

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY

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

Complaint No. CC005000000010700

1. Mr. Shrant Gour.
2. Dr. Purnima Gour

Address : Sapphire 2 1B
Cosmos Jewels, Ghodbunde Road,
Near Suraj Water Park,
Thane (W)-400 607.

.. Complainants

Versus

1. Lake District Reality Pvt. Ltd,
Bungalow No.10, Staveley Road,
East Street, Near Jeos Mess,
Koregaon Park, Pune-411 001.
2. Pune Kondhwa Realty Pvt. Ltd.,
215, The Capital, G Block,
Bandra Kurla Com, Bandra (E),
Mumbai-400 051.

.. Respondents

Appearances :-

Complainants : Adv. Sanika Kurundwadkar
Respondent : Adv. Arjun Gupta

FINAL ORDER
(Delivered on 04.01.2019)

1. Two complainants, who had booked a flat with the Respondents/Builders seek compensation from them due to delay in handing over possession of the flat.

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2. The Complainants have alleged that they booked Flat No. 602 admeasuring 117 sq. Mtrs. in Building A-5 In the Project he Cove" in the Lake District at village Yeolewadi, Tal. Haveli, District Pune. The Complainants appear to be residents of Thane. The Complainants paid Rs. 5,34,554/- by cheque on 21.12.2011. Agreement for Sale was executed on 20th Feb. 2013. The Respondents agreed to deliver possession of the flat in September, 2015. The Respondents failed to deliver possession of the flat as per the agreement. The Complainants issued notice to the Respondents on 7th September, 2017, to which Respondents sent reply on 4th November, 2017. The Complainants therefore, pray for direction to the Respondents to deliver possession of the flat. The Complainants further seek interest @ 9% p.m. on Rs. 10,80,096/- for delay. The Complainants also seek Rs.9,00,000/- as compensation towards mental agony and financial ordeal.

3. The complaint came up before me on 12th July, 2018. The representative of Respondent No.1 and Advocates for Complainants and Respondent No.2 were present. Written explanation on behalf of Respondent No.2 was filed on 25th July, 2018 and plea of the Respondents also came to be recorded on that day. Vide purshis, dated 3rd September, 2018, Respondent No. 1 adopted say filed by Respondent No. 2. On 3rd October, 2018 it was submitted on behalf of Respondents that settlement talk is going on and more time was prayed for. However, on 1st Nov. 2018 it was submitted on behalf of Complainants that there was no progress as regards settlement. However time was asked to produce

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documents. Ultimately on 4th December, 2018 arguments for the parties were heard.

4. The Respondents have alleged that they are making best efforts to complete the construction and hand over possession as per clause 15 of the agreement subject to the events beyond the control of the Respondents. The Respondents are entitled to extension of time on the grounds mentioned in that clause. Under clause 58 of the agreements, all the disputes that arise are to be resolved under the provisions of Arbitration & Conciliation Act, 1996. Therefore, present complaint is not tenable. The Respondents have offered to refund money to the Complainants with interest @ 9% p.a. The complainants did not accept the offer and are trying to arm twist and blackmail the Respondents to extract money from them. Vide email, dated March 2, 2016 the Respondents had informed the Complainants that Respondent Nos.1 and 2 were entering into joint development agreement for development of Phase - 2 and vide email dated March 22, 2016, the Respondents offered a discount of Rs. 3,21,767/- on the agreement value to the Complainants. The Adjudicating Officer is having no jurisdiction to deal with this matter. It is denied that possession of the flat was to be delivered in September, 2015. It is alleged that possession was to be delivered within 18 months subject to the events beyond control of the Respondents. The Respondents have made full disclosure of the necessary information to the Complainants. The Complainants are misinterpreting clause 15 and 16 of the agreement. Despite taking steps and incurring huge costs for water connections, there were several problems in that regard and there was no water supply till November, 2015. There

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was scarcity of steel and cement of desired quality. The labourers from out of Maharashtra migrated back to their native States. On account of heavy rains there was several water logging at the site and it became inaccessible for trucks and machinery. Due to strike of the crusher's association, crushed stones/sand were not readily available. Vide Notification, dated 21st December 2012, Yeolewadi was merged in Pune Municipal Corporation and Respondents had to obtain permissions/approvals from the Pune Municipal Corporation and further revise plans. Royalty proceedings were before Tahsildar, Haveli in respect of alleged excavation of minor minerals at the site. The Respondents had to file a writ petition before the Hon'ble High Court. The Complainants have paid 20% of the cost of the flat. Their prayer is not reasonable. Consequently the complaint deserves to be dismissed.

5. On the 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

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

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REASONS

6. **POINT Nos.1 and 2** :- The Complainants have placed the copy of cheque for Rs. 5,33,554/- on record. They have also placed copy of another cheque for Rs.5,46,542/-. Copy of Receipts, dated 28.12.2011 and dated 20.02.2013 are also placed on record, which show payments at the time of booking of the flat and at the time of execution of agreement. Copy of agreement, dated 22.02.2013 is also placed on record. Booking by Complainants of Flat No 602 is not denied by the Respondents. The price of the flat agreed was Rs. 52,01,600/- As per clause 15, the Respondents were to hand over the premises for fit-out purposes on September, 2015. However, they were entitled to extension of time if the construction was delayed under 8 enumerated circumstances. They include non-availability of steel, cement, other building material, water, electric supply, labour, notice order, rule, notification, force majeure or other causes, etc. When the cheque was issued, receipt for it was executed on 28.12.2011 for booking amount. The agreement was executed after about 1 and ¼ years on 20.12.2013, which came to be registered on 22.2.2013 and at that time second instalment from the price was accepted. Out of the agreed consideration of Rs. 52,00,1600/-, the Complainants have paid Rs. 10,69,787/- towards the price of the flat. The agreed date for delivery of possession was September, 2015 i.e. about 4 years since Complainants booked the flat. The defences raised by the Respondents will have to be scrutinized in this light.
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7. The project must have been initiated by the Respondents well before 2011. The agreement was registered in the year 2013. Non-availability of water is being pleaded as a ground for not delivering possession of the flat. It is alleged that water availability from Pune Municipal Corporation came only in November 015. A builder is not expected to start construction work only after water is made available by municipal corporation. At least he is not expected to collect money from the flat buyers when there was no source of water to carry out construction activities. Unless construction activities are visible, flat buyers will not be inclined to part with their money. Therefore, digging of bore wells or tapping other source of water is the first visible activity at any construction site. Then the builder is required to explain the background to the flat purchasers before accepting money. Merely a term in the agreement is of no help to the Respondents. Only a condition of severe draught where all water sources get dried down can come to the help of the Respondents, but such conditions have not been proved by the Respondents. Likewise, total non-availability of steel, cement and labourers has to be proved by the Respondents and it has to be proved that such circumstances were explained to the flat buyers. Heavy rains if at all have occurred, were required to be anticipated by the Respondents and provisions were required to be made for that contingency. The royalty proceedings arise out of excavation of minor minerals and that activity had got nothing to do with the construction. The merger of Yeolewadi within the limits of Pune Municipal Corporation is said to have occurred on 21.12.2012. That was well before execution of agreement in favour of the Complainants. Hence the defences put-forth by the Respondents are of no help to them in

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defending delay in delivering possession. I therefore, hold that the Respondents failed to deliver possession to the Complainants as per agreement without there being circumstances beyond their control. I therefore, answer Point No.1 in the affirmative.

8. The Complainants have proved that they have made payment of Rs. 10,69,787/- towards the price of the flat. The Complainants are praying for direction to the Respondents to deliver possession of the flat. However, Adjudicating Officers appointed under Section 71 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA") are not empowered to give such direction. The Complainants will be entitled to recover interest under Section 18(1) (proviso) and under Rule 18 of the Maharashtra Real Estate (Regulation & Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest & Disclosure of Website) Rules, 2017 on Rs. 10,69,787/- from the date the Respondents defaulted in delivering possession.
9. The Complaints have placed on record copy of licence agreement to show that they have hired premises on leave and licence basis at Thane. The flat booked is at Yeolewadi in Pune. It appears that the Complainants are residents of Thane and working there. Unless they shift to Pune, they cannot say that they are having no accommodation for staying in Pune due to the default on the part of the Respondents in delivering possession of the flat booked. Consequently, the Complainants cannot claim compensation in respect of premises hired at Thane. For mental agony, the Complainants have preferred extra claim of Rs. 9,00,000/-. A compensation

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of Rs. 40,000/- will be just and proper. I therefore, answer Point No.2 in the affirmative and proceed to pass following order.

ORDER

- (1) The Respondents to pay interest at State Bank of India's Marginal Cost Lending Rate (MCLR) + 2% i.e. 8.70% + 2% = 10.70% p.a. to the Complainants on the amount of Rs. 10,69,787/- from 1st October, 2015 till Respondents deliver possession of the flat to the Complainants ready in all respects.
- (2) The Respondents to pay Rs. 40,000/- as compensation for mental agony to the Complainants.
- (3) The Respondents to pay Rs. 20,000/- as costs of this Complaint to the Complainants.
- (4) The Respondents to pay outstanding amounts within 30 days from the date of this order.

Pune
Dated :-04.01.2019


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