

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

CORUM : Shri W.K. Kanbarkar, Adjudicating Officer, Pune

Complaint No. CC005000000022463

1. Mr. Chandrashekar Narayan Borole
2. Mr. Vishal Chandrashekar Borole
3. Mrs. Shobha Chandrashekar Borole.

All r/at A/702, Om Avishkar Co-op.
Hsg. Society, Rambag Colony,
Paud Road, Pune-411 038.

.. Complainants

Versus

1. M/s. OM Developers through its partners,
O/at 35, Laxmi Park, above
Sangram Dining Hall, Navi Peth,
Pune-411 030.
2. Mr. Devendra Arvind Awati,
O/at 35, Laxmi Park, above
Sangram Dining Hall, Navi Peth,
Pune-411 030.
3. Mr. Shrikant Anant Nagarkar
O/at 35, Laxmi Park, above
Sangram Dining Hall, Navi Peth,
Pune-411 030.
4. Mr. Arvind Gajanan Awati,
O/at 35, Laxmi Park, above
Sangram Dining Hall, Navi Peth,
Pune-411 030.
5. Mr. Atul Ratnaka Mahashabde
O/at 35, Laxmi Park, above
Sangram Dining Hall, Navi Peth,
Pune-411 030.

.. Respondents

PR No. P52100009404

Appearance :-

Complainants : Adv. Mr. R.S. Satpute

Respondents : Adv. Mr. Nachiket Thakur

WKK

FINAL ORDER

(Delivered on 30.12.2019)

1. The present complaint is filed by the allottee/complainants against the promoter-respondent claiming refund of the entire amount paid by them along with interest on account of the delay in possession of the flat No.506, booked by them with the respondent in the project "Om Prangan" situate at Ambegaon Budruk, Tal. Havell, District Pune under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "the Act").
2. The case of the complainants in nut shell is that she booked Flat No. 506 in the project "Om Prangan" launched by the respondent at village Ambegaon Budruk, Tal. Haveli, District Pune. Accordingly, complainants entered into an agreement, dated 25.06.2013. The total consideration of the booked was agreed at Rs. 48,61,425/-. The complainants have paid Rs. 46,91,091/- excluding stamp duty, registration and other charges. As per the agreement, the respondent has agreed to hand over possession of the said flat within 30 months i.e. on or before 25.12.2015. Respondents have failed to deliver possession of the booked flat as per agreement within stipulated period. Therefore, the present complaint seeking permission for withdrawal from the project and refund of amounts paid together with interest thereon @ 18% p.a. and further sought recovery of payment of rent amount @ Rs.15,000/- p.m. from the date of proposed possession 25.12.2015 till date of judgment, with interest @ 18% p.a. and for recovery of compensation of Rs.5,00,000/- towards

WKK

harassment and mental agony and cost of Rs. 50,000/- as sought in the complaint.

3. Plea of the respondents recorded, respondents have filed written explanation and resisted the complaint claim on various grounds. Reliefs in the present complaint is sought under the provisions under MOFA Act and hence under RERA Act, this authority has no jurisdiction and the same is liable to dismiss. Complainants have to prove the payments made by them. Construction of the project is ready and occupancy certificate is yet to receive. Complainants have made major payments after proposed date of possession. Present complaint is not proper and legal but same is liable to dismiss not maintainable at law.
4. On the above contentions, the following points have arisen for my determination and findings thereon are as under :-

POINTS

FINDINGS

- | | |
|---|---|
| <ol style="list-style-type: none"> (1) Whether the Complainants/Allottees are entitled for refund of amount paid together with interest and compensation thereon ? (2) Whether the complainants are entitled to recover compensation towards rent and mental agony, As sought in the complaint ?.. In the Negative. (3) What order ? | <p>.. In the Affirmative.</p> <p>As per final order</p> |
|---|---|

REASONS

WKK
→

5. **POINT No. 1** :- Undisputed position between the parties that the complainants have booked Flat No. 506 in the project Om Prangan situate at Ambegaon Budruk, Pune vide registered agreement, dated 25.06.2013 for consideration of Rs. 46,91,425/-. Respondents/Promoters admit about the payments made by the complainants, but only contention in this regard is made by them as much payment is made after proposed date of possession in the year 2015. Apart from said facts, complainants have made total payment of Rs. 46,91,091/- and further in addition payments made of Rs. 3,21,814/- including stamp duty of Rs.2,43,200/- + Registration charges of Rs. 30,000/-. Complainants have obtained loan from Bank of Maharashtra and disbursed loan of Rs. 42,00,200/- and further made payment by cheque of Rs. 4,42,477/-. Accordingly, complainants have made total payment of Rs. 49,64,291/-. At the instance of complainants placed on record payment receipts. Therefore, complainants have proved about the payment made by them of Rs. 49,64,291/- as aforesaid.
6. Proposed date of possession was within 36 months i.e. on or before 25.12.2015. According to respondents/promoters, construction of building is practically ready but occupancy certificate and completion certificate are yet to be obtained. On the contrary, in this context, submit at the instance of complainants that construction of project is fully erected but interior construction of the project is yet to be completed and since lapse of proposed date of possession, respondents are avoiding to deliver possession without just cause and they have lost hopes to get possession. On behalf of respondents further contend that reliefs are sought under the provisions of MOFA Act and hence provisions of RERA Act are not

WKK

maintainable and liable to be dismissed. Just to mention present complaint falls under the scope of RERA Act and not within the scope of MOFA Act even though agreement is executed in the year 2013 while MOFA Act was applicable. One more point raised at the instance of respondents delay is caused due to change of govt. Policies and for want of timely sanction including PMRDA and respondents are also suffering from financial crisis. Grounds raised by the promoters do not come within the purview of force majeure and hence cannot be taken into consideration. Just to mention just and proper to allow the complainants to withdraw from the project. So complainants are entitled to refund of Rs. 49,64,291/- except stamp duty of Rs. 2,43,200/- which is refundable under the provisions of Maharashtra Stamp (Amendment) Act, 2015 at the prescribed rate @ S.B.I.'s highest MCLR i.e. 8.4% + 2% above. However, prayer of the complainants for recovery of interest @ 18% is not permissible under law. Thus Point No. 1 is answered in the affirmative.

7. Point Nos. 2 and 3 :- Complainants have sought recovery of rent @ Rs.15,000/- p.m. from 25.12.2015 till date, but such prayer is also not maintainable in absence of any contract between the parties and for want of authentic document for payment of such rent in the context of contract, if any between the parties, hence such relief also cannot be granted and liable to dismiss. As regards prayer of complainants for recovery of compensation of Rs. 5,00,000/- for mental agony is also not substantiated by authentic document and same is not maintainable and liable to dismiss. Taking into consideration the aforesaid case, just and proper to award cost of Rs.30,000/- to the complainants. Under such

WIK

circumstances, Point Nos.2 and 3 are answered in the negative. In the result, I proceed to pass the following order.

ORDER

- (1) The Respondents/Promoters shall refund the amount of Rs. 49,64,291/-, except stamp duty of Rs.2,14,300/-, which is refundable as per the Maharashtra Stamp (Amendment) Act, 2015 to the Complainant along with interest at the State Bank of India's Highest Marginal Cost Lending Rate i.e. $8.40\% + 2\% = 10.40\%$ p.a. from the date of actual payments received by him from the Complainants time to time towards Flat No.506 in the project "Om Prangan" situate at Ambegaon Budruk, Tal. Haveli, in Pune District.
- (2) Respondents/Developers shall pay Rs.30,000/- to the Complainants/Allottees as cost of this complaint.
- (3) The Respondents/Developers shall pay the aforesaid amounts within 30 days from the date of this order.
- (4) Complainants shall execute deed of cancellation of the agreement, dated 25.06.2013 at the cost of the respondents after realisation of the entire due and payable amount from the respondents.
- (4) Charge of the aforesaid amount is kept on the booked flat till realization of the entire amount.

Pune
Dated :-30/12/2019

WKK 30-12-2019
(W.K.Kanbarkar)
Adjudicating Officer,
MahaRERA, Pune