

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY

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

Complaint No. CC005000000011395

Mr. Amit Jayant Bhandari
Flat No. E Wing, 1304,
Indradhanu Society,
Behind Vanaz Company,
Paud Road, Kothrud,
Pune-411 038. .. Complainant

Versus

1. M/s. Mohiniraj Associates,
A partnership firm
Having its address at
Shreeram Apartment, 1st floor,
Sahakari Vasahat, behind Lagu-Bandu Motiwale,
Off Karve Road, Erandwane,
Pune-411 004.
Through its Partner
Mr/ Mahendra Pathak.

2. Mr. Mahendra Madhukar Pathak,
R/at Plot No. 37, Kohinoor Planet Society,
Opp. Rohan Nilay, Near Spicer College,
Pune-411 007.

And having office at
Shreeram Apartment, 1st floor,
Sahakari Vasahat, behind Lagu-Bandu Motiwale,
Off Karve Road, Erandwane,
Pune-411 004. .. Respondents

APPEARANCES :-

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| Complainant | : Adv. Londhe & Adv. Bhat |
| Respondent No.1 | : Adv. Tushar Kale |
| Respondent No. 2 | : Adv. Shri Sushil S. Padhye |

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FINAL ORDER
(Delivered on 05.10.2018)

1. The Complainant, who had booked a flat with the Respondents/Builders, seeks withdrawal from the project and refund of the amount paid to the Respondents with interest.
2. The Complainant has alleged that the Respondents are promoters of the project known as "City Lights" consisting of multi-storied buildings at Gat No. 779/A and 779/B at Khed-Shivapur, Tal. Haveli, District Pune. The Complainant booked Flat No. 905 on 9th floor in 'B' Wing having built up area of 61.41 sq. Mtrs. The agreement for sale was registered on 26.09.2014. The consideration agreed was Rs. 17,18,600/-. The Complainant paid Rs. 4,00,000/- on or before execution of agreement. The balance was to be paid in instalments as per the progress of the work. The Respondents were to hand over possession of the flat within 24 months since execution of agreement. The Complainant was to pay Rs. 1,50,000/- + Rs.75,000/- + Rs.75,000/- towards MSEB, society formation charges, maintenance charges, development charges, etc. before handing over possession of the flat. The Complainant paid Rs. 17,200/- for registration of the agreement, Rs 86,000/- towards stamp duty, Rs. 53,105/- for service tax and Rs. 17,186/- towards VAT. The Complainant thereafter made payments from time to time through bank disbursements. Total amount paid is Rs. 18,99,840/-. The Respondents have failed to hand over possession of the flat on the agreed date. Complainant went on paying the balance amount with request to hand over possession of the flat. The Respondents have started avoiding the Complainants. A notice came to be

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issued by the Complainant on 18.05.2017. Now the Respondents have shown the date of delivery of possession as 30.06.2020 on the RERA website. The Complainant therefore, seeks to withdraw from the project and refund of the entire amount of Rs. 18,99,840/- with interest @ 18% p.a. as well as interest paid on loan amount.

3. The Respondent No.1 resisted the complaint by filing written explanation on 27.07.2017. It is alleged that Respondents have developed huge infrastructure such as sewerage line, internal water connection, sub-station for electricity, reservation of garden, etc. Till this date, there is lack of basic amenities like electricity, water, sewerage line and the Respondents made lot of efforts with his own funds to get them by spending huge amounts. The Respondents applied to the Collector, Pune for N.A. permission and then obtained commencement certificate from Town Planning Authority, Pune on 26.02.2014. The Respondents then commenced the construction of 3 buildings as per sanctioned plans. The work of the project was prolonged due to non-availability of sand, delay in sanction, recession in real estate market and huge cost of administration charges. Despite all odds and the problems, the Respondent completed the project after obtaining huge loan from various financial institutions and 90% work of building 'A' and 'B' is completed, and nearing possession, completion certificate is awaited from Pune Municipal Corporation due to red tapism. No cause of action arose for filing of the complaint. There are 65 flats in 'A' building and 65 flats in 'B' building. Possession will be delivered in respect of those 130 flats on or before 22nd Sept. 2018. Building 'C' will be completed by 13.06.2020. One

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Satyajeet Madhukar Gaidhani was responsible for execution and completion of the project, but committed suicide in the year 2017. The Respondents have obtained loan of Rs. 4 Crores from Jalgaon Janta Sahakari Bank, but there is inadvertent delay as constitution of the firm is not to be changed. After the demise of Mr. Gaidhani, there was no one to look after the construction work. The Respondent No.1 is not liable to pay anything to the Complainants. The complaint therefore, deserves to be dismissed.

