

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

Complaint No.CC005000000011391

Punyatoya Mohanty

.. Complainant

Versus

Harit Developers

.. Respondent

Coram : Shri M.V. Kulkarni

Hon'ble Adjudicating Officer

Appearance :

Complainant : In person

Respondent : In person

FINAL ORDER

21-08-2018

1. The complainant who had booked a flat with the respondent/developer seeks refund of the money paid with interest and penalty as respondent failed to deliver possession as per agreement. Since I am working at Mumbai & Pune offices in alternate weeks as per availability of dais and due to non availability of stenographer, this judgement is being delivered now.

21-8-2018

2. The complainant had booked a flat No.F-0402 in F Wing project Royal Orange County at Rahatani, District Pune of respondent on 31-07-2014. Agreement was executed on 12-12-2014. It is alleged that complainant was promised possession on 30-06-2015. The area of the flat is 700 sq.ft plus 143 sq.ft terrace plus car parking. The price agreed is shown as Rs.64,57,600/- Total amount paid Rs.61,34,720/- Since possession is not delivered, complainant seeks refund of total amount paid alongwith interest.
3. The respondent filed written explanation on 6-6-2018. The matter was fixed for arguments on 6-6-2018. On 27-6-2018 the plea of the respondent was recorded. Initially the prayer was to recover interest on the amount paid since the agreed date for delivery of possession till actual delivery of possession. On 27-6-2018 the complainant prayed for amending the complaint by substituting prayer for refund of entire amount paid in place of interest on the amount paid. The respondent has alleged the delay in delivering possession has occurred due to reasons beyond his control. As per clause 10 of the agreement the period for delivery of possession stands extended due to delay in grant of NOC/permission/licence etc., As EC clearance is necessary, the respondent applied for the same in July 2012. The certificate came in January 2016 as there was no committee for 18 months. The PCMC sanctioned building plan on 13-2-2017 after application was filed on 20-2-2016. As per agreement clause-4 in case of delay after six months compensation of flat rent of equivalent size in the same locality is payable. The respondent has completed

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construction in March, 2018. When the agreement was executed RERA was not in existence. Now MahaRERA has been informed that possession will be given on 31-12-2018. The complaint therefore deserves to be dismissed.

4. On the basis of rival contention 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 deliver possession of flat to the complainant as per agreement without circumstances beyond his control? | Yes |
| 2. Is the complainant entitled to the reliefs claimed? | Yes |
| 3. What order? | As per final order. |

REASONS

5. The complainant has placed on record agreement dated 12-12-2014. As per schedule E possession was to be delivered on 30-6-2015. As per clause-10 the developer was entitled to reasonable extension of time in 8 contingencies including delay in grant of NOC/permission/licence. It is the contention of the respondent that delay has occurred due to delay in getting environmental clearance. At the argument stage it was

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submitted on behalf of complainant that the respondent did not disclose the litigation in respect of the property.

6. It is the contention of the respondent that he had applied for a EC clearance in July, 2012 but for want of committee matter was delayed for 18 months. It appears that the respondent had started construction and therefore legal action was initiated against him. Ultimately environmental clearance was received in January 2016. However building plan was sanctioned by PCMC on 13-2-2017. Alongwith the agreement there is the commencement certificate issued by PCMC on 24-10-2013. As per architect certificate dated 4-12-2014 in the F building VIII slab was completed and brick work upto VII floor was completed. It appears that respondent gave permission to the complainant to mortgage the flat that was booked.
7. The letter of Municipal Engineer dated 21-6-2014 informed the respondent that there was contravention of Environment Protection Act and therefore permission for construction could not be given. The letter of government dated 13-5-2014 directs the respondent to stop construction work till environment clearance is obtained. On 12-12-2014 when agreement was executed in favour of the complainant the respondent was required to disclose the above facts to the complainant. No doubt clause -10 provides for extension of time due to delay in grant of NOC / permission. Since commencement certificate and architect certificate were annexed to the agreement it is likely that the complainant was not unaware of the restriction on carrying out construction. In spite of such a situation the respondent gave the date of delivery of possession as 30-6-2015 i.e., just about six months since

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execution of agreement. The grievance of the complainant that the litigation was not disclosed to her appears genuine. It is her contention due to non disclosure of the litigation banks sanctioned loan to her. Merely clause-10 of the agreement will not come to the help of the respondent because complaint was misled and induced to enter into agreement. Consequently she is entitled to rescind the agreement. The agreed date for delivery of possession has gone by before three years. There were no bonefides on the part of respondent in seeking extension of time. Consequently the complainant is entitled to withdraw from the project.

8. The complainant has placed receipts about payment on record. Accordingly Rs.54,88,960/- were received by respondent till 29-3-2018 including the loan amount of ICICI bank. It also appears that complainant has mortgage the flat with that bank. Therefore complainant must redeem that mortgage so that respondent will be free to sell the flat booked to anybody else. I therefore answer point No.1 and 2 in the affirmative and proceed to pass following order.

ORDER

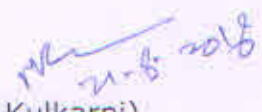
1. Subject to the complainant redeeming the mortgage of the flat booked by her, she is allowed to withdraw from the project.
2. After redemption of the mortgage by complainant the respondent shall refund Rs.54,88,960/- (minus) - stamp duty which is refundable if included in it with interest at the rate State Bank of India highest marginal cost of

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lending rate plus 2% prevailing as on date, from the date of payment.

3. The complainant shall execute cancellation deed at the cost of respondent.
4. The respondent shall pay costs of Rs.20,000/- to the complainant.
5. The respondent shall pay the aforesaid amounts within 30 days from the date of this order.

Pune
Date :- 21.08.2018


(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA