

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

**Complaint No.CC005000000010505**

**Chemron Texchem Pvt Ltd** .. Complainant  
**Versus**  
**Marvel Sigma Homes Pvt Ltd** .. Respondent

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

**Appearance :**

**Complainant : Advocate Shri.Chaturvedi**  
**Respondents : Advocate Shri. Amit Patil**

**FINAL ORDER**

**16-08-2018**

1. The Complainant a private limited company seeks refund of entire amount paid to the respondent and costs, as the respondent has failed to deliver possession of the flat as per agreement. Since I am working with Pune office and Mumbai office in alternate weeks and for want of stenographer this matter is being decided now.
2. The complainant has alleged that it entered into an agreement with respondent for purchase of flat No.502 in Marvel Rebirra in 'A' Wing at Sangamwadi, Pune, area 323.76 sq.mtrs.Taluka Haveli, Dist.Pune on 9-5-2016. The consideration agreed was Rs.6,82,48,500/- which was to be paid as per schedule annexed to the agreement. It was agreed that possession would be delivered on 30-09-2017. The complainant made payments as per demand raised by respondent to the extent of Rs.3,41,24,250/- plus Rs.48,12,395/- as registration charges etc., The respondent

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has not delivered possession of the flat, therefore respondent is liable to refund the total amount paid by complainant with interest.

3. The respondent has resisted the complaint by filling written explanation on 30-5-2018. It is alleged that as per clause 47 of the agreement it is specifically admitted that the complainant i.e., purchaser is an investor. The complainant specifically informed that he had right to claim stamp duty set off under provisions of Bombay Stamp Act. The board of directors of complainant in their meeting dated 14-4-2016 passed a resolution that they were purchasing said flat for investment purpose. The complainant therefore does not come within the definition of allottee.
3. RERA does not have retrospective effect. Since agreement was executed prior to 1<sup>st</sup> May 2016, present complaint is not tenable. The respondent has clear and good intention of completing project and handing over possession to complainant by the date furnished to RERA. If majority of allottees like complainant withdraw from the project respondent would suffer irreparable loss and will have to ultimately shut down the project itself. Spirit of Section 32 of the RERA which protects interest of the promoter also will get frustrated if this complaint is allowed. Stamp duty service tax and VAT were paid to the government and not the respondent. The respondent is therefore not liable to repay them.
4. 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

1. Is the complainant an allottee under RERA Act?

#### FINDINGS

No

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2. Has the respondent failed to hand over possession of flat to the complainant as per agreement without there being circumstances beyond his control? Does not survive
3. Is the complainant entitled for reliefs claimed? Does not survive
4. What order? As per final order.

### REASONS

5. Point No.1: Heard -Shri.Chaturvedi learned Counsel for complainant and Shri Amit Patil learned Counsel for respondent. Shri Amit Patil has submitted that the complainant cannot be called an allottee because it sought to purchase the flat only for investment purpose. The Board of Directors of the complainant passed a resolution to the effect that the flat in question was being purchased for investment purpose. Rustom Mehta case which is cited on behalf of complainant is not applicable to the present case because there was a memorandum of understanding in that case. Shri. Patil also submitted that RERA is not applicable to the present case as the agreement was executed prior to coming into force of RERA Act.
6. Shri.Chaturvedi has submitted on the other hand that while registering this project with RERA authority, respondent did not mention complainant as one of the promoters. Clause-47 is a common clause in all agreements. The flat was sought to be purchased for bonafide use. The complainant wants to start his business and he is forced to stay in a hotel in Pune for want of accommodation. The complainant company is not authorised to invest by purchasing property. The complainant sought to purchase three parking spaces and

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terrace which would not have been purchased if it was only for investment purpose. Service tax has been paid by the respondent and not by complainant.

7. As per definition of investment on google it is the action or process of investing money for profit. " a debate over private investment in road-building" synonyms: investing, speculation; expenditure, outlay, funding, backing, financing, underwriting; buying shares" "you can lose money pretty fast by bad investment" stake, share, portion, interest, money/capital invested; informalante.

As per definition on Wikipedia - Investment : In general, to invest is to allocate money (for sometimes another resource, such as time) in the expectation of some benefit in the future - for example, **investment** in durable goods, in real estate by the service industry, in factories for manufacturing, in product development, and in research and development. However, this article focuses specifically on investment in financial assets.

