

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

Complaint No.CC005000000010613

RAJANIGANDHA V MUTALIK .. Complainant

Versus

1. MARVEL SIGMA HOMES PVT LTD .. Respondent
2. RUNAL DEVELOPERS

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

Appearance :

Complainant : In person
Respondent 1. Advocate Kutkar
2. Advocate Hariprasad Shetty

FINAL ORDER

27-07-2018

1. The complainant who had booked a flat with respondents/developers seeks refund of the money paid with interest and penalty as respondents failed to deliver possession as per agreement. Since I am working at Mumbai & Pune offices in alternate weeks as per availability of dias and due to non availability of stenographer, this judgement is being delivered now.
2. The complainant has alleged that she had booked a flat with respondents. As usual the name of the project and

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no. of the flat booked is not found in the proforma. It is alleged that complainant was promised possession by 31st December, 2017. However, now it is understood that the project will be ready only by 30th June, 2021. Other necessary details are required to be fished out from the documents annexed to the complaint. Accordingly the project is Marvel Castella at Balewadi. The flat No. is 801 in 'A' building. Agreement was signed on 5th May, 2016. The agreement shows that it was executed in favour of (1) Mrs. Rajnigandha (2) Mr. Venkatesh K Mutalik. They appear to be wife and husband. Arguments were advanced by both of them and the complaint appears to have been filed on behalf of both. The area of the flat is 157 sq.mtrs. The price agreed is shown as Rs.12151000/- Total amount paid is shown as Rs.4036953/- Date of delivery of possession mentioned in the agreement is 31-12-2017. Since possession is not delivered, complainant seeks refund of total amount paid alongwith interest and compensation.

3. Respondent No.1 filed written explanation on 29-05-2018. It is alleged that since agreement was entered into on 1st May, 2016, the complainant is not an allottee under RERA act. Husband of the complainant who is co-purchaser is a necessary party. The project has been delayed due to reasons beyond the control of the respondent. The complainant is well aware about the term in the agreement in that respect. As per RERA the revised date for possession is 30-6-2021. The amounts which are paid to the government cannot be claimed back by complainant. The respondent is on the verge of completing the project. Section 32 of the RERA

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contemplates growth and promotion of Real Estate Sector. Hence such complaints cannot be allowed which would cause irreparable loss to the respondent. The complaint is filed to harass the respondents and it deserves to be dismissed.

4. Respondent No.2 also filed reply on 29-05-2018. It is alleged that proprietor of respondent No.2 Runal Developers namely Rajendra Suresh Jain is the owner of block of land admeasuring 24650 sq.mtrs from the land survey No.29/6/1 at Balewadi. With an object to develop said land, respondent No.2 entered into articles of agreement on 18-11-2010 with company i.e., respondent No.1 and also executed power of attorney in it's favour to enable respondent No.1 to carry out development work efficiently. Same day supplementary agreement was also executed by the parties and they have decided to work on principal to principal basis. The respondent No.1 initially procured sanction of building plan for project Marvel Cascada admeasuring 19400 sq.mtrs. which was to be completed before 12-12-2014 but failed to complete it. The respondent No.1 has mortgaged his land for the sake of respondent No.1 with capital first limited and has prejudiced the interest of respondent No.2. It is respondent No.1 who has delayed delivery of possession to the complainant. He started the project Marvel Cascada without taking respondent No.2 in confidence. Respondent No.2 is having no role in the construction and sale of flats. Hence complaint deserves to be dismissed against respondent No.2.

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5. On the basis of 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 flat to the complainant without circumstances beyond their control?	Yes
2. Is the complainant entitled to the reliefs claimed?	Yes
3. What order?	As per final order.

REASONS

6. Point Nos.1 & 2 The husband of the complainant, Advocate Kutkar for respondent No.1 and Advocate Shetty for respondent No.2 made submissions on expected lines. The project of the respondents is ongoing project and is registered with MahaRERA. It is now well settled that the provisions of RERA are applicable to all on going projects. Hence objection raised by respondent No.1 cannot be accepted. The complainant is very much an allottee.
7. The respondent No.1 has alleged that delay in delivery of possession is cause by reason beyond his control. The respondent could not even mention the reason. The question of such reason being beyond his control, therefore does not arise. It is only a defence taken for the safe of defence and it is not acceptable. So also respondent No.1 claims that as per RERA record revised date of possession is 30-6-2021. The respondent has

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not taken consent of the complainant for such extension of date of delivery of possession. Such unilateral act on the part of respondent No.1 is not binding on the complainant.

8. Respondent No.1 solicited my attention to Section 32 of the RERA. No doubt the provisions of the act and functions of the authority include promotion of real estate sector. A bonafide promoter deserves a sympathetic approach. Here the respondents are not showing any bonafides in not fulfilling promise to deliver possession of the flat booked by complainant despite accepting huge amounts from her. Clearly the delay on the part of respondents appears deliberate.
9. Respondent No.2 is the owner of the land and has entered into an agreement with respondent No.1 for the development. Thus, he has caused to be constructed the buildings for the purpose of selling. He has even mortgaged the land for that very object. He is also a party to the agreement executed in favour of the complainant. His contention that he does not come within the ambit of promoter cannot be accepted and he cannot be absolved of his liability.
10. The complainant has placed on record copies of receipts in respect of payments made by her. Accordingly, Rs.22,67,297/- were paid on 11-4-2016. Rs.22,902/- were paid on 11-4-2016, Rs.99,633/- were paid on 11-4-2016, Rs.31,100/- were the registration charges dated 5-5-2016. Rs.76,4060 appears to be stamp duty paid on 5-3-2016. Rs.69,1785/- appears to have been paid on 29-2-2016. Rs.12,15,10/- appears to have been paid on 6-3-2016. Rs.82,15/- were paid on 8-3-2016.


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The total comes to Rs.3983617/- So far as stamp duty is concerned, on cancellation of agreement part of it is refundable. The complainant would not be entitled to the refundable amount. Relaying on clause-16 of agreement, the complainant claims compensation of Rs.30,000/- per month. As the respondents have failed to give justifiable reason for not delivering possession of the flat to the complainant, the complainant would be entitled to recover this amount from 1st of January 2018 till today. I therefore answer point no.1 and 2 in the affirmative and proceed to pass following order.

ORDER

1. The respondents shall refund Rs. 3983617/- to the complainant which were received from her with interest @ the State Bank of India highest Marginal Cost of Lending Rate plus two percent per annum prevailing as on date, which is refundable from the date of payment till actual realisation - (minus) the stamp duty which can be recovered by the complainant.
2. The respondents shall pay to the complainant amount @ Rs.30,000/- per month 1-1-2018 till today as per agreement.
3. The respondents shall pay costs of Rs.20,000/- to the complainant.
4. The respondent shall pay above amount within 30 days from the date of issue of this order.

Pune
Date :- 27.07.2018


(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA