

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

Complaint No.CC005000000010436

**Abhishek Upadhyay
Mrs.Ragini Upadhyay**

.. Complainants

Versus

**Kul Builder River View
Properties Pvt Ltd**

.. Respondent

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

Appearance :

Complainant : In person

Respondent : Advocate Vaishalli

FINAL ORDER

20-08-2018

- 1.** The complainants who had booked flats with respondent/developer seek 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.

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2. The complainants have alleged that they had booked flats No.G-309 and G-602 in "Kul Ecolock Delight" Project at Mahalunge, Taluka Haveli Dist. Pune of respondent on 30-11-2013. It is alleged that complainants were promised possession within five years. Other necessary details are required to be fished out from the documents annexed to the complaint. Agreement in favour of Ragini Upadhyay in respect of flat No.G-309 was signed on 30-11-2013. Agreement in respect of flat No.G-602 in favour of Abhishek Upadhyay was signed on 30-11-2013. There are two distinct agreements in favour of two distinct persons. Filing of one complaint by two complainants without paying sufficient court fees may not be proper. Office shall recover deficit court fees as per rules. Area of the flat No.G-309 is 379.97 sq.fts plus open terrace 3.08 sq.mtrs. The price agreed is shown as Rs.28,46,540/- Total amount paid is shown as Rs.30,00,000/- Date of delivery of possession mentioned in the agreement is within five years. The area of flat No.G-602 is 379.97 sq.fts. plus open terrace 5.27 sq.mtrs. The price agreed is shown as Rs.29,31,154/- Total amount paid is shown as Rs.30,00,000/- Date of delivery of possession mentioned in the agreement is five years. Since possession is not delivered, complainants seek refund of total amount paid alongwith interest and compensation.
3. On 17-4-2018 the complainant appeared in person and one Shashikant Deshmukh appeared for respondent. His plea was recorded on 29-5-2018. The respondent filed written explanation on 29-5-2018. It is alleged that complaint is bad for not joining Ragini Upadhyay as a party. As usual the complaint is not filed seriously.

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Though description of two flats was given in the complaint, in details of name, name of only Abhishek Upadhyay was there. The complainant then moved amendment application on 13-6-2018 and added name of Ragini at the top of the proforma. The respondent has alleged that he is ready and willing to perform his part of the agreement. The date of agreement is 30-11-2013. The complaint is premature because possession as per agreement clause 4.1.2 is to be handed over on or after five years since execution of agreement. Under clause 7.1.1. if there is delay in delivering possession upto three years damages at the rate of Rs.3/- per sq.ft. on the carpet area are payable, thereafter upto 5 years damages at the rate of Rs.6/- per sq.ft are payable. Clause 10.2 stipulates cancellation only by mutual consent. In case of rescission by purchaser amount received to be paid by deducting 5% of the amount. The cause of action given is imaginary. The complaint therefore deserves to be dismissed.

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 failed to deliver possession of flat to the complainants as per agreement without circumstances beyond their control? | No |
| 2. Are the complainants entitled to the reliefs | No |

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claimed?

3. What order?

As per final order.

REASONS

5. Point Nos.1 & 2: The complainants annexed copy of agreements to their complaint which is not the complete agreement. Later on complete agreements came to be produced. The date mentioned is 30-11-2013. The price agreed was Rs.28,46,540/- and Rs.29,31,154/- As per clause-4.1.2 possession was to be delivered on or before expiry of five years from the date of execution of agreement.
6. The complainants claim to have paid Rs.30,00,000/- each towards cost of the flats plus government charges. The grievance of the complainants is that respondent will not deliver possession as per agreement. It was submitted by complainant Abhishek that there is communication from respondent to that effect. No construction work was started. New date for completion is not communicated. The respondent proposed the complainants to move to flats H-707 and H-1202.
7. The copy of the email dated 3-6-2018 from complainant shows that the movement for two flats began in November, 2016. The reply of respondent dated 23-9-2016 shows that respondent had completed all formalities about shifting the flats and registration would begin in November, 2016. There is further exchange of emails. The complainants had agreed to the movement of

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the flats on certain conditions. The communication from respondent dated 28-5-2016 gives the details of the movements from G-309 to H-707 G-602 to H-1202. It was submitted on behalf of respondent that original date for delivery of possession was November, 2018. Now it is made January 2019. Since the date^s have not arrived the complaints are not tenable.

8. The respondent is relying on the clause in the agreement regarding delivery of possession as well as clause-7.1.1. and 7.1.2 which provide for damages if there is delay in delivering possession upto three years from the date agreed @ Rs.3/- per sq.ft on the carpet and at the rate of Rs.6/- per sq.ft. due to delay beyond three years.
9. Even from the receipt about registration of agreement it becomes clear that date of registration is 30-11-2013. Consequently date for delivery of possession comes to 30-11-2018. That date is yet to come. It is true that only three and ½ months are left in the arrival of said date. Though complainant has alleged that no construction activity is going on, no substantial evidence is adduced by the complainant. How much construction has been done is neither pleaded nor proved. Perhaps the respondent may be able to complete the construction of flat booked in November, 2018. The complainants appear to have accepted different flats from the ones booked by them. In that event there is renovation of contract. What are the terms of new agreement are not made clear. New agreements are not placed on record. In any event since the date for delivery of possession has not arrived, this complaint is premature. As such no breach of contract has been caused by the respondent on this date.

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Consequently complainants are not entitled to the reliefs claimed. I therefore answer point No.1 and 2 in the negative to proceed to pass following order:

ORDER

1. The complaint stands dismissed.
2. No order as to cost.

Pune
Date :- 20.08.2018

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(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA