. Moreover, the allottee has no knowledge of extension of time sought by the respondent at the time of

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registration of the project. As such the respondents could not bring on record any justifiable reason for delay in completing the project and handing over possession to the complainant as per the agreement. I therefore, hold that the respondents have failed to deliver possession of the booked flat to the complainant without there being any reason beyond their control. The Point No.1 is answered accordingly in affirmative.

9. It has been argued on behalf of the complainant that the construction quality of the project of the respondents is poor and the project is shut down and there are no chances of completion of it. On the contrary, Mr. Mane-Deshmukh, Advocate on behalf of the respondents argued that the registration and stamp duty and taxes are paid by complainant and not by Respondent. He drew my attention towards the provision of Section 4(2)(I)(C) of the Act and Rule 4(2) of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 (hereinafter referred to as "the Rules"), which is discussed in the order passed by the Hon'ble Chairperson, MahaRERA, dated 9th Jan. 2019 in Complaint No. CC006000000054648 and 12 other complaints - Rohit Chawla v/s. The Bombay Dyeing and Manufacturing Co. Ltd. and the decision of the Hon'ble High Court in the case of Neel Kamal Realtors Suburban Pvt. Ltd. and anr. Vs. Union of India and others, which is referred by the Hon'ble Authority in the aforesaid order. He has also argued that as on today 95% construction is completed and the promoter/respondent is not in a position to refund the amount, as it has been invested in the construction of the flat of the complainant. He further

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argued that the bank has created first charge on the said flat and as such the bank is necessary party to the present complaint. The complaint is premature and liable to be rejected. He relied upon the order passed by the Hon'ble In the case relied upon by the respondents there were in all approximately 520 allottees and as many as 13 complaints were decided by the said order. The complainants in the said complaints have filed complaints against the promoter on the ground of false assurances regarding amenities and changes in the carpet areas and overall layout to the project. The Hon'ble Authority has discussed Section 4(2)(I)(C) of the Act as well as Rule 4(2) of the Section 4(2)(I)(C) of the Act is regarding declaration of promoter declaring the time period undertaken to complete the project or phase thereof, as the case may be and Rule 4(2) of the Rules is regarding disclosure of original time period disclosed to the allottees for completion of the project at the time of sale including the delay and the time period undertaken by him to complete the pending project. The relevant portion in the decision of the Hon'ble High Court referred by the Hon'ble Authority in the order is regarding object and purpose of the Act to complete the development work within the stipulated time and entitlement of promoter to prescribe fresh time limit for getting the remaining development work completed and the provisions of RERA are not retrospective in nature and may to some extent be having a retroactive or quasi retroactive effect. In the rejoinder to the arguments of the respondents, it has been argued on behalf of the respondents that Section 3 and 4 of the Act are not applicable and the bank is not necessary party to the present complaint.

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10. Section 3 and 4 of the Act relates to the registration of real estate projects and application for registration of real estate projects and are statutory obligations to be complied by the promoter before the Authority. The agreement, dated 24.07.2015 is prior to the declaration submitted by the respondents under Section 4(2)(1)(C) and without the knowledge of the complainant. The respondent is bound to comply his obligations in the agreement. Moreover, the facts of the complaints decided by the Hon'ble Authority and the facts of the present case are altogether different. There was no agreement executed between the allottees and promoter in the said case and advise was given to the parties to execute the agreement to post the enforcement of the Act. Even in para 11 of the decision, the Hon'ble Authority observed that if the complainants intend to withdraw from the project, then such withdrawal shall be guided by the terms and conditions of the allotment letter. I therefore, decline the arguments of the respondents on these lines.
11. Section 31 of the Act describes filing of complaints with the Authority or the Adjudicating Officer. As per the provision, any aggrieved person may file complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the Rules and Regulations made thereunder against any promoter, allottee or real estate agents, as the case may be. The Act do not have any definition of any 'bank' or financial company' or 'financer'. Moreover, there is no any violation or contravention of the provisions of the Act by the bank, nor the bank is a party to the agreement executed by and between the complainant and

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respondents. I am therefore, of the opinion, that the bank cannot be a necessary party to the present complaint.

