

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

Complaint No.CC005000000011836

1.Vinod Manik Zende .. Complainants
2.Usha Vinod Zende

Versus

1.M/s.Maple City Developers through .. Respondents
its partner Mr.Sachin Agarwal
2.M/s.Astrix Infrastructure through its
Partner Mr.Shabbir Fazlehusein Furniturewala

Coram : Shri.W.K.Kanbarkar
Hon'ble Adjudicating Officer

FINAL ORDER

28-12-2018

- 1.** Present complaint is Initiated for refund of amount paid for booked flat together with interest and compensation thereon, as per Section-18 of The Real Estate (Regulation & Development) Act, 2016.
- 2.** Complainants have booked flat No.A-301 on 3rd floor in 'A' Wing in the project known as 'Aapla Ghar Sanswadi' Phase-III at Sanswadi-Pune, from the promoters/ developers M/s.Maple City Developers, In pursuance of registered agreement for sale dated 13-6-2014 for total consideration of Rs.11,18,536/- and out of such

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consideration amount, complainants have made payment more than 90% to the respondents. As per registered agreement for sale respondents have agreed to deliver actual possession of booked flat within 30 months on or before 30-12-2017 from the date of said agreement. However, the respondents have failed to deliver possession of booked flat. So also construction quality of booked flat is not upto the mark as per the agreed terms. Therefore, the present complaint for withdrawal from the said project and for refund of certain sum consideration paid, together with interest, compensation thereon and cost of the proceedings.

3. Plea of respondent No.1 recorded. Respondent No.1 has filed written explanation and thereby contended that the contents of the complaint are not true and are denied, unless specifically admitted by the respondent. Complainants are guilty of suppressing material facts and the complaint is neither legal nor bonafide and the same is not maintainable under law and thereby deserves to dismiss.
4. Respondent is registered partnership firm under The Partnership Act 1932 with the business purpose of construction and development of land property and to provide affordable housing to needy people. Respondent is bullder and developer of lands and in that capacity developing project named and styled as, 'Aapla Ghar Sanaswadi'.

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5. Respondent states that complainant initially booked flat No.A-301 in 'A' Wing in the project 'Aapla Ghar Sanaswadi' Phase-III and in that regard executed registered agreement on dated 13-6-2014 for total consideration of Rs.11,18,536/-. The respondent had paid the required stamp duty for the said agreement.
6. Thereafter complainants approached to the respondents and requested for transfer of earlier booked flat and the amounts received thereon, for and towards another flat in Phase-II of the said project i.e., flat No.C-201 on 2nd floor of 'C' Wing and in that regard complainants have signed consent letter and information form. So in furtherance of the aforesaid change complainants and respondents have executed registered cancellation agreement dated 17-1-2018. The respondents have paid even stamp duty for this agreement also.
7. It is denied that the complainants have paid more than 90% advance payment to the promoters. Further denied that the quality of construction of the booked flat is of low in nature. The complainants have not paid the entire consideration amount as well as not taken possession of the booked flat. Complaint is barred by law of limitation. Thus the complaint is not maintainable and liable to dismiss.
8. None present for respondent No.2 on the given dates for hearing and the same reflects from the record. Therefore the plea and written explanation as well as argument of respondent No.2 is not on record.

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9. On the above controversial contentions the following points have arisen and findings thereon are as under:

POINTS	FINDINGS
1. Whether the complainants are entitled to refund of amounts paid by them to Respondents together with Interest & Compensation thereon?	In the affirmative
2. What order?	As per final order

REASONS

10. Point Nos.1 & 2: Admitted positions between the parties on record that as per registered agreement for sale dated 13-6-2014 complainants have booked flat No.A-301, on 3rd floor of 'A' Wing, in the project known as 'Aapla Ghar Sanaswadi', Phase-III for total consideration amount of Rs.11,18,536/- In pursuance of aforesaid registered agreement the complainants have paid total consideration price of Rs.10,63,744/- including stamp duty, registration and VAT etc, to the respondents/builder/developers and out of said amount of Rs.10,63,744/- complainants have paid Rs.9,40,535/- through Home First Finance Company India Ltd and Rs.1,23,209/- in cash/cheque. Ledger account document opened by complainants for respondents/developers vide Exhibit C/8 speaking amount of Rs.9,96,544/- paid to the respondents/developers. Apart from the aforesaid position document of registered cancellation agreement dated 17-1-2018 placed on record vide Exhibit R/7. Material on record clearly indicating that the complainants have paid Rs.10,63,744/- out of total

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consideration price of Rs.11,18,536/-, to the respondents/developers, as aforesaid.

11. In view of agreement for sale dated 13-6-2014 it was obligatory on the part of respondents/developers to deliver actual possession of booked flat No.A-301 in the project known "Aapla Ghar Sanaswadi" phase-III, on or before 30-12-2017, in terms of the said agreement. Admittedly respondents have not delivered the actual possession of the said booked flat to the complainants on or before 30-12-2017 but on the contrary with a view to avoid obligation executed registered cancellation agreement on dated 17-1-2018 vide Exhibit R/7. As per said registered cancellation agreement dated 17-1-2018 hopes of the complainants to take actual possession of booked flat No.A-301 in phase-III "Aapla Ghar Sanswadi" project, vide agreement for sale dated 13-6-2014, are totally shut down. This registered cancellation agreement dated 17-1-2018 denotes that the vendors have not given possession of the above flat to the purchasers and purchasers henceforth shall not any rights, title and interest in the booked flat after execution of this agreement of cancellation. Of course in this cancellation agreement reference ought to have been made about the provision of refund of amount to be paid to the complainants, alongwith interest and compensation if any thereon but such reference is silent in this agreement of cancellation. On behalf of respondents made submission that in view of this agreement of cancellation dated 17-1-2018 amount to be refunded to the complainants is already deposited at particular bank loan account in the name of complainants

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and in that regard placed on record statement of said bank account. On the contrary on behalf of complainants made submission that they are ignorant about depositing of any such amounts by the respondents at any such accounts and the complainants have not received upto now any amount as such by way of refund. So in the light of material placed on record very clear that amount paid by the complainants in pursuance of agreement dated 13-6-2014 is yet to be refunded alongwith interest and compensation if any appropriately. Said agreement of cancellation is silent as what was the sufficient cause not to comply the agreement for sale dated 13-6-2014. As per Section 11 (5) the Real Estate (Regulation and Development) Act, 2016 with Maharashtra Rules and Regulations 2017, 'the promoter may cancel the allotment only in terms of the agreement for sale and such cancellation is not in accordance with the terms of agreement of sale, unilateral and without any sufficient cause the allottee is at liberty to approach this authority for appropriate relief'. So also as per Section-18 of the said RERA Act, 2016 if the promoter fails to complete or is unable to give possession of an apartment, plot or building as the case may be in accordance with the terms of the agreement for sale, the promoter shall be liable on demand to allottees or in case the allottee wishes to withdraw from the project, to return the amount received by such promoter with interest at such rate as may be prescribed in this behalf including compensation in the matter provided under this Act. As per present complaint relief sought is of refund of amount together with interest, and other charges as contemplated in Section-18 of the

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RERA Act. Agreement for sale dated 13-6-2014 is cancelled by this registered cancellation agreement dated 17-1-2018 without any sufficient cause and one way unilaterally and not appropriately. Therefore, under such circumstances complainants are entitled to withdraw from said "Aapla Ghar Sanaswadi " project Phase No.III and further entitled for refund of Rs.10,63,744/- exclusive of stamp duty as levied thereon together State Bank of India's higher marginal cost of lending rate plus 2% per annum prevailing as on date i.e., 8.70% plus 2% total 10.70% per annum from the date of payment till its realisation.

12. According to respondents fresh agreement for sale is executed on dated 17-1-2018 for new flat No.C-201 Phase-II in "Aapla Ghar Sanaswadi " for total consideration of Rs.17,38,700/-. If it is treated that parties have entered into fresh agreement for sale for said new flat booked by complainants still then this is a total new contract entered into between the parties and parties have nothing to do with the first agreement for sale dated 13-6-2014. Moreover, on behalf of complainants mainly submission made that this fresh agreement for sale dated 17-1-2018 has nothing to do with earlier agreement for sale dated 13-6-2014 and or said registered agreement for cancellation dated 17-1-2018. Therefore booked flats in both the said agreements for sale are separate and distinct as well as consideration price amounts in both the said agreements are also separate and no concern to each other. So in the light of fresh agreement for sale dated 17-1-2018 respondents/developers cannot shirk their

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responsibility to refund the amount paid by the complainants together with interest and compensation thereon as permissible under law. Of course on behalf of respondents made submission that in light of cancellation agreement dated 17-1-2018 outstanding loan amount at the accounts of the complainants at HFFC deposited by the respondents in lieu of the refund of amount and therefore respondents are not liable to refund any amount as such to the complainants. On the contrary on behalf of complainants submission made that the complainants have time to time deposited loan EMI at their loan account at HFFC and cancellation agreement is got executed by the respondents unilaterally without their knowledge and consent and even if EMI at their account deposited by the respondents possibly after the present complaint petition if filed just to avoid responsibility to refund the amount and with no other motive. So also on behalf of respondents further argued that complainants approached this authority with different stories and therefore even on that count present complaint is not maintainable under law and the same is liable to dismiss. Thus taking into consideration the aforesaid position and material on record, just and proper to allow the present complainants to withdraw from "Aapla Ghar Sanaswadi" Phase-III project from Flat No.A-301 and further entitled for refund of Rs.10,63,744/- exclusive of the amount deposited by the respondents if any at the loan accounts of the complainants at HFFC and further exclusive of stamp duty as levied thereon together with State Bank of India's highest marginal cost of lending rate plus 2% per annum prevailing as on date i.e. 8.70% + 2% total 10.70% per


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annum from the date of payment till its realisation. Thus point No.1 and 2 are answered accordingly. In the result pass the following order.

ORDER

1. Complainants are hereby entitled to withdraw from "Aapla Ghar Sanaswadi" Phase-III project flat No.A-301 and thereby respondents shall refund amount of Rs.10,63,744/- exclusive of stamp duty of Rs.56,000/- i.e., Rs.10,07,744/- and further exclusive of amount deposited by the respondents if any at the loan account of the complainants at HFFC, together with interest thereon at the State Bank of India's highest marginal cost of lending rates 8.70% plus 2% i.e., 10.70% prevailing as on the date till its realisation from the date of amount received by the respondents time to time from the complainants.
2. Respondents shall pay Rs.25,000/- as cost of this proceeding to the complainants.
3. Respondents shall further pay aforesaid amounts to the complainants within 30 days from the date of this order.
4. The charge of the aforesaid amount shall be kept on the flat in dispute till realisation of the entire amounts by the complainants as aforesaid.

Pune
Date :-28-12-2018


(W.K. Kanbarkar)
Adjudicating Officer,
MahaRERA