

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY

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

AT : PUNE

Complaint No. CC005000000011113

1. A) Aparna Laxman Gole,
B) Laxman Amrut Gole.

Both R/at Gole Niwas, Dattawadi,
Akurdi, Nigdi, Pune-411 014.

2. Pallavi Harshal Karnavat,
R/at 101, Diwanji Housing Society,
Behind Ganesh Vishwa Building,
Katraj-Kondhwa Road, Gokul Nagar,
Katraj, Pune-411 048.

3. Dilip Vishnu Khadatare,
R/at Room No.2, 'B' Wing,
CH-4, Colombo Society,
Ever shine City, Gokhiware Road,
Vasai (E), Tal. Vasai, Dist. Palghar.

.. 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, Sicillaa, Sr.No.70/A/5/1,
B.T. Kawade Road, Pune-411 001.

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3. Muktabai Murlidhar Jadhav .. (Deleted)
 R/at Gat No.1029, Kunjirwadi,
 Tal. Haveli, District Pune. .. Respondents

APPEARANCE :-

Complainant : Adv. Mamidwar.
 Respondent Nos.1 & 2 : Adv. Tapkir Akshay.

JUDGMENT

(Delivered on 06.09.2018)

- 1) Three distinct Complainants, who had booked respective flats in the Project "Tara Alicia" being constructed by the Respondents, claims the reliefs of interest on the amounts paid by them to the Respondents towards the consideration of their respective flats, as the Respondents failed to hand over possession on the date, as agreed. Since flat booked by each is different, by way joint complaint, complainants may have avoided paying of sufficient court fees. Office to recover deficit court fees from them as per rules.
- 2) It is alleged by the Complainants that the Complainant Nos.1(A) and 1(B) have booked Flat No. 507"D" with the Respondents on 11.04.2013 and further entered into an agreement on 11.12.2013, by which the total consideration agreed to be paid was Rs. 15,12,200/-. The Complainants have paid Rs. 10,56,000/- to the Respondents till date.
- 3) It is further alleged that the Complainant No.2 has booked Flat No. 308"D" on 11.04.2013 and executed an agreement for the same on 19.12.2013 for the total consideration of Rs. 15,12,200/-. She has paid Rs. 10,31,700/- to the Respondents against the total consideration.

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- 4) Likewise, the Complainant No.3 has booked flat No. 406"D" on 13.04.2013 and executed an agreement on 06.01.2014 for the total consideration of Rs. 15,30,500/-. He has paid Rs.14,78,350/- to the Respondents till the date.
- 5) The Respondents agreed to hand over possession of the respective flats within two years from the date of execution of the said flat. However, they have not handed over possession within the agreed period. It is further alleged that the Respondents without getting occupancy certificate of project and without providing amenities mentioned in the brochure, have illegally issued demand letter for payment of final balance amount. The Respondents have given undertaking on 12.11.2016 and agreed to pay rent of Rs. 7000/- p.m. for 1 BHK and Rs. 9000/- for 2 BHK on account of delayed possession and further assured to hand over possession by the end of March, 2017. The Complainants claimed interest from launching of project i.e. 2013/booking. The Complainants have further alleged that the Respondents are liable to pay compensation of Rs. 5,00,000/- for mental harassment. The Complainants therefore, seek relief of interest and compensation.
- 6) On 15.06.2018 Complainants filed an application and prayed to delete the name of Respondent No.3 from the Complaint.
- 7) On 11.07.2018 plea of the Respondent Nos.1 and 2 came to be recorded through their representative.
- 8) The Respondent Nos.1 and 2 filed their reply on 11.07.2018. It has been contended that the complaint is baseless,

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frivolous and vexatious and deserves to be dismissed as prescribed u/S. 7(2)(d) of the Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable Forms of Complaints and Appeals, etc.) Rules, 2017. The complaint is counterblast to the notice issued to the Complainants for default in payment. The Complainants are defaulters and contravened the provisions of Section 19(6) of RERA. The agreement was executed with the Complainants prior to coming into force the RERA. In paragraph 12 of the Agreement, it has been specifically mentioned that the project is revised and the new planned project will require additional compliance, which will take more than two years. The complaint discloses no cause of action against the Respondent Nos.1 and 2 and the alleged cause of action is before enforcement of the RERA and therefore, this authority has no jurisdiction to hear the present complaint. The construction of building E and D is on the verge of completion and shall be completed by the end of December, 2018. The Respondents pray for dismissal of the complaint with exemplary cost and direction to complainants to pay the default amount with interest @ 18% p.a.

- 9) On 25.07.2018 Respondents submitted an application that the present Complainants have withdrawn their complaint on their own will and without any liberty to file the complaint before the authority and therefore, the Complainants have no cause of action and the Complaint is hit by the principle of double jeopardy and is therefore, liable to be dismissed with costs. Say of Complainants was called for. The complainants

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replied that permission was obtained from the authority to file the complaint.

- 10) Arguments were heard on 25.07.2018. As I am working with Mumbai Office and Pune Office in the alternative weeks and as the stenographer was on medical leave, this judgment is being delivered now.
- 11) Following Points arise for my determination. I have recorded my findings against them for the reasons stated below.

POINTS

FINDINGS

1. Have the Respondents failed to deliver possession of respective flats to the Complainants as per terms of Agreement without there being reasons beyond their control ? .. In the Affirmative.
2. Are the Complainant entitled to reliefs claimed ? .. In the Affirmative.
3. What order ? .. As per final order.

REASONS

- 12) **POINT Nos.1 and 2** :- Respondent Nos.1 and 2 do not dispute execution of agreement in favour of the Complainant No.1A & 1B on 11.04.2013. The Complainant Nos.1 and 2 claimed to have paid Rs.10,56,000/- to the Respondents against the total agreed consideration under the agreement of Rs. 15,12,000/-. Likewise, the Complainant No.2 has paid Rs.10,31,700/- against the total agreed consideration of Rs.

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15,12,200/-, whereas the Complainant No.3 claimed to have paid Rs. 14,78,350/- against the total agreed consideration of Rs. 15,30,500/-.

13) I have perused the respective agreements placed on record. As per clause 12 of the agreement, promoter undertook to hand over possession on or after two years from the date of agreement. The clause of reasonable extension of time under certain contingency was also inserted. Thus in ordinary circumstances, the Respondent is expected to deliver possession of the flats to the Complainants within two years from the date of execution of the respective agreements.

14) Adv. Tapkir for the Respondent Nos.1 and 2 placing reliance of clause 12 of the agreement, has tried to submit that there is no delay on the part of Respondents to deliver possession. According to him, the clause provides for delivery of possession on or after two years from the date of agreement and therefore, the Respondents are at liberty to hand over possession after due completion of the project. The Respondents have given December, 2018 as the date for completion of project. Even though the wording in the agreement is a bit strange, the meaning that can be drawn is that the Respondents had undertaken to deliver possession within two years after execution of the agreement. If no time limit was put in the agreement there would have been no mention of two years. Again there cannot be any agreement where the builder has given no time limit for completion of the project. An allottee parts with his precious money with a hope to get shelter for him in near future.

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Nobody will part with his money when there is no certainty of getting accommodation in foreseen future. Therefore, interpretation tried to be made by Adv. Tapkir cannot be accepted. On the other hand, the submission of Adv. Mamidwar that the date of possession was 2 years after completion of the respective agreements deserves to be accepted. There is no dispute that the Respondents have not yet delivered possession of respective flats to the respective Complainants. Consequently, under Section 18 of the RERA, the Complainants are entitled for interest on the amount paid by them to the Respondents.

15) Complainant Nos.1 and 2 have placed on record statement of account issued by pnb Housing Finance Ltd., dated 09.02.2018, which shows that the loan of Rs. 12,05,000/- was sanctioned against Flat No. 507 and amount of Rs. 7,61,000/- has been disbursed. A copy of passbook extract, dated 28.07.2015 is also placed on record to show payment of Rs. 3,00,000/- made to the Respondents

16) The Complainant No.2 has placed on record the receipts, (1) dated 11.04.2013 for Rs. 1,00,000/-, (2) dated 16.05.2013 for Rs. 1,40,000/-, (3) dated 21.01.2014 for Rs. 1,00,000/-, (4) dated 01.07.2014 for Rs. 6,00,000/-. The total comes to Rs. 9,40,000/-.

17) The Complainant No.3 has placed on record the receipts (1) dated 25.02.2014 for Rs. 1,60,000/-, (2) for cheque No.802653, dated 05.05.2013 for Rs. 90,000/-, (3) for cheque No. 802655, dated 03.06.2013 for Rs. 1,00,000/-,

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(4) dated 13.04.2013 for Rs. 50,000/-. The total comes to Rs.4,00,000/-.

18) Though the figures of amounts alleged to have paid by the respective Complainants for the respective flats to the Respondents do not tally with the documents placed on record by respective Complainants however, the Respondents have not disputed or challenged payment of the amounts as alleged by the Complainants. Therefore, it can be believed that the Respondents have received the respective amounts paid by the respective complainants, as mentioned in the chart in the complaint. Thus the Complainants will be entitled to recover interest on the amounts paid by them at the State Bank of India's Highest Marginal Cost of Lending Rate + 2% p.a. prevailing as on date i.e. $8.65\% + 2\% = 10.65\%$ p.a. from immediate date of completion of two years from the execution of their respective agreements till the Respondent delivers possession of the flat or gives notice to Complainant about obtaining occupancy certificate, subject to payment of balance consideration, if any.

19) Complainants have further alleged that on 12.11.2016 the Respondents executed an undertaking to pay monthly rent to the Complainants till possession is delivered to them. The rent agreed to be paid for 1 BHK and 2 BHK flat are ^{said to be} @ Rs.7000/- and Rs. 9000/- p.m. respectively. No such undertaking is placed on record by the Complainants. Moreover, they have claimed rent @ Rs.15,000/- p.m. in the relief clause. The Complainants will be entitled to claim rent that they have paid as a compensation only if they lost their

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present accommodation and failed to get possession of the flats booked from the builder. There is no evidence adduced in that respect by the present Complainants. Hence the prayer for recovery of rent cannot be considered. I therefore, answer Point Nos.1 and 2 in affirmative and proceed to pass the following order.

ORDER

- (1) The Respondents shall pay interest at State Bank of India's Highest Marginal Cost of Lending Rate + 2% p.a. prevailing as on date i.e. 8.65% + 2% = 10.65% p.a. to the Complainants on the actual amounts paid by the Complainants towards price of the respective flats, for each month of default in handing over possession since the immediate date of the completion of two years from the date of execution of the respective agreements till Respondents delivers possession of flat or gives notice to Complainant about obtaining occupancy certificate, subject to payment of balance consideration, by the respective complainants, if any.
- (2) The Respondents shall pay Rs. 30,000/- to the Complainants as cost of this complaint.
- (3) The Respondents shall pay the aforesaid amounts within 30 days from the date of this order.

Pune
Dated :-06/09/2018

MF 6.9.2018
(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA, Pune