

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY

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

AT : PUNE

Complaint No. CC005000000011843

1. Mukund Bahu Kadam
2. Madhuri Mukund Kadam.

Both R/at Sr.No.11,
Parna Kuti Paytha,
C/6, Laxmi Traders,
Yerwada, Pune.

.. Complainants

Versus

1. M/s. Shivtara Meredian Associates,
Through its Partner
Mr. Ravindra Laxman Dhumal,
Office at 114-115, Connought Place,
Bund Garden Road, Pune-411 001.
2. Shivtara Properties Pvt.Ltd.
(A Company incorporated under
Companies Act, 1956
Through its Director
Mr. Nilesh S/o Shivaji Singh,
R/at C-904, Sicilaa, Sr.No.70/A/5/1,
B.T. Kawade Road, Pune-411 001.
3. Muktabai Murlidhar Jadhav
R/at Gat No.1029, Kunjirwadi,
Tal. Haveli, District Pune.

.. (Deleted)

.. Respondents

APPEARANCE :-

Complainant : Adv. Mamidwar.
Respondent Nos.1 to 3 : Absent.

10.5.19

FINAL ORDER

(Delivered on 10.05.2019)

1. The Complainants who had booked a flat with the Respondents/Promoters seek withdrawal from the project and refund of the amount with interest, as the Respondents failed to deliver possession of the flat as per agreement.
2. As per online complaint, only Mukund Bhau Kadam is complainant, the date of agreement was 10th December, 2013, agreed date for possession was 10th of December 2015, total consideration payable was Rs.14,46,000/-, the amount paid to the Respondents is Rs.10,12,200/- + stamp duty of Rs. 95,000/-. The project is "Tara Alicia" at village Kunjirwadi on Pune-Solapur Highway, Tal. Haveli, District Pune. The Complainant came to know about the project and after going through the brochure and documents shown by Respondents, Complainant booked a flat. Respondents have delayed possession. Respondents took more than 20% of the consideration amount. The Respondents have agreed to pay meagre amount of Rs.7,000/- per month towards rent of 1 BHK flat to the Complainants. The Complainants therefore, seek withdrawal from the project and seeks refund of the amount paid with interest@ 18% p.a. as well as rent @ Rs.15,000/- p.m. from the date of default.
3. In the detailed complaint, Mukundas well as his wife Madhuri are shown as Complainants. Respondent No.1 is Shivtara Meredian Associates through it's partner Laxman Ravindra Dhumal. Respondent No.2 is Shivtara Properties Ltd. through it's director Nilesh Shivji Singh. Respondent No.3 is Muktabai

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Jadhav, who appears to be the land owner. Respondent Nos.1 and 2 are said to have executed development agreement with Respondent No.3 – the land owner/co-promoter. Complainant booked Flat No.103-D on 17th April, 2013. Amount paid towards price is Rs. 11,07,200/- and stamp duty paid RS. 95,000/-. It is alleged that the Respondents are demanding balance amounts without getting occupancy certificate and without providing amenities mentioned in the brochure and without the provision of water supply. No potable water is available at the site. Parking facility is not in accordance with the sanctioned plan. Respondents had agreed to deliver possession within 2 years since the agreement. On failure, they agreed to pay Rs. 7000/- p.m. as rent for accommodation, whereas 1 BHK flat fetches rent of Rs. 9000/- p.m. The Complainants therefore, filed this complaint.

4. The complaint came up before me on 14th Feb, 2019. Advocate Mamidwar for Complainant was present but Respondents failed to appear. The matter was adjourned to 15th March, 2019 for exparte hearing. On that day arguments were partly heard. The matter was adjourned for further arguments to 3rd April, 2019. On 3rd of April, 2019, as nobody appeared, the matter was adjourned to 3rd May, 2019. On 3rd May 2019, on the request of the Complainants, matter was adjourned to 9th May, 2019. Arguments were concluded on 9th May, 2019.
5. Following Points arise for my determination. I have recorded my findings against them for the reasons stated below.

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POINTS**FINDINGS**

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|--|------------------------|
| 1) Have the Respondents failed to deliver possession of the flat to the Complainants as per the agreement without there being circumstances beyond their control ? | ..In the Affirmative. |
| 2) Are the Complainants entitled to the reliefs claimed ? | ..In the Affirmative. |
| 3) What order ? | .. As per final order. |

REASONS

6. **POINT Nos.1 and 2** :- Complainants have placed copy of agreement, dated 10th December, 2013 on record. Flat no.103 in D building in the project 'Tara Alicia' at village Kunjirwadi, Tal. Haveli, District Pune was agreed to be sold to the Complainants for a consideration of Rs. 14,46,000/- including basic cost of Rs. 13,49,000/-. As per clause 12, date of delivery of possession was within 2 years since execution of agreement. Usual circumstances under which the Respondents were entitled for extension of time are also mentioned. The Respondents have not put forth any ground for the delay in delivery of possession, which was expected in December, 2015 i.e. prior to 3 years. I therefore, hold that the Respondents failed to deliver possession as per agreement without there being circumstances beyond their control. I therefore, answer Point No.1 in the affirmative.

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7. Complainants have contended that they have paid Rs. 11,07,200/- towards cost of the flat and Rs. 95,000/- towards stamp duty. Some receipts have been placed on record along with statement of loan amount. The total payment to the Respondent comes to Rs. 12,02,200/-. Out of it, Rs. 95,000/- are said to be for stamp duty and registration charges. In the event of cancellation of sale-deed, the Complainants are entitled for refund of stamp duty as per rules. Except that amount, Complainants will be entitled to refund of the amount with interest as per Rule 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. Complainants are residents of Yerwada in Pune. They have not adduced evidence to show that they were forced to hire accommodation at Kunjirwadi only because the Respondents delayed possession of the flat. Therefore, the amount of compensation payable in my opinion will be Rs. 30,000/-. I therefore answer Point No.2 in the affirmative and proceed to pass following order.

ORDER

- (1) The Respondents to pay Rs. 12,02,200/- except the stamp duty amount, which is refundable as per rules, together with interest @ 10.75% p.a. from the date of payments till the realisation.
- (2) The Respondents to pay Rs. 30,000/- towards compensation to the Complainants.
- (3) The Respondents to pay Rs.20,000/- as costs of this complaint.
- (4) The Complainants to execute cancellation deed of the agreement at the cost of the Respondents.

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- (5) The Respondents to pay the aforesaid amounts within 30 days from the date of this order.

Pune
Dated :-10/05/2019

M.V. Kulkarni
10.5.2019
(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA, Pune