

**BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.**

COMPLAINT NO: CC006000000054608

- 1) Vishal Prakash Mutreja
2) Neelam Mirchandani ... Complainants.

Versus

- 1) Goldstar Realtors
2) Amit Prakash Masalia
3) Prakash Rasiklal Masalia ... Respondents.
MahaRERA Regn: P99000006550

Coram:

Hon'ble Shri Madhav Kulkarni.

Appearance:

Complainant: In person

Respondent: Absent.

Final Order

21st February, 2019

1. The complainants who had booked a flat with respondent / builder had prayed for recovery of interest on the amount paid to the respondent with further direction to hand over possession of the flat. Before Hon'ble Member, MahaRERA, the complainant sought to withdraw from the project and sought refund of total amount paid to the respondent with interest.
2. The complainants have alleged that under Development agreement dated 4.2.2011 the respondent had undertaken development of land survey nos. 45,46,47,53 at village Kambalgaon, Taluka Palghar, Dist. Palghar. The complainants booked Flat No. 303 in Bldg. No. 3 in the complex known as Colours Discovery for a consideration of Rs. 17,37,450/-. Agreement was executed on 18th Jan. 2014. Till 19th Dec. 2013 complainants had paid Rs. 3,47,490/-. Thereafter the complainants paid Rs. 8,97,654/-. Thus, the

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complainants paid Rs. 12,45,144/- towards price of the flat and also Rs. 1,35,124/- towards other charges, out of which Rs. 28,929/- were paid towards service tax, Rs. 17,375/- towards VAT; Rs. 69,500/- towards Stamp Duty; Rs. 19,320/- towards Registration charges. Date of possession was not mentioned in the agreement. Complainants contacted respondents on various occasions but they avoided to communicate with the complainants. However, via email date 19th Dec. 2016 respondents represented that building will be completed within 15 to 18 months and possession would be delivered within 15 to 18 months. When the complainant visited the site he found that construction was not completed. Respondent No. 2 would not answer call from complainants nor representative including respondent No.3. Vide letter dated 14.1.2018 sent by RPAD complainants called upon respondent to deliver possession but it returned as unclaimed. The respondents have not completed construction till this date. The complainants had sought loan from HDFC Bank and are paying instalments since Oct. 2014. Therefore, the complainants filed this complaint.

3. The matter came up before Hon'ble Member on 19th Aug. 2018 but the respondents failed to appear. Again on 04.09.2018 the respondents failed to appear. On 20.09.2018, the complainants sought refund of amount with interest and compensation and the matter came to be transferred to Adjudicating Officer. On 18.12.2018 the complainants appeared before me with their Advocate Mr. Yadav. Respondents were absent. The matter was adjourned for exparte hearing to 22.1.2019. On 22.1.2019 arguments for complainants were heard. As I am working at Mumbai and Pune Offices in alternative weeks, this matter is being decided now.

4. Following points arise for my determination. I have noted my findings against them for the reasons stated below.

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Points	Findings
1. Have the respondents failed to deliver possession of flat to the complainants as per agreement without there being circumstances beyond their control?	Affirmative
2. Are the complainants entitled to the reliefs claimed?	Affirmative
3. What order?	As per final order

Reasons.

Point Nos. 1 & 2

5. The complainants have not explained their relationship interse but are residing at the same place. The respondent No.1 is the firm. Relationship of respondent No.2 with firm is not explained in the complaint. But respondent No. 3 is referred as representative of respondent No. 2. However, there is no challenge from respondent No. 2 &3 that they are representatives of the firm respondent No.1. The complainants have placed on record agreement dated 18.01.2014. Accordingly, the complainants booked flat No. 303, in building No. 3 in the complex Colours Discovery at Village Kambalgaon, Taluka Palghar, Dist. Palghar. The price agreed was Rs. 17,37,450/-. Clause 13 in respect of date of delivering possession has been kept blank. Usual circumstances under which the respondent was entitled for reasonable extension of time are mentioned. However, since the date for delivering possession is not mentioned, this clause is becoming redundant.

6. It is the contention of the complainants that they came to know about non-inclusion of the date of delivery of possession after the agreement was handed over on 15.9.2014. The complainants believing in

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the respondents did not go through the contents when the agreement was executed. However, they started insisting upon the date of delivery of possession and the respondents started avoiding them. It appears that the complainants have booked flat on 6th Nov. 2013 by paying Rs. 51,000/-. Thereafter the complainants made payments from time to time. Complainants are relying on the mail dated 19.12.2016 received from the respondents. Accordingly, possession will be near by 15 to 18 months. However, the starting point is not mentioned in the mail. If we take the starting point as the date of agreement then the date of possession will be July, 2015. If we take the starting point as the date of this mail, then the date of possession will come to June 2018. There is no challenge that respondents have not delivered possession till today. No justification for the delay is coming forth from the respondents. I therefore hold that the respondents failed to deliver possession without there being circumstances beyond their control. I therefore answer point No.1 in the affirmative.

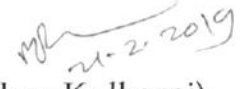
7. The complainants have claimed that they have paid Rs. 12,45,144/- towards price of the flat. In addition to that they paid Rs. 1,35,124/- towards various charges including Stamp Duty of Rs. 69,500/-. The complainants have placed on record the receipts and the total payment comes to Rs. 12,45,144/-. Out of the other charges stamp duty amount can be refunded to complainants as per Rules. Except that amount complainants will be entitled to refund of the amount with interest as provided under Rule 18 of Maharashtra Rules. I therefore answer Point No. 2 in the affirmative and proceed to pass following order.

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ORDER

- 1) The complainants are allowed to withdraw from the project
- 2) The respondents to repay Rs. 13,18,268/- to the complainants - Stamp Duty which can be refunded as per Rules together with interest @ Rs. 10.70% p.a. from the date of payments till final realisation.
- 3) The respondents shall pay Rs. 20,000/- to the complainants as costs of the complaint.
- 4) The complainants to execute cancellation deed at the cost of the respondents.
- 5) The respondents to pay above amount within 30 days from the date of this order.

Mumbai.
Date:21.02.2019


(Madhav Kulkarni)
Adjudicating Officer
MahaRERA