4. The Respondent No.2 has filed written explanation on 27.07.2018. It is alleged that by virtue of partnership deed, dated 06.05.2014, Respondent No.2 had become partner of the firm. However, due to personal reasons, he was unable to continue and retired from the firm on 26.06.2016. Then one Surseh Satyajeet Gaidhani became incoming partner. A notice has been published by Respondent No.2 in daily "Prabhat", dated 12.05.2017. All rights and liabilities of the firm have been taken over by continuing partners. The Respondent No.2 never represented to Complainants that they were responsible for day-to-day activities. The Respondent No.2 is wrongly impleaded in this complaint. The Complaint therefore, deserves to be dismissed against Respondent No.2.
5. On the basis of rival contentions of parties, following Points arise for my determination. I have recorded my findings against them for the reasons stated below.

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| <u>POINTS</u> | <u>FINDINGS</u> |
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1. Have the Respondents failed to deliver possession of the flat to the Complainant without there being circumstances beyond their control ?.. In the Affirmative.
2. Is the Complainant entitled to reliefs claimed ? .. In the Affirmative.
3. What order ? .. As per final order.

REASONS

6. **POINT Nos.1 and 2** :- The Complainant has placed on record copy of the agreement, dated 26.09.2014. Accordingly, Complainant booked Flat No. 905 on 9th floor in the project "City Lights" at Khed-Shivapur, Tal. Haveli, District Pune having built-up area of 661 sq. Ft. The price fixed was Rs.17,18,600/-. Payment of Rs. 4,00,000/- was acknowledged. Balance of Rs. 13,18,600/- was to be paid in instalments. As per clause 11, the builder undertook to deliver possession of the flat within 24 months since the date of agreement. The Complainant claimed to have paid in all Rs. 18,99,840/-, whereas the price of the flat was fixed at Rs. 17,18,600/-.
7. Adv. Bhave, the learned counsel for the Complainant submitted that the Respondents had agreed to deliver possession of the flat within 24 months from the date of agreement. Though Complainant has paid entire consideration, the Respondents failed to deliver possession as per the agreement. On the RERA website, the date of delivery of

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possession is shown as June, 2020. There is no justifiable reason for the delay in delivering possession. The defence that material was not available for carrying out construction is taken just for the sake of defence and not believable. Respondent No.2 was a partner when agreement was executed. He is also owner of the land and has retained 34 flats for himself. Therefore, he cannot be exempted from the liability. In the written statement, Respondent No.1 admits the contents of para 3.3 of the complaint i.e. date of delivery of possession as Nov./Dec. 2016. The Complainant is required to repay the loan with interest. Shri Tushar Kale, the learned counsel for Respondent No.1 has submitted on the other hand that the Complainant was looking for accommodation around Khed-Shivapur. As per clause 11 of the agreement, date for possession is given as 24 months from the date of plinth completion certificate or from the date of agreement. It is submitted that there is typographical error and it should be read as the date 24 months since obtaining the plinth completion certificate. It is submitted that the partner who was looking after the construction work, committed suicide. Therefore, possession could not be delivered earlier. Shri Padhye, learned counsel for Respondent No.2 submitted that Respondent No.2 had retired from partnership firm under Section 72 of the Partnership Act on 26.07.2016 and the liabilities have been taken over by Respondent No.1.

8. The Respondents are trying to rely on clause 11 of the agreement about date of delivery of possession. Since the date of agreement is 26.09.2014, counting two years from that date comes to 25.09.2016. The clause reads that, "date of delivery of possession would be 24 months from the date of

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the agreement or from the date of plinth completion certificate to be issued by the concerned local competent authorities, whichever is later." No ambiguity is as such found in this clause. The question that arose is, "when did Respondents obtain plinth completion certificate ? The Respondent No.1 averred that he obtained commencement certificate from the Town Planning Authority, Pune on 26.02.2014. It is also alleged that 90% construction of 'A' and 'B' building is completed. This is the position in the year 2018. If the Respondents have to allege that plinth completion certificate came two years after execution of agreement in favour of Complainants, it was for them to plead the fact and to place the plinth completion certificate on record. There is a letter, dated 18.11.2014 from the Respondents addressed to the Complainant to the effect that, total work stage and the Flat No. 905 on 9th floor in 'B' Wing is completed up to 7th level of RCC Slab i.e. 70% work is completed. There are further letters showing further progress. Therefore, it becomes clear that on the date of execution of agreement, the construction had advanced from the stage of plinth completion. It could not be advanced without obtaining plinth completion certificate. Consequently, the date of delivery of possession has to be taken as 25.09.2016, as alleged by the Complainant.

