BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

COMPLAINT No: CC005000000011457

Mr. Vikas Deo Shett & Mrs. Neeta Vikas Shett ..... Complainants

Versus

1.M/s. Marvel Zeta Developers Pvt Ltd
2.Mr. Vishwajeet Subhash Jhavar
3. M/s. Nyati Realtors LLP.
4.M/s. Nyati Builders Pvt Ltd
5.Mr. Nitin Dwarkadas Nyati ..... Respondents

MahaRERA Registration No. **P52100003767**

Coram: Hon'ble Dr. Vijay Satbir Singh, Member -1

Adv. Dilip Dhumaskar appeared for the complainants.

Adv. Abhijeet Pawar appeared for the respondent No. 1 &2.

Adv. Prasad for the Respondent No.3 to 5.

Order

(30th July, 2018)

Facts in brief: -

The above named complainants who are the joint allottees have filed this complaint against the respondent No. 1 & 2, who are the promoters of the project and the respondent No. 3 to 5, the owners of the land who have given the development rights to the respondent No. 1. In the present complaint, the complainants are seeking directions to the respondents to refund the amount paid by them to the respondents/ promoters with interest and compensation

under the provision of Section-18 of the Real Estate (Regulation & Development) Act, 2016 in respect of booking of a flat bearing No. 401 in the building known as "Marvel Izara Phase 01", bearing MahaRERA Registration No. P52100003767 at Pune.

This matter was heard at length, when all concerned parties have appeared before this Authority through their respective advocates and made oral as well as written submissions.

Arguments by the complainants:-

The complainants have argued that they had jointly purchased the said flat from the respondent No. 1 vide registered agreement for sale dt.10-12-2014. As per clause No. 5(b) of the said agreement, the stipulated date of the possession was 30-06-2017. However, the respondents have not given them the possession of the said flat so far.

There seems to be no construction activity at the site for the last 18 months. Till now, they have paid an amount of Rs.8,53,616/- directly to the respondents and by HDFC loan disbursement of Rs. 63,47,746/-, totaling to Rs. 72,01,362/-. All payments were made on time by the complainants as per the payment schedule mentioned in the agreement. The bank has charged an interest of Rs.15,98,928/-till 31st March, 2018 on the loan taken to purchase the flat. The complainants cannot trust the respondents and wait any more for delivery of the flat. Therefore, they want to leave the project and to get the amount paid refunded with interest and compensation decided by the law (xi). The respondents have breached clauses 5(b) & 14 of the said agreement dated 10-12-2014.

Arguments by the respondent No. 1 & 2:-

The respondent No. 1 argued that the provisions of Real Estate (Regulation & Development) Act, 2016 has prospective effect and hence complainants are not allottees as per sec. 2(d) of the said Act as the agreement was executed

prior to 1/5/2017. The present complaint is therefore, governed under the MOFA Act and not under RERA Act. He further stated that the respondent No. 1 was bound to give possession as per revised date of possession mentioned in MahaRERA website and therefore, there is no breach committed by him and the provision of Sec. 61 of RERA Act is not attracted. Even the complainants are not entitled to claim interest on service tax, VAT & Stamp duty. Moreover, there was default on the part of the complainants in making payment of the installments and hence respondent had to issue demand notice.

The respondent No. 1, further argued that as per clause No. 14 of the registered agreement for sale, if the respondent fails to give possession on the scheduled date, then the complainants will have option to demand and receive compensation every month. However, such compensation is payable only if the complainants have made all payments within time. However, in the present case, the complainants are defaulters and have violated the terms and conditions of the registered agreement for sale. He further stated that he had clear and good intention of completing the project and handing over the possession of the flat to the complainants as per completion date furnished during the registration. In view of these facts, the respondent requested for dismissal of this complaint.

Arguments by the respondent No. 3 to 5: -

The respondent No. 3 to 5 have argued that since the Development Agreement and the Unit Agreement were prior to the RERA Act, 2016, the Development/Unit Agreement is governed by MOFA. Hence, this Authority has no jurisdiction to try and entertain this complaint. They further stated that they granted development rights in favour of respondent No.1, M/s. Marvel Zeta Developers Pvt. Ltd. by registered Development Agreement dated 25th April, 2011 and Power of Attorney executed with respondent No.1 to enable them to develop the land. As per clause no. 11(x) of the said development agreement dt. 25.04.2011, all obligations of promoter under MOFA were to be

performed by the respondent No. 1 alone. They further stated that they are not promoters in respect of responsibilities / liabilities towards allottees of the said project and the relation between them is that of land owner and developer and there is no Partnership or J.V. between them. Even the respondent No. 1 is carrying out development in its own independent capacity because they had chosen to accept the consideration for grant of development rights of their respective holdings in the form of certain share in the gross sales proceeds and hence they cannot be treated to be promoter together with the respondent No. 1 towards the allottees.

Even as per the registered agreement for sale dated 10/12/2014, the respondent No. 1 has agreed to hand over possession of the said flat to the complainants and they are in no way concerned with the said agreement as the respondent Nos. 1 and 2 are entirely responsible for development of the said project and they have signed the said unit agreements as confirming party being the land owners. They further argued that as per the said agreement, the respondent No. 1 received all the amounts towards sale consideration from the complainants. Further, as per development agreement their only responsibility is to deduce clear and marketable title to their respective holding out of the larger land and procure TDR for carrying out construction on the said land and no other responsibility. Therefore, they cannot be penalized for non performance of respondent Nos. 1 and 2, as they are just the land owners.

Discussion and conclusions:-

This Authority has examined the submissions made by all concerned parties and relevant information available in the present case. Admittedly, the respondents have executed registered tripartite agreement for sale with the complainants - allottees and the agreed date of possession of the flat was 30th June, 2017. Further, since the project of the respondents has been registered with MahaRERA being an ongoing project and therefore, it brings with it the

legacy of the rights and duties of the parties connected thereto. The respondent No. 1 argued that he is liable to hand over possession of the flat to the complainants as per the revised date mentioned in the MahaRERA registration. This submission cannot be accepted by this Authority, since the respondents have no authority to rewrite the date of possession mentioned in the agreement as observed by the Hon'ble High Court at Bombay vide its order dated 6-12-2017 passed in W.P.No. 2737 of 2017. As per the provision of Section 18 of the RERA Act, 2016, the allottee is entitled to claim refund with interest and compensation, if the promoter fails to deliver the possession of the flat on the agreed date of possession mentioned in the agreement. In the present case, the respondent agreed to handover possession of the said flat to the complainants by 30th June,2017. However, while registering the project with MahaRERA, the respondent has mentioned the revised date of possession as 31-12-2020. It shows that the complainants are still required to wait for another two years to get the possession of the said flat from the respondents. Section 18 of the Real Estate (Regulation & Development)Act, 2016 provides that :

"If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—
(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act":

According to the said provision of law, if the promoter fails to handover possession of the flat to the allottee, as per the agreed date of possession mentioned in the agreement for sale, then on demand of the allottee, the promoter is liable to refund the amount to the allottee.

In the present case also admittedly, since the respondent No. 1 has failed to fulfill his liability to give possession of the flat to the complainants as per the agreement for sale, the complainants who are the allottees are entitled to seek relief in the form of refund of money along with interest under Section 18 of the RERA Act, 2016.

In this regard, this Authority also feels that the payment of interest on the money invested by the home buyer is not the penalty, but a type of compensation for delay as has been clarified by the Hon'ble High Court of Judicature at Bombay in above cited judgment dated 6th December, 2017 passed in W.P. No. 2737 of 2017. The respondent is liable to compensate the home buyer accordingly.

In the present case, during the hearing, the complainants filed written application on record of this Authority stating that they are seeking only interest under section 18 of the RERA Act, and not claiming any other compensation. The said request of the complainants is accepted.

With regard to the submission made by the respondent Nos. 3 to 5 that they are not liable to refund the amount to the complainants, this Authority has perused the tripartite agreement dated 10-12-2014 duly signed by the complainants as purchasers, the respondent No. 1 as promoter and the respondent Nos. 3 to 5, who are the owners of the land under the said project have joined as confirming parties. Clause No. 14 of the said agreement states that if the promoter has failed to give possession of the said flat to the purchasers, in that event the promoter is liable to refund the amount received by them from the purchaser with simple interest at the rate of 9%. The said clause clarifies the

liability of the respondent No. 1 to refund the amount in case of default in handing over possession of the said flat to the complainants. Undoubtedly, the said terms and conditions are binding upon all concerned parties to the said agreement. Hence there is substance in the submissions made by the respondent No. 3 to 5 that they are not liable to refund the amount to the complainants.

Accordingly, this Authority passes following order:

Order

The respondent No.1 promoter is directed to refund the amount paid by the complainants with interest at the rate prescribed i.e. MCLR plus 2% under section 18 of the RERA Act, 2016 and the Rules and Regulations made thereunder from the date of payment till the final payment is made to the complainants.

With these directions, the complaint stands disposed of.

(Dr. Vijay Satbir Singh)
Member-1, MahaRERA