In finance, the benefit from investment is called a return. The return may consist of capital gains or investment income, including dividends, rental income etc., or a combination of the two. The projected economic return is the appropriately discounted value of the future returns. The historic return comprises the actual capital gain (or loss) or income (or both) over a period of time.

Investors generally expect higher returns from riskier investments. Financial assets range from low-risk, low-return investments, such as high-grade government bonds, to those with higher risk and higher expected commensurate reward, such as emerging markets stock investments.

Investors, particularly novices, are often advised to adopt a particular investment strategy and diversify their portfolio.

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Diversification has the statistical effect of reducing overall risk.

Section 2(d) of RERA defines "allottee" as in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

Section 2 (zk) defines " promoter " means-

(i) A person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of -

(a) Buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) Plots owned by such a authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs

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apartments or buildings for its Members of In respect of the allottees of such apartments or buildings: or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land or which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation, - For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

8. As usual it is a cryptic complaint lacking the necessary details like the price that was agreed to be paid and the stages in which the price was to be paid. It is in the agreement annexed to the complaint that the price of Rs.6,82,48,500/- is found. As per exhibit G filed by the complainant he paid booking amount Rs.3,37,83,007/- on 9<sup>th</sup> May, 2016 and TDS of Rs.3,41,243/- on 10-5-2016 making the total payment of Rs.3,41,24,250/- Stamp duty of Rs.40,94,900/- and registration of Rs.31,240/- MVAT of Rs.6,82,485/- and Misc. amount of Rs.3,770/- were paid on 5-5-2016. Then the figures of interest receivable in each month from May 2016 @ 9% per annum are also given in the same exhibit.
9. The flat agreed to be purchased is residential flat with amenities like car parking and terrace. The agreement does not show the purpose behind purchasing the flat in question. Ordinarily a person books a flat for using as his

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accommodation. The complainant being a private limited company would required a flat to accommodate its directors or officers or staff members. As per memorandum of association of the complainant placed on record at exhibit-H main object of complainant company was business in chemicals, pharmaceuticals etc., One of the incidental objects was to purchase, take on lease etc., real or personal property --- enhance the value any other property ---.

10. It may be noted that copy of resolution of the board of directors of the complainant dated 14-4-2016 is annexed to the agreement itself. As per resolution the board accorded to acquire by purchase the flat in question for investment purpose on such terms and conditions in the best interest of the company. Clause-47 of the agreement reads " The purchaser has informed the promoter/s that purchaser is an investor and hence purchaser reserves his/her/its right to claim stamp duty set off -----"
11. It is true that the word investor is not mentioned in RERA as rightly submitted by advocate Chaturvedi. The crucial question is whether the complainant is an allottee or promoter. The agreement is silent as to whom the complainant wanted to accommodate in the flat in question. On the other hand the documents mentioned above show that the flat was being purchased by complainant company as an investment. An amount of more than Rs.3 crores was paid at one go. The agreement is dated 9-5-2016 and the possession was expected on the 30-9-2017 that is within 1 year 5 months since execution of agreement. It is also clear that the flat is a prime property in Pune city and after completion of the project the flat can be sold with handsome profit. The respondent builder takes amount from persons booking flats in order to facilitate progress of the

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construction in phased manner. Here the complainant has paid 50% of the price of the flat at the beginning itself which is to the tune of Rs.3,41,24,250/- This constitutes bulk of the funds required for the respondent to carry on his business. This fact of investment by complainant is mentioned in agreement. The complainant has invested this amount obviously to make handsome gains in short period. In other words the complainant is one of the persons who caused to be constructed the building in question for the purpose of selling the flat booked by him for handsome gains. I therefore conclude that the complainant comes in the ambit of the definition of promoters under RERA. Consequently the complainant not being an allottee he cannot claim the reliefs under RERA. I therefore answer point No.1 in the negative.

12. Point No.2 & 3. In view of finding on point No.1 as above, these points do not survive. I therefore proceed to pass following order.

### **ORDER**

1. The complaint stands dismissed.
2. No order as to costs.

Pune  
Date :- 16.8.2018

  
(M.V.Kulkarni)  
Adjudicating Officer,  
MahaRERA