

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

**Complaint No.CC005000000010829**

**Thomas Elliott**

**.. Complainant**

**Versus**

**Marvel Landmarks Pvt Ltd**

**.. Respondent**

**Coram : Shri M.V. Kulkarni**

**Hon'ble Adjudicating Officer**

**FINAL ORDER**

**27-07-2018**

1. The Complainant who had booked flat with respondent builder seeks refund of the amount paid by him with interest and compensation, as the respondent failed to deliver possession of the flat as per agreement.
2. The complainant has alleged that he booked flat with the respondent in the project Marvel Sangria No.K-1001 alongwith his wife in August 2012. The respondent had promised to deliver possession by December, 2013. The complainant has paid total amount Rs.1,88,91,585/-. For want of sanctions agreement was not registered. In January, 2014, after sanctions were received the complainant was invited to register the agreement. The date of completion was given December, 2014. On being pressed by the complainant

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the respondent offered alternative unit on higher floor i.e., K-1501. Therefore, an agreement was registered in January 2015 and the completion date was given as December, 2015. In April, 2015 complainant received a Court Order showing that Marvel Landmarks Pvt. Ltd has sold unit K-1501 to third party also. In August 2015, an MOU was executed and Marvel Landmarks Pvt. Ltd undertook to resolve court case and handover the possession by December, 2016 or in the alternative they would cancel the agreement at their own cost. The project is now registered with RERA with completion date as June, 2019. The court case is still going on and respondent is not complying with the agreement. The complainant therefore seeks Rs.2,00,000/- per month as loss of rental from December, 2013 and interest at the rate 1.5% per month. Alternatively he seeks refund of Rs.1,88,91,585/- with interest at the rate of 18% per annum as well as compensation of Rs.1 hundred lakh.

3. The respondent has resisted the complaint by filling written explanation. It is alleged that wife of the complainant is Co-purchaser of unit K-1501 of Marvel Ganga Sangria but she has not been made a party. Co-Promoters are also not joined as parties. The previous purchaser Pravin Bhandari gave confirmation on 6-2-2014 to the effect that he does not have subsisting claim, right or interest in respect of flat No.K-1501. Only, thereafter the respondent entered into an agreement with complainant on 20-1-2015.

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Pravin Bhandari has filed a false civil case. Delay in handing over possession has been caused due to reason beyond control of the respondent. The complainant was informed about the situation from time to time. As per RERA, revised date of possession is 30-6-2019. As per contract, date of possession may be revised as per statutory obligation. The respondent has clear cut intention of completing the project and handing over possession on the above date. The respondent is on the verge of completing the project, Section-32 of the act directs authority to facilitate growth and promotion of the real estate sector, and thus it has to protect interest of promoters also. No cause of action arose for filing of this complaint, therefore it deserve to be dismissed.

4. As I am working at Mumbai and Pune offices in alternate weeks as per availability of dias and as Stenographer was not available, this complaint is being decided now.
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. Has the respondent failed to hand over possession of flat to the complainant as per agreement without there being circumstances beyond his control?	Yes

*Handwritten signature/initials*

2. Is the complainant entitled for reliefs claimed? Yes
3. What order? As per final order.

### REASONS

6. Heard - Advocate Kapatkar and Advocate Kutkar for the complainant and respondent respectively. Both made submissions on expected lines. The complainant has placed on record the terms and conditions and the chart about payments made. Copy of MOU dated 10-8-2015 is also placed on record. As per clause-5, date of delivery of possession is 31-12-2016. A mention has been made that Pravin Bhandari expressed inability to pay his instalments and requested to withdraw from the deal and therefore agreement with complainant was registered on 20-1-2015. However, Mr.Bhandari filed Special Civil Suit No.604 of 2015 in the Court of CJSD, Pune. Therefore, the date of delivery of possession was agreed at 31-12-2016. It was provided that if possession was not delivered on that date, the builder will execute agreement of sale of flat No.1601 admeasuring 268.61 sqr Mtrs. In that event that agreement dated 20-1-2015 was to be cancelled. The purchase price of flat H-1601 was to remain same i.e. Rs.2,33,79,000/-The complainant has placed agreement dated 20-1-2015 also on record.
7. There is no dispute that the respondent is the Director of Marvel Landmarks Pvt Ltd who is the builder. The complainant has however not mentioned in the complaint that respondent is joined as Director of the company.

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However, the liability of the respondent will be only as a Director of the company. Even the respondent concedes that the liability of co-promoters is joint and several. The complainant has chosen to proceed against only one Director i.e., respondent. However that is choice of the complainant. The liabilities of co-promoters interse is not look out of the complainant. Hence this challenge cannot survive.


8. There is no dispute that Pravin Bhandari filed a Civil suit against respondent. There is a clear mention in MOU about earlier agreement with Bhandari and the Civil Suit filed by him. Considering these circumstances, date of delivery of possession was fixed as 31-12-2016. In the event of inability to resolve the matter alternative flat No.1601 was offered to the complainant by respondent. Now it does not lie in the mouth of respondent that the delay in delivery of possession has occurred due to the circumstances beyond his control. It also appears that the respondent is not in a position to deliver possession of flat No.1601 to the complainant. Therefore, complainant is entitled to refund of amount paid by him.
9. The complainant has not placed the receipts about payments executed by respondent. However, payment chart about the payments made by him is placed on record. The respondent is not denying having received such payments. Consequently the complainant will be entitled to refund of amount of Rs.1,88,99,585/- together with interest from the respondent and compensation of Rs.500000. I therefore answer point No.1 & 2 in the affirmative and proceed to pass the following order.

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**ORDER**

1. The Respondent shall pay Rs.1,88,91585/- to the complainant 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.
2. The respondents shall pay Rs.5,00,000/- to the complainant as compensation for the inconvenience and worries suffered by him.
3. The respondents shall pay Rs.25,000/- as costs to the complainant.
4. The respondent shall pay above amount within 30 days from the date of issue of this order.

Pune  
Date :- 27.2018

  
(M.V.Kulkarni)  
Adjudicating Officer,  
MahaRERA