9. The Respondent No.1 has tried to justify the delay on the ground that there was no infrastructure available for completion of the project. He had to spend from his own pocket for the infrastructure. The Respondents are professional builders and must have been aware of the conditions under which they were required to complete their project. So far as scarcity of building material is concerned,

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that was well within the knowledge of the Respondents. They were required to tap alternative source for the building material. The cost of the flats as well as date of delivery of possession is fixed by the builder by taking into consideration all these aspects. These are not the reasons which could not be anticipated by the builders. Hence the defence cannot be accepted.

10. The Respondent No.2 is alleging that since he retired from the partnership in July 2016, he cannot be saddled with the liability. His defence cannot be accepted because consent of the Complainant while retiring was not obtained to absolve him from the liability of the firm. Section 32 of the Partnership Act does not absolve a retiring partner of the obligations that had accrued, unless there is an agreement with the third party. Also Section 72 prescribes mode for issuing the public notice for retirement and there is nothing on record that Respondent No. 2 has complied with the said provision. On behalf of the Complainant following rulings were cited on this point.

- (i) Syndicate Bank v/s. R.S.R. Engineering Works, 2003 DGLS (SC) 1121 (Supreme Court).
- (ii) Jayantilal Mohanlal v/s. Narandas and Sons – AIR 1983 Bombay 226.
- (iii) Union Bank of India v/s. Six Star Hosieries and Another - [2003] 115 CompCas495(Madras),
- (iv) Urmilaben Pareshbhai Kothiya v/s HDFC Bank Ltd. Cri. Misc. Appln. No. 7872 of 2017 – High Court of Gujarat.

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I am therefore, of the view that the Respondent No.2 cannot be absolved from the liability.

11. The Complainant has placed on record loan statement from the Axis Bank. The loan amount disbursed is shown as Rs. 13,74,840/-. Loan sanctioned amount is shown as Rs. 13,74,840/- and undisbursed amount shown is Rs. 1,32,589/-. The rate of interest is shown as 9.15% p.a. The Complainant is claiming Rs. 3,99,946/- in addition to the refund of total amount paid as interest component. The Complainant is also claiming interest @ 18% p.a. In my opinion, this will be claiming double interest and it cannot be allowed. Reliance was placed by Complainant on the judgment of Hon'ble Bombay High Court in Neelkamal Realtors' Case. It has been held by the Hon'ble Bombay High Court that, "interest granted under RERA is the compensation". In my opinion, the Complainant is not justified in claiming interest on the amount paid to the Respondents and again interest component on the loan availed by him.
12. Since the price of the flat was Rs.17,18,600/-, the Complainant is entitled to refund of this amount. Further Rs. 3,00,000/- are claimed to have paid towards MSEB connection, society charges, etc. About Rs. 1,73,491/- are claimed to have paid for stamp duty and registration charges, etc. Complainant is also entitled to refund of this amount, except the stamp duty, which can be refunded to him. The Complainant is entitled to interest on these amounts @ State Bank of India's Highest Marginal Cost of Lending Rate + 2% above, as provided under Section 18 of the Maharashtra Real Estate (Regulation & Development) (Registration of Real

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Estate Projects, Registration of Real Estate Agents, Rate of Interest & Disclosure of Website) Rules, 2017 since the date of payment. The Complainant is also entitled to Rs.50,000/- as compensation and Rs. 25,000/- as cost of this complaint. I therefore, answer Point Nos.1 and 2 in the affirmative and proceed to pass following order.

ORDER

- (1) The Respondents shall refund an amount of Rs. 18,99,840/- except the stamp duty, which is refundable, to the Complainant with interest @ State Bank of India's Highest Marginal Cost Lending Rate + 2% since the date of payment till realization of the entire amount.
- (2) The Respondents shall pay Rs. 50,000/- to the Complainant as compensation.
- (3) The Respondents shall also pay Rs. 25,000/- to the Complainant as cost of this complaint.
- (4) The Respondents shall pay the aforesaid amounts within 30 days from the date of this order.
- (5) The Complainant shall execute cancellation deed at the cost of the Respondents.

Pune
Dated :- 05/10/2018


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