

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY  
AUTHORITYCORUM : Shri M.V. KULKARNI, ADJUDICATING OFFICER, PUNE  
AT : PUNE

Complaint No. CC005000000010957/2018

Mr. Mallappa Birajdar s/o Gurrappa Birajdar  
R/at B-1, 601, Kumar Shantiniketan,  
Sus Road, Pashan, Pune 411 021.

.. Complainant

## Versus

1. Marvel Sigma Homes Pvt. Ltd.,  
Having registered office at  
4<sup>th</sup> floor, Arthavishwa Building,  
Above IDBI Bank, Koregaon Park,  
Pune-411 001.
2. Mr. Rajendra Suresh Jain,  
Having Office at  
Indraprastha Apartment,  
Pimpri-Chinchwad Link Road,  
Chinchwad, Pun-411 033. .. Respondents

**JUDGMENT**

(Delivered on 21.08.2018)

- 1) The Complainant, who had booked a Flat with the Respondents, seeks to withdraw from the project and refund of the amount paid together with interest.
- 2) The Complainant has alleged that he booked flat with the Respondents. As usual, the details of the flat booked and the details of the terms on which it was booked, are missing in the complaint. What is mentioned is that possession was to be delivered in the year 2018. The Complainant is retiring in 2019. The project of the Respondent has not taken off so far.

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The Complainant does not have a house to stay in Pune after retirement. He therefore, informed the Respondents before about one year to cancel the booking, but to no avail. The Complainant has paid total amount of Rs. 37,01,756/- and seeks repayment with interest.

- 3) From the agreement that is annexed to the complaint, it can be made out that it was executed on 03.09.2016 by the Respondent Nos.1 and 2 in favour of Complainant Yallappa and his wife Ujwala in respect of Flat No. 201 in 'B' building in the project "Marvel Castella", admeasuring 156.07 sq. mtrs. Built up area + open terrace admeasuring 20.43 sq. mtrs. and one covered car parking. The price agreed was Rs 1,10,45,000/-. As per clause 5(b), possession was to be delivered on or before 31.03.2018.
- 4) Initially only Respondent No.1 was joined in this complaint. On 17.04.2018 one Mr. Dhananjay Chewale on behalf of the Respondent No.2 Runal Developers filed appearance purshis and demanded copy of complaint and prayed time to file Vakalatnama. The application came to be opposed on behalf of Complainant and thereafter on 29.05.2018 the Complainant himself prayed for inclusion of Respondent No.2 and he was permitted to do so.
- 5) The Respondent No.1 filed written explanation on 28.06.2018. It is alleged that since RERA came into force after the present agreement was executed, this complaint is not tenable. An objection is taken that co-promoter is not joined as a party. The delay in handing over possession to the Complainant was not deliberate, but caused due to

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reasons beyond control of the Respondents. The Complainant is aware of the term in the agreement in that respect. As per RERA record, the date of delivery of possession is 30.06.2021. The Respondent has clear and good intention to complete the project and to hand over possession to the Complainant. The Respondent is on the verge of completing the project. If majority of allottees withdraw from the project, the Respondent will have to shut down the construction. Section 32 gives the authority to facilitate growth and promotion of the Real Estate sector. Hence the Complainant may not be allowed to withdraw. No cause of action arose for filing the complaint. The complaint therefore, deserves to be dismissed.

- 6) The Respondent No.2 has resisted the complaint by filing say on 12.07.2018. It is alleged that the proprietor of Respondent No.2 Mr. Rajendra Suresh Jain, who is owner of the land Survey No. 29/6/1, at village Balewadi, Tal. Haveli, District Pune, had objected to develop the said land. He entered into articles of agreement with the Respondent No.1 Company on 18.11.2010. He executed power of attorney in favour of the Respondent No.1 to enable it to more efficiently carry out development work on the said land. As per agreement, both the parties are to work on principal to principal basis. The Respondent No.1 initially on its own volition procured sanction for building plan for the project "Marvel Cascada" and obtained commencement certificate and N.A. permission. The period for completion of the project was from 13<sup>th</sup> December, 2011 to 12<sup>th</sup> December, 2014. Despite repeated requests, the Respondent No.1 failed to complete the project. The Respondent No.1 mortgaged the

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land on 25.06.2015 in favour of Capital First Limited for borrowing Rs. 21 crores. It is learnt that the Respondent No.1 has not utilized the said amount for developing the said land. The Respondent No.2 has only to sign the agreement for sale of the flats being owner of the land. Except that there is no other role for Respondent No.2 in the development work. The Respondent No.2 is acting in the best interest of the flat purchasers. The Respondent No.1 has issued notice to Respondent No.2 for referring the dispute to the arbitrator. The Respondent No.2 is not at fault and cannot be penalized. Alternatively, liability of the Respondent No.2 is restricted to the principal amount received by the Respondent No.2 from the Complainant.

- 7) The arguments in this matter were heard on 12.07.2018. As I am working with Mumbai Office and Pune Office in the alternative weeks and as the stenographer here was on medical leave, this judgment is delivered now.
- 8) On the basis of rival contentions, 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 the flat to the Complainant as per terms of Agreement without there being reasons beyond their control ? .. In the Affirmative.