12. So far as the 95% completion stage of the construction, as alleged by the promoter/respondent, it has been argued on behalf of the complainant that the quality of construction is poor and the complainant is not intending to remain in the project. Admittedly, the complainant has paid more than 80% amount against the total consideration of the flat to the Respondent. As per the agreement, the respondents were under obligation to complete the construction and hand over possession of the booked flat to the complainant on or before 24.07.2018, which the respondents failed. As such there is breach of terms and conditions of the agreement on the part of the respondents. Even today, the project is not completed and respondents have not handed over possession of the flat to the complainant. Moreover, the respondents have not come with a specific date of handing over possession of the flat to the complainant. In the present case, there is continuing cause of action and statutory obligation on the part of promoter, when he has failed to discharge part of his contract. In such facts and circumstances, the complainant is entitled to withdraw from the project.
13. The respondents have not resisted the payment made by the complainant towards the total agreed consideration of the flat. It is argued on behalf of the respondents that the stamp duty, registration and taxes are paid by the complainant and not by respondents. The stamp duty is refundable from the competent authority and therefore, the complainant is not entitled to ask refund of same from the respondents. However,

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as the registration charges and taxes paid by the complainant against the booked flat, and as the complainant has not received possession of the said flat against which she has paid the registration charges and taxes, she is entitled to claim refund of the said amount from the respondents. The complainant has produced on record two receipts, dated 20.03.2015 for Rs. 3,11,163/- and dated 27.01.2015 for Rs.50,000/-. The complainant claims to have In para (g) of her complaint that the bankers of the complainant have disbursed more than 90% amount out of total consideration to the Respondents. However, no disbursement letter is produced on record. The respondents however, in their reply at para (7) have admitted that the bank has disbursed Rs.16,85,812/-. Therefore, the complainant is entitled to claim the amount of disbursement. In para (m) of her complaint, she has mentioned the amount of Rs. 6,74,323/- allegedly to be paid to the Respondents by way of interest @ 12% p.a. from 24.07.2015 to 30.11.2018. The complainant however, cannot claim interest on the interest amount paid by her. Therefore, the complainant is entitled to claim only Rs. 16,85,812/- which is disbursed amount of loan, Rs.3,61,163/- paid by her own contribution and Rs. 24,940/- paid towards registration charges. Thus the amount due from the respondents to the complainant by way of refund is Rs. 20,71,915/- only. Therefore, the complainant is entitled to ask refund of this amount from the respondents together with simple interest.

14. Complainant claims compensation of Rs.10,00,000/- on the ground that he has suffered monetary loss on account of mental agony. But the said claim is not substantiated appropriately and hence, the same is not maintainable under

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law. Therefore, claim of complainant of compensation of Rs. 10,00,000/- is liable to be dismissed.

15. As provided under Section 18 of the Maharashtra Real Estate (Regulation & Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest & Disclosure of Website) Rules, 2017, the complainant is entitled to receive interest @ State Bank of India's Highest Marginal Cost Lending Rate + 2% above i.e. $8.70\% + 2\% = 10.70\%$ on the amount due for refund. The complainant is also entitled for costs of this litigation.
16. With these reasons, 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 refund amount of Rs. 20,71,915/- to the complainant except the stamp duty, which can be refunded to the complainant together with simple interest @ State Bank of India's Highest Marginal Cost of Lending Rate + 2% p.a. prevailing as on date i.e. $8.65\% + 2\% = 10.65\%$ p.a. from the date of actual payments till realization of the entire due amount.
- (3) The respondents to pay Rs. 20,000/- to the complainant as cost of this complaint.
- (4) After receiving the entire due amount from the respondents together with interest, the complainant shall repay the outstanding housing loan amount to the

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Union Bank of India and execute cancellation deed at the cost of the respondents.

- (5) The charge of the due amount be kept on the flat in question till realisation of the entire amount.
- (6) The respondents to pay the aforesaid amounts within 30 days from the date of this order.
- (7) Complaint towards claim of compensation of Rs.10,00,000/- stands dismissed.

Pune
Dated :- 28/02/ 2019

WKK 28-2-2019
(W.K.Kanbarkar)
Adjudicating Officer,
MahaRERA, Pune