

**BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI**

COMPLAINT NO. CC006000000078646

1. Shailendra Dwiwedi
2. Priti Shailendra Dwiwedi

..Complainants

Verses

Mateshwari Realtors

..Respondent

MahaRERA Regn. No. P51700010188

Coram:

Hon'ble Shri Madhav Kulkarni,
Adjudicating Officer, MahaRERA.

Appearance:

Complainant: Adv. Naveen Wandrekar
Respondent : CA Kirit Gada

**ORDER
(Dated 04.12.2019)**

1. The complainants/allottees husband and wife who had booked 3 flats with the respondent/promoter, seek withdrawal from the project and refund of money paid with interest as respondent failed to deliver possession as per agreement.
2. Complainants have alleged that they booked three flats nos. 703, 704 and 705 by registered agreement dated 23.09.2013 for a consideration of Rs.87,80,475/-. Promised date for delivery of possession was December, 2016. As the respondent failed to deliver possession, complainant filed complaint no. 55115. Respondent was directed to deliver possession by 31.12.2018. Respondent has failed to deliver possession. Therefore complainants seek refund of Rs.81,78,379/- together with interest.

3. Complaint came up before me on 26.06.2019. Matter was adjourned for plea of the respondent and written explanation by the respondent. Plea of the respondent was recorded on 24.07.2019 and he pleaded not guilty. Respondent filed written explanation. Matter was adjourned to 23.08.2019 for arguments. Arguments were heard on 23.08.2019. As I am working at Mumbai and Pune Offices in alternative weeks, and due to huge pendency in this office, this matter is being decided now.
4. In his written explanation, respondent has alleged that total consideration received in respect of flat nos. 703, 704 and 705 in B wing in Mateshwari Altura building is Rs.74,63,405/-. Complainant spent Rs.6,19,260/- for stamp duty, registration charges etc. and Rs.3,29,124/- for service tax and VAT. Rs.63,166/- in respect of flat no. 703, Rs.2,06,533/- in respect of flat no.704 and Rs.8,21,167/- in respect of flat no. 705 are due since September, 2018. Previous complaint no. 55115 was settled amicably. Respondent undertook to pay Rs.9,00,000/- as lumpsum compensation and paid it on 24.09.2018 and also allotted 3 car parking spaces to the complainants. It was agreed that if the project was further delayed, rent of Rs.6,000/- per p.m. will be paid to the customer. At the time of settlement, complainants were aware that revised date of completion was 31.12.2022 and it was agreed in the settlement. There was case pending in the court of Civil Judge, Sr. Division, Thane since 2013. Plaintiff's application in that suit was rejected. There was matter with SDO which was decided in favour of the respondent. Matter before Additional Collector, Thane was also decided in favour of the respondent. There was issue of inheritance between land owners and their family members. Mutual understanding was arrived at on 26.06.2018. Due to this dispute, financial institutions stopped disbursing loans to customers.

Project is delayed for the above reasons. Respondent undertakes to complete the project within next 6 to 8 months. Complaint therefore, deserves to be dismissed.

5. 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 the flat to the complainants as per agreement, without there being circumstances beyond his control?	Affirmative
2 Are the complainants entitled to the reliefs claimed?	Affirmative
3 What Order?	As per final Order.

REASONS

6. **Point Nos. 1 & 2** – Complainants claim to have booked 3 flats at a time in the project of the respondent which appear to be adjacent to each other. Complainants have not placed on record, copies of the agreements for the reasons best known to them. Price of each flat is not given separately in the complaint. Neither the location is mentioned in the complaint. It appears that agreements were executed on 23.09.2013 and possession was promised by December, 2016. According to respondent, complainants have paid Rs.74,63,405/- towards consideration of the flats and are still to pay Rs.6,19,260/-. It means that the total consideration of 3 flats was Rs.80,82,665/-. Why the price of each flat could not be separately mentioned by the complainants is not understood. Since agreements are not there on record, agreed date for delivery of possession could not be ascertained.
7. There is no dispute that earlier complaint no. 55115 was filed by the complainants. Copy of Final Order in that complaint is

placed on record by the respondent. One undertaking was also given by the respondent on 23.08.2018. Final Order was passed on the same date. The complaint was in respect of flat no. 703. Respondent agreed to hand over possession on or before 31.12.2018. Complainant accepted the said undertaking. Complaint therefore, came to be disposed of. It is the contention of the respondent that date for delivery of possession as 31.12.2022 was accepted by the complainants. That does not appear to be the case.

8. Respondent claims that respondent has paid lumpsum compensation of Rs.9 lakhs on 24.09.2018, which was due till December, 2018. Thereafter, he agreed to pay rent of Rs.6,000/- p.m. per flat. There is such a wording in the undertaking dated 23.08.2018, However, it is not signed by the complainants nor it is mentioned in the Final Order passed by the Hon'ble Member.
9. The defence of the respondent that since a Civil Suit was pending and also matter was pending before Revenue Authorities, project got delayed. This defence is not substantiated. It appears no stay order was passed or no injunction was granted against the respondent. Temporary injunction application against respondent was rejected. Challenge to mutation was also rejected. There was no reason for the respondent to delay completion of the project. If the respondent has paid compensation to the complainant, that will be adjusted in the amount awarded to the complainants. One thing is certain that respondent has failed to deliver possession as per agreement without there being circumstances beyond his control. I therefore, answer point no. 1 in affirmative.
10. According to the respondent, complainants have paid in all Rs.74,63,405/- towards the price of 3 flats. Further, Rs.6,19,260/- were spent towards stamp duty. Further Rs.3,59,124/- were spent

towards service tax and VAT etc. Thus admittedly, complainants paid Rs.84,41,789/- under the promise to receive possession of 3 flats booked with the respondent. Complainants have restricted their claim to Rs.81,78,379/-. Whether this is inclusive of stamp duty or not is not made clear. So far as stamp duty is concerned, complainants will be entitled to refund of stamp duty as per rules. Except that amount complainants will be entitled to refund of the balance amount together with interest as per rule 18 of Maharashtra Rules. I therefore, answer point no. 2 in the affirmative and proceed to pass following Order.

ORDER

1. The complainants are allowed to withdraw from