

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY, PUNE

Complaint No.CC005000000010765

Chhaya Shirvale .. Complainant

Chandrakant Shirvale

Versus

M/s.Bhujbal Brothers Constn Company .. Respondent

Coram : Shri M.V. Kulkarni

Hon'ble Adjudicating Officer

FINAL ORDER

13-08-2018

1. The Complainants wife and husband who had booked a flat with builder/respondent seek refund of the amount paid by them by withdrawing from the project alongwith interest and compensation.
2. The complainants have alleged that they are very old persons and had booked flat in the project of the respondent namely Forest Mist at Hadapsar in Pune and agreement was executed on 3^{0th} March, 2013. The flat No.604 is having area of 55.55 Sq.Mtrs and price Rs.30,99,200/-. The respondent had agreed to deliver the possession within 18 months since booking of the flat. The complainants made payments as required. In all Rs.36,11,340/- were paid, the last instalment being Rs.59,920/-paid on 10th April, 2014. The respondent

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avoided to hand over the possession flat to the complainants as per agreement. The purpose for which the complainants agreed to purchase the flat is frustrated. The complainants therefore demand a refund of Rs.36,11,340 with interest of 15% per annum and compensation of Rs.3,00,000/- for mental and physical harassment.

3. The respondent failed to appear before me on the date fixed for hearing i.e., 30-5-2018.
4. Following points arise for my determination and I have noted my findings against them for the reasons stated below:

POINTS	FINDINGS
1. Has the respondent failed to hand over possession of flat to the complainant as per agreement without there being circumstances beyond his control?	Yes
2. Are the complainants entitled for reliefs claimed?	Yes
3. What order?	As per final order.

REASONS

5. Point No.1 & 2: The complainants have placed on record booking of flat proforma with details dated 17th March, 2013. Accordingly they booked flat No.604 on 6th floor in the 'B' building having area of 1011 sq.ft for the price of Rs.33,36,300. The name of project is missing in this form

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but at the right top corner Forest Mist has been printed. Complainants have also placed on record the copy of the agreement dated 30th March, 2013 which is a tripartite agreement among the respondents who are the developer, land owner and complainants. Rs.11,99,086 were admitted to have been paid to the promoters. The mentioned area is 55.55 sq.mtrs, 598 sq.ft carpet area, 16.72 terrace, 180 sq.ft. and 93.92 sq.mtrs i.e., 1011 sq.ft. saleable area. The payment schedule is given on page No.15. As per the clause-VI, in the event of delay in payment, the purchaser was to pay interest at the rate of 24% per annum. As per clause-9, possession was to be delivered within 18 months from the date of execution of agreement. On the failure to deliver possession, the purchaser had a right to cancellation of agreement. In that even purchaser was entitled to refund of money with simple interest at the rate of 9% per annum.

5. Complainants have placed on record the receipts about payments made by them. Accordingly Rs.1,00,000/- were paid on 17-3-2013, Rs.13,36,186/- were paid on 18-3-2013, Rs.1,00,000/- were paid on 17-3-2013, Rs.8,50,000/- were paid on 30-4-2013, Rs.2,00,000/- were paid on 30-3-13, Rs.3,00,000/- were paid on the same date, Rs.1,25,000 were paid on 24-6-2013, Rs.80,000/- on the same date, Rs.3,10,234/- were paid on 5-3-2014, Rs.59,920/- were paid on 10-4-2014, Rs.2,50,000/- were also paid on the same date. Thus they paid Rs.36,11,340/-.
6. The complainants have made almost entire payment and their contention is that despite agreeing to deliver the possession within 18 months since 30-3-2013, the

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respondent has not delivered possession to them. This allegation remains unchallenged. Thus complainants were expecting the possession of the flat booked by them on 30-9-2014. Nearly four years have gone by and still they appear to have not received possession from the respondent. Absolutely no justification for the delay in delivery of the possession is coming from the respondent side. Therefore I hold that the respondent has failed to deliver possession as per agreement without any reasonable cause.

7. The complainants are now 66 & 73 years old persons and practically at the fag end of their life. They had dreamt of living in the booked flat in the last days of their life. However, their dream appears to have been shattered as possession of the flat is not in sight, though it was expected before about 4 years. The complainants are therefore entitled to refund of the amount paid by them by withdrawing from the project. I therefore answer point No.1 & 2 in the affirmative and proceed to pass following order.

ORDER

1. The complainants are entitled to withdraw from the project and respondent shall pay Rs.36,11,340/- to the complainants with interest @ the State Bank of India highest Marginal Cost of Lending Rate plus two percent per annum prevailing as on date, which is refundable from the date of payment.

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2. The respondent shall pay Rs.1,00,000/- to the complainant as compensation for mental and physical harassment in their old age.
3. The respondent shall pay Rs.20,000/- as costs to the complainants.
4. The respondent shall pay above amount within 30 days from the date of issue of this order.

Pune

Date :- 13.08.2018


(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA