

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

Complaint No.CC006000000044227

- 1. Mr. Mohit Sureka,**
 - 2. Mrs. Sonal Sureka.**
- R/at 7, Swastik Society,
Gulmohar Road, Opp. Bhaidas Hall,
Vile Parle (W), Mumbai-400 056. .. **Complainants**

Versus

**Aanya Realtors (Partnership Firm),
Mr. Rohit Chugani – Partner
Ms.Rita Patel – Partner**
Office at 110, 1st floor, Orion Business
Park, Next to Cine Wonder Mall,
Kapurbawdi, Ghodbunder Raod,
Thane (W)-400 607. .. **Respondents**

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

**Appearance :-
Complainant : In person.
Respondent : Absent**

**FINAL ORDER
(05.02.2019)**

1. The Complainants, who had booked a flat with the Respondents/Builders, seek withdrawal from the project and refund of monies paid, as the Respondents/Builder

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failed to deliver possession of the flat as per the agreement.

2. The Complainants have alleged that they booked Flat No. 812 on 8th floor in Falco Chesire by paying Rs. 20,00,000/- in advance by RTGS on 07.09.2013 in the name of Complainant No.1. They also booked Flat No. 813 by paying price of Rs. 20,00,000/- in advance by RTGS on 07.09.2013 in the name of Complainant No.2. The proposed date of completion was 31st October, 2016. It is alleged that Complainants were compelled to purchase flats in lieu of unpaid loan to the Respondents. The Respondents issued two allotment letters on 07.09.2013. There is no progress at the site and all funds seems to have been diverted elsewhere. The Complainants issued notice for cancellation of booking on 23.04.2018. The Complainants claim refund of the amount paid with interest @ 21% p.a. from the date of booking, as the Complainants have been duped of all their savings which were invested in this project.
3. The complaint came up before the Hon'ble Member on 14th June, 2018 and was adjourned to 6th July, 2018. Then it came to be adjourned on 2nd August, 2018 and thereafter to 10th of September, 2018. The parties were submitting that they were intending to settle the matter amicably. On 14th Sept. 2018 the matter came

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to be transferred to the Adjudicating Officer. On 17th December, 2018, the Complainant appeared, but the Respondents failed to appear. Arguments for Complainants were heard.

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

POINTS

FINDINGS

- | | | |
|-----|---|---------------------|
| (1) | Has the Respondent failed to deliver possession of the flat to the Complainant as per agreement, without there being circumstances beyond his control ? | In the Affirmative |
| (2) | Is the Complainant entitled to the reliefs claimed ? | In the Affirmative |
| (3) | What order ? | As per final order. |

REASONS

5. **POINT Nos. 1 and 2** :- Two letters of allotment, dated September 7, 2013 have been placed on record by the Complainants. Flat Nos. 812 and 813 in the building Falco Cheshire at Mohili, Tal. Kalyan, District Thane were allotted in the names of Complainant Nos.1 and 2 respectively. Payment of Rs. 20,00,000/- was admitted

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to have been received on 07.09.2013 by RTGS. The price was exclusive of other charges mentioned in Clause No.1 as well as share application money, etc. As per clause 8 of the allotment letter, Respondents were to hand over and convey title of the property to society etc in the proposed complex within a period of 3 years from the date of completion of entire permissible construction. As per clause 9, the Complainants had agreed to execute regular agreement for sale upon being called to do so and agreed to sign necessary writings, etc.

6. The Complainants have alleged that agreed date for completion of the project was 31st October, 2016 however, Respondents failed to complete the project. By letter, dated April 23, 2018, Complainants cancelled the booking and asked for refund. Now the Complainants have alleged that Flat No. 812 has been sold to Susanta Kumar Pradhan. Possession date as per MahaRERA Registration record is March, 2016. The Complainants cannot invest additional RS. 5,00,000/- for registration on a standstill project and the Respondents have not provided documents required for registration viz. 7/12 extracts, approved plan, title certificate, etc.
7. The Respondents have failed to challenge the contentions of the Complainants. The allotment letters

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as well as HDFC Bank Statements prove the payments of Rs. 20,00,000/- as price of each flat. Though registered agreements have not been executed, it appears that Respondents are to be blamed for that. It were the Respondents who were required to execute registered documents in favour of Complainants and to take initiative for that. There is nothing on record to show any steps taken by Respondents for execution of registered documents even though the whole consideration amount was received at the time of booking itself. The Complainants have also alleged that the Respondents have made sale agreement in Falco Rivershire, which is an adjoining project. The allotment letters show the booking in the project Falco Chasire. Specific period for delivery of possession is not mentioned in the allotment letters, but the period to convey title in the properties is given as 3 years. Therefore, the contention of Complainants that possession was promised on 31st October, 2016 can be accepted. Absolutely no reason is coming forth from the Respondents why project has not been completed till date. The Complainants are therefore, entitled to withdraw from the project and refund of their amounts with interest as provided under Maharashtra Rules. I therefore, answer Point No.1 and 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. 20,00,000/- to each of the complainants together with interest @ 10.70% p.a. from the date of payments till final realization.
- (3) The Respondents also to pay Rs.20,000/- to the Complainants as costs of this complaint.
- (4) The Respondents to pay the aforesaid amounts within 30 days from the date of this order.

Mumbai (Camp at Pune)
Dated :- 05/02/2019


(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA