

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY  
AUTHORITY

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

AT : PUNE

Complaint No. CC005000000035

Rupesh Jain,  
R/at Multi Agency,  
321/A1, Timber Market,  
J.N. Marg, Pune-411 042.

.. Complainant

Versus

Vishwajeet Subhash havar,  
R/at 301-302, Jewel Tower,  
Lane No.5, Koregaon Park,  
Pune-411 001.

.. Respondent

**FINAL ORDER**

(Delivered on 05.09.2018)

1. The Complainant, who had booked a Flat with the Respondent, claims interest on the amount paid by him to the Respondent/builder, as he failed to deliver possession on the date on which it was agreed.
2. As usual, necessary details are not given in the complaint and they are required to be fished out from the documents annexed. It is alleged that agreement was executed on 16.11.2011. The Respondent had agreed to deliver possession of the flat on 31.12.2013. The complainant claims compound interest as per government guidance.
3. It may be mentioned here that the complaint came to be dismissed by the Hon'ble Member, MahaRERA, Mumbai for

5-9-2018

failure of complainant to attend on the date fixed on 17.11.2017. By his order, dated 02.05.2018, the Hon'ble Member, MahaRERA, Mumbai has restored the case to the file and transferred to this office. The parties appeared before me on 03.04.2018. However, the Respondent filed written explanation only on 13.07.2018. Thereafter arguments were heard on 25.07.2018. Since I am working at Pune Office and Mumbai Office in alternative weeks and since the stenographer here was on medical leave, this matter is being decided now.

4. The Respondent averred that since the agreement was entered into prior to coming into force of RERA, the provisions of RERA are not applicable to the present complaint. The Respondent Mr. Vishwajeet Jhavar is joined in his individual capacity, which is not proper. Other co-owner Kalpana Rupesh Jain is not joined to the complaint and therefore, complaint is bad for non-joinder of necessary party. Likewise, co-promoters Subhash Sitaram Goel, Rajendra Sitaram Goel and Umesh Sitaram Goel are the necessary parties. The Respondent has a clear and good intention to complete the project and delivering possession to the complainant on the date communicated to the RERA. Interest of promoter are also required to be protected under Section 32 of RERA. The Complainant is entitled to recover interest only from 1<sup>st</sup> May, 2017 when RERA came into force. The complaint therefore, deserves to be dismissed with cost.
5. On the basis of rival contentions of parties, following Points arise for my determination. I have recorded my findings against them for the reasons stated below.

5.9.2018



**POINTS****FINDINGS**

- |   |                        |
|---|------------------------|
| 1. Has the Respondent failed to deliver possession of the flat to the Complainant as per the agreement without there being reasons beyond his control ? | .. In the Affirmative. |
| 2. Is the Complainant entitled to reliefs claimed ?   | .. In the Affirmative. |
| 3. What order ?   | .. As per final order. |

**REASONS**

6. **POINT Nos.1 and 2** :- The Complainant has placed on record the general power of attorney executed by him and his wife in favour of his father Lilachand. Copy of the agreement, dated 16.11.2011 is placed on record. Accordingly Complainant had booked Flat No. 201 in "M" building in the project "Marvel Ganga Sangria" admeasuring 201.59 sq. mtrs. inclusive of balconies. Possession was agreed to be delivered on 31.12.2013. The price agreed to be paid was Rs.1,22,65,000/-. There is no dispute that the Respondent has not yet delivered possession of the flat to the Complainant.
7. The Complainant has not mentioned how much amount he has paid to the Respondent. The receipts obtained from the Respondent are not placed on record. In written notes of arguments, dated 25.07.2018, the Complainant has alleged that he has paid Rs. 1,13,63,800/- out of the agreed

5-9-2018

consideration. He has paid stamp duty of Rs. 5,95,900/- and registration fee Rs. 30,000/-. The Respondent on his part has also not given the figure of amount received by him from the Complainant.

8. One of the grievances made out by the Respondent is that the Respondent has been joined in his individual capacity. He appears to be the director of the company Marvel Landmarks Pvt.Ltd. As stated earlier, the complaint has been crudely drafted, obviously because it is drafted by the Complainant himself without any legal advice. Anyway, the Respondent will be liable only as the director of company and not in his individual capacity. So far as payments towards stamp duty, registration charges, etc. are concerned, they are necessary government charges and not pocketed by the Respondent. Hence the Complainant will not be entitled to claim interest on this amount. He is ~~only~~ entitled to claim interest only on the amounts paid towards cost of the flat. I therefore, answer Point Nos.1 and 2 in the affirmative and proceed to pass the following order.

### **ORDER**


- (1) The Respondent shall pay interest at State Bank of India's Highest Marginal Cost of Lending Rate + 2% p.a. prevailing as on date i.e. 8.65% + 2% = 10.65% p.a. to the Complainant on the actual amounts paid by the Complainant towards price of the flat, for each month of default in handing over possession since 01.01.2014 till Respondent delivers possession of flat or gives notice to Complainant about obtaining

*5.12.2016*

occupancy certificate subject to complainant paying balance from consideration, if any.

- (2) The Respondent shall pay Rs. 25,000/- to the Complainant as cost of this complaint.
- (3) The Respondent shall pay the aforesaid amounts within 30 days from the date of this order.

Pune  
Dated :-05/09/2018

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