

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

Complaint No.CC005000000010520

Hina Qausar Shaikh

.. Complainant

Versus

Marvel Promoter and Builders(Pune) Pvt Ltd.

.. Respondent

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

**FINAL ORDER
11-07-2018**

1. The Complainant has filed this complaint to recover compensation due to delay in delivering possession of flat by respondent/builder. Initially there was prayer for recovering possession of the flat booked with the respondent but that prayer has been given up by alleging that possession has been taken on 23-12-2017.
2. The complainant has alleged that she booked flat with the respondent in project Marvel Cerise Flat No.A-304. The agreement was registered on 7th Jan, 2011. The proposed date of completion of the project was 31st December, 2013. The complainant made all the payments on time. She paid last instalment on 7th August, 2014. In spite of repeated follow ups no concrete action for delivery of possession is taken by the respondent. Out of the A, B C and D buildings, only

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A building was completed. Amenities were incomplete. The respondent is insisting on taking possession by complainant by including charges of amenities which are not yet ready. He is also insisting on club membership. He is insisting on taking possession by buyers in A building by the end of September 2017. The respondent is demanding high maintenance charges. As stated earlier by making amendment in the complaint, the complainant has alleged that she has taken possession of the flat on 23rd of December 2017. Though she has prayed for compensation for financial loss due to delay since original possession date i.e., 31st of December, 2013, she has not quantified the compensation claimed by her.

3. The respondent has resisted the complaint by filling written statement. It is alleged that since complainant did not produce the agreement on record, the complaint deserves to be dismissed. It is alleged that the company Marvel Promoters and Developers (Pune) Pvt. Ltd came to be amalgamated with Marvel Realtors and Developers Ltd by order of Company Law Tribunal. The respondent applied for completion certificate and obtained the same for A building on 23-08-2017. The respondent has already handed over the possession of Flat No.A-304 to present complainant. Present complaint is infructuous. The complainant is estopped from making this claim. Therefore it deserves to be dismissed.

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4. On the basis of 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 committed default in handing over possession of the flat to complainant as per agreement without reasonable grounds? | Yes |
| 2. Is the complainant entitled for relief sought? | Yes |
| 3. What order? | As per final order |

REASONS**5. POINT Nos. 1 & 2 :-**

The complainant has placed on record copy of Index II register. Accordingly the carpet area of Flat No.A-304 is 86.96 Sq mtrs plus terrace 12.26 Sq.Mtrs plus car parking space. The consideration mentioned is Rs.5740250/- The date of agreement is 7th January 2011. Only one page of the agreement is annexed to the complaint. According to clause 5b date of delivery of possession was 31-12-2013. As per letter of respondent dated 28-12-2017, the complainant has paid entire consideration amount to respondent. The delivery of possession as per agreement was subject to purchaser making payment of instalments and other charges/deposits. The complainant has produced list of

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amenities and status. Out of 28 amenities mentioned only 4 amenities were partly completed. Copy of one email dated 11-12-2017 is also annexed to the complaint whereby 14 defects in the flat were pointed out by complainant.

6. The respondent is not denying that agreed date of possession was 31-12-2013. The agreement with complainant was dated 7th January 2011. Two years period was fixed for completion of construction and handing over possession which was quite reasonable. Admittedly completion certificate was obtained by respondent on 23-08-2017. The reasons for the delay are not at all explained by the respondent. He is only relying on the fact that complainant has taken possession of the flat. There is no justification for the delay in handing over possession. Under Section 18(1) of the Real Estate (Regulation and Development) Act 2016 if the promoters fails to complete or he is unable to give possession of an apartment, plot or building (a) in accordance with the terms of agreement for sale, or, as the case may be duly completed by the date specified therein (b) ----

he shall be liable on demand ----

provided that where an allottee does not intend to withdraw from the project he shall be paid by the promoter interest for every month of delay till handing over the possession at such rate as may be prescribed.

7. The complainant did not mention in the complaint what amounts were paid by her to respondent and on what

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dates. As per Index-II register the price agreed was Rs.5740250/- Admittedly the last instalment was paid by complainant on 7-8-2014. As per terms of agreement she was not entitled to claim possession till last instalment was paid. The delay in delivery of possession therefore occurred after 7-8-2014. The complainant is entitled to claim interest on the price paid by her from 7-8-2014 till 23-12-2017, as there is no record that respondent informed the complainant to take possession before that date. The prescribed rate of interest is MCLR of SBI which is 8.05% plus 2% = 10.05%. I therefore answer point No. 1 and 2 in the affirmative and proceed to pass following order.

ORDER

1. The Respondent shall pay interest on Rs.5740250/- to the complainant @ 10.05% per annum since 7-8-2014 till 23-12-2017.
2. The respondent shall pay Rs.25000/- to the complainant as costs of this complaint.

Pune

Date :- 29.06.2018

Dt 11.7.2018

(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA

since I am working at Pune office for 1 week of Mumbai office in the next week and due to non availability of stenographer this judgment is being delivered now.

11.7.2018