

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY

CORUM : Shri M.V. KULKARNI, ADJUDICATING OFFICER, PUNE

AT : PUNE

Complaint No. CC005000000010846/2018

Mr. Sanjay Gahinanath Kote
R/at Room No.105, 1st floor,
Om Saikrupa CHS, Above Ambar Hotel,
Opp Bandra Court, Bandra (East),
Mumbai-400 051.

.. Complainant

Versus

1. Apl Yashoangal Developers,
2. ARK Prem Developers.

Having registered office at
C 1/2, Srushti Centre,
Pune-Nagar Road, Ramwadi,
Pune-411 014.

.. Respondents

JUDGMENT

(Delivered on 21.08.2018)

- 1) The Complainant, who had booked a Flat with the Respondents, seeks to withdraw from the project and refund of the amount paid to the Respondents together with interest and compensation.
- 2) The Complainant has alleged that in the month of November, 2012 he came to know that the Respondents had undertaken construction of project in Survey No. 123, Hissa No.2 at Vadgaon, Tal. Mawal in Pune District. On inquiry, the Complainant found the flat to be suitable and decided to purchase Flat No.301, admeasuring 54.71 sq. mtrs. On the

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3rd floor in 'D' Wing of Building No.1 in the project 'Alfa Green Fields', together with terrace admeasuring 3.71 sq.mtrs. and car parking for a total consideration of Rs. 20,92,500/-. An agreement between the parties was entered into on 28th Jan. 2013, which was registered with Sub-Registrar, Mawal. The Complainant has so far paid Rs. 21,39,755/- inclusive of stamp duty and registration charges. The Respondents had agreed to deliver possession of the flat in December, 2013. The Respondents failed to complete the project as per agreement. Tar approach road from the highway up to the project is not laid. Internal road and swimming pool have not come up. There is no arrangement for drinking water. The Respondents failed to obtain occupancy certificate for the said project. The Complainant is unable to occupy the flat that was booked. He time and again approached the Respondents and requested to complete the project by providing amenities as per agreement, but to no avail. The Complainant requested the Respondents to refund the amount paid, but the Respondents have neglected to do it. The Complainant has therefore, filed this complaint.

- 3) The matter came up before me on 13th April, 2018. Though the Complainant appeared, the Respondents failed to appear on 31st May, 2018 as well as 15th June, 2018. Arguments for Complainant were heard on 29th June, 2018. As I am working with Mumbai Office and Pune Office in the alternative weeks and as the stenographer was on medical leave, this judgment is being delivered now.

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- 4) Following Points arise for my determination. I have recorded my findings against them for the reasons stated below.

POINTS

FINDINGS

- | | |
|--|------------------------|
| 1. Have the Respondents failed to deliver possession of the flat to the Complainant as per terms of Agreement without there being reasons beyond their control ? | .. In the Affirmative. |
| 2. Is the Complainant entitled to reliefs claimed ? | .. In the Affirmative. |
| 3. What order ? | .. As per final order. |

REASONS

- 5) **POINT Nos.1 and 2** :- In the detailed complaint, the names of two Complainants are mentioned viz. Sanjay Gahininath Kote and Mrs. Deepali Nivrutti Hande. It is mentioned that they are husband and wife. Copy of the Agreement, dated 28th Jan. 2013 is placed on record. Accordingly, Respondents agreed to sell Flat No. 301 in D Wing in building No.1 in the project 'Alfa Green Fields', admeasuring 54.71 sq. mtrs. + 3.71 sq. mtrs. Terrace and car parking for a consideration of Rs. 20,92,500/-, and acknowledged having received a sum of Rs. 3,13,875/-. As per clause 21, the promoters/Respondents undertook to deliver possession on or before December, 2013. Possession could be delayed under 8 contingencies mentioned in that clause.

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- 6) Complainant has placed on record the chart in respect of payments made by him to the Respondents. Accordingly, Rs. 3,13,875/- were paid by cheque No.7421 on 05.11.2012. That appears to be a booking amount, which is acknowledged in the agreement, vide cheque Nos.220863 and 220864, dated 10.04.2013 from ICICI Home Finance for Rs. 13,32,813/- are said to have been paid. Out of it, Rs. 1,04,710/- are paid for stamp duty and Rs.22,170/- are paid as registration charges. Vide cheque No.240596 from ICICI Home Finance on 09.07.2013 Rs. 2,19,000/- are said to have been paid to the Respondents, vide cheque No. 270152, dated 22.09.2014 Rs. 1,47,187/- are said to have been paid to the Respondents.
- 7) The date of agreement is 28th Jan. 2013. The agreed date for delivery of possession was 31.12.2013 i.e. within one year since the agreement was executed. The flat booked was from Building No.1 in D wing on 3rd floor. It means it was a big project. There must have been substantial progress in the construction when the Complainant booked the flat. The grievances made out by the Complainant in the complaint is that no approach road has been laid, no internal road has been laid, swimming pool has not been constructed and there is no arrangement for drinking water. The Respondents have failed to obtain occupancy certificate.
- 8) Now almost 5 years have gone by since the date for delivery of possession as per the agreement expired. It can be safely inferred that construction has not been going on at required speed and is lagging far behind the schedule. No justification of any kind is coming forth from the Respondents' side, as


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the Respondents failed to appear and defend their case. Consequently, there is no alternative than to hold that the Respondents failed to deliver possession as per the agreement without their being circumstances beyond their control. Consequently, the Complainant would be justified in withdrawing from the project and seeking refund of the amount paid. I therefore, answer Point Nos.1 and 2 in affirmative and proceed to pass the following order.

ORDER

- (1) The Complainant is allowed to withdraw from the project. The Respondents shall refund an amount of Rs. 21,39,755/- minus stamp duty, which is refundable to the Complainants together with interest at State Bank of India's Highest Marginal Cost of Lending Rate + 2% p.a. prevailing as on date, from the date of payment.
- (2) The Complainant shall execute cancellation deed at the cost of the Respondents.
- (3) The Respondents shall pay Rs. 25,000/- to the complainants for mental agony.
- (4) The Respondent shall pay cost of Rs. 20,000/- to the Complainant.
- (5) The Respondents shall pay the aforesaid amounts within 30 days from the date of this order.

Pune
Dated : 21 / 08 / 2018


(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA, Pune