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2. Is the Complainant entitled  
to reliefs claimed ? .. In the Affirmative.  
3. What order ? .. As per final order.

### REASONS

9) **POINT Nos.1 and 2** :- The Complainant has annexed copy of the agreement, dated 03.09.2016 to the complaint. Heard Advocate Abhijeet Bhilavadikar for Complainant, Advocate Amit Patil for Respondent No.1 and Advocate Hariprasad Shetty for Respondent No.2. Shri Bhilavadikar solicited my attention to clause 5(b) of the agreement. Accordingly, the possession of the flat would be delivered on or before 31.03.2018. My attention is drawn to letters of the Complainant, dated 30.03.2017, 09.02.2018 at pages 69 and 70 and third letter, at page 71. It is submitted that the Complainant had expressed his intention to cancel the booking. It is further submitted that there is dispute between the Respondent Nos.1 and 2, but that will not affect the Complainant's rights.

10) Advocate Amit Patil submitted on the other hand that agreement was executed with Mallappa Birajdar and his wife Ujwala Birajdar. Both were required to come as Complainants. Shri Patil has submitted that liability of Respondent No.1 and 2 is joint and several. Shri Shetty has submitted that Complainant alone cannot seek cancellation. There is no prayer as such in the complaint against the Respondent No.2. As per agreement between Respondent No.1 and 2, it was incumbent on Respondent No.1 to complete the project within 36 months. There is arbitration

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clause and issuance of notices. Therefore, no liability can be saddled or at least interest liability may not be saddled on Respondent No.2.

11) The agreement is dated 03.09.2016. The date of delivery of possession was 31.03.2018 i.e. nearabout one and half year's time. The grievances made by the Complainant in the complaint is that he will be retiring by the year 2019. However, possession of the flat booked is not delivered as per agreement i.e. on 31.03.2018. Therefore, Complainant seeks to withdraw from the project. Going by his letter, dated 30.05.2017 at page 69, it is revealed that the Complainant found the price to be quite high. Unless there is reconsideration, the Complainant desired to cancel the booking. The letter at page 70. Dated 09.02.2018 speaks that the Respondent had a talk with representative of the Respondent regarding refund to the Complainant. The third letter reads that the Respondent was supposed to come out with a refund plan by 25<sup>th</sup> January, 2018, but he failed to do so. The process of cancellation if at all it was going on, has got nothing to do with the present dispute, which is a RERA complaint. That matter is a dispute within the jurisdiction of Civil Court.

12) The further twist is that as per agreement, the possession of the flat was to be delivered on or before 31.03.2018. That date is gone by. Admittedly, possession has not been delivered by the Respondents to the Complainant. Though the Complainant desired to back out in the year 2017 itself, now since the date of delivery of possession as per agreement is over, he has preferred this

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RERA complaint. It appears that Respondent No.2 owner of the land and Respondent No.1 is developer/builder. However, both come within the meaning of "promoter", as defined under RERA. No doubt, there is dispute inter-se between Respondent Nos.1 and 2. That cannot have any effect on the rights of the Complainant and in my opinion, Respondent Nos.1 and 2 are equally liable.

- 13) A feasible attempt was made by Respondent No.1 to justify delay in delivering possession to the Complainant. Vague statement is made that the delay has occurred due to reasons beyond the control of the Respondent No.1. The Respondents could not even give the details of such reasons. Consequently, no justification for delay on the part of the Respondents can be accepted. There is a clear default on the part of the Respondents in delivering possession of the flat to the Complainant as per terms of the agreement.
- 14) In view of the discussions above, the Complainant is entitled to withdraw from the project. His prayer is for refund of the amount paid by him with interest. Some receipts/cheques have been produced from page Nos.63 to 67. There is receipt/cheque, dated 12.07.2016 for Rs. 8,00,000/-, dated 12.07.2016 for Rs. 6,91,896/-, dated 12.07.2016 for Rs. 8,105/-, dated 14.07.2016 for Rs. 39,650/-, dated 07.09.2016 for Rs. 20,690/-, dated 07.09.2016 for Rs. 20,40,310/-, dated 07.09.2016 for Rs. 93,105/- . The total comes to Rs. 40,61,756/-. The Complainant will be entitled for refund of this amount. I therefore, answer Point Nos.1 and 2 in the affirmative and proceed to pass the following order.

5-8-2016

**ORDER**

- (1) The Complainant is allowed to withdraw from the project. The Respondent Nos.1 and 2 jointly and severally shall refund an amount of Rs. 40,61,756/- minus stamp duty, which can be refunded to the Complainants together with interest at State Bank of India's Highest Marginal Cost of Lending Rate + 2% p.a. prevailing as on date, from the date of payment.
- (2) The Complainant shall execute cancellation deed at the cost of the Respondent Nos.1 and 2.
- (3) The Respondents shall pay cost of Rs. 20,000/- to the Complainant.
- (4) The Respondents shall pay the aforesaid amounts within 30 days from the date of this order.

Pune

Dated :- 21/ 08 / 2018

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