

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

Complaint No.CC005000000000347

Rajesh Manikchand Jain .. Complainant

Versus

Vishwajit Subhash Jhawar .. Respondent

Coram : Shri M.V. Kulkarni

Hon'ble Adjudicating Officer

Appearance :

Complainant : Advocate Kenjalkar

Respondent : Advocate Kutkar

FINAL ORDER

13-08-2018

1. The Complainant who had booked a flat with builder/respondent seeks interest on the amount paid by him due to delay in handing over the possession of the flat as well as compensation.
2. The complainant has alleged that he booked flat No.E-501 in the project of the respondent Marvel Ganga Sangria at Mohammadwadi, Pune on 24-10-2011. The respondent had promised to deliver possession on or before 31-12-2013. However, the respondent has not delivered the possession of the flat till today. The complainant therefore seeks compensation to the extent of interest paid to the bank and rentals paid to the landlord for

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accommodation. The complainant finally had to buy another flat last year at the prevailing market rate in the area.

3. The respondent has resisted the complaint by filling written say. It is alleged that the flat was booked by complainant alongwith two others and the complaint is bad for non-joinder of those two persons. Also co-promoter of the project has not been made a party. The complainant had inspected all documents and understood the terms and conditions under which possession of the flat was to be received by him. Agreement was executed under Maharashtra Ownership of Flats Act, 1963. The agreement provides that under special circumstances, possession of the flat may be delayed. The respondent had applied for completion certificate and obtained the same on 13th April, 2018. The complaint therefore deserves to be dismissed.
4. On the basis of the rival contentions of the parties, following points arise for my determination I have noted my findings against them for the reasons stated below:

POINTS	FINDINGS
1. Has the respondent failed to hand over possession of flat to the complainant as per agreement without there being circumstances beyond his control?	Yes
2. Is the complainant entitled for reliefs claimed?	Yes
3. What order?	As per final order.

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REASONS

4. Point No.1 & 2: The complaint is silent as to the amount paid by complainant to the respondent. Copy of the agreement dated 24-10-2011 is placed on record. Accordingly the flat booked was No.501 in 'E' building in the complex Marvel Ganga Sangria admeasuring 365.57 sq.mtr built up area 80.36 sq.mtrs open terrace + 246.90 sq.mtrs terrace. The consideration was Rs.2,78,12,500/- Under clause V(b) the respondent agreed to deliver possession of flat on 31-12-2013. The project appears to be at Mohammadwadi in Pune.
5. Shri.Kenjalkar learned counsel has submitted before me that the agreement is of the year 2011 and the respondent was supposed to deliver possession by 2013. The complainant has made 92% payment. Therefore respondent may be directed deliver possession immediately or alternatively respondent may be directed to refund the amount received by him. Shri Kutkar learned Counsel for respondent submits on the other hand that the two prayers made by the complainant are not tenable. Under clause 19(1) of the agreement it is for the allottee to take possession. Section-32 contemplates protecting the interest of allottee as well as promoter. Delay in delivery of possession was caused due to problems. CC has been filed in this case on 13-4-2018.
6. There is no dispute that respondent had agreed to deliver possession on or before 31-12-2013. Now it is claimed that occupation certificate is obtained on 13-4-2018. It is contention of the complainant that no intimation of any kind has been given by the respondent. The flats are not ready

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as yet. The complainant is paying rent of Rs.25,000/- per month and has booked ~~he~~ flat at Rs.2.5 crores. There are leakages and only D & E buildings are complete as per occupation certificate.

7. It has to be mentioned that agreement is executed in favour of Mr.Rajesh Manikchand Jain, Mrs.Purna R Jain, Mr.Manikchand D Jain i.e., complainant, his wife and his father. Therefore, not joining the wife and father will not make much difference. As usual there is no mention of the amount which was paid by the complainant in this complaint. Also there is no prayer for withdrawal from the project. Now respondent has placed the occupation certificate dated 13-4-2018 on record. Accordingly D & E buildings are complete in all respect. This occupation certificate is annexed to the say on 17-4-2018. Therefore the complainant was expected to take possession of his flat on 18th April, 2018. However, there has been a delay in delivering possession since 31st December, 2013 and there is absolutely no justification in that respect given by the respondent.
8. Complainant's claims that he has paid interest on the loan sought by him. He also claimed that he has paid the rent for the accommodation occupied by him. However no evidence is adduced in that respect. Consequently complainant is entitled to claim interest on the amount paid by him for the delay in delivering possession by respondent. I therefore answer point No.1 & 2 in the affirmative and proceed to pass following order.

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ORDER

1. The respondents shall pay interest @ the State Bank of India highest Marginal Cost of Lending Rate plus two percent per annum prevailing as on date on the amount paid by the complainant except the government expenses from the 1st January, 2014 till 18th April, 2018
2. The respondents shall pay Rs.20,000/- as costs to the complaint.
4. The respondent shall pay above amount within 30 days from the date of issue of this order.

Pune
Date :- 13.08.2018

13-8-2018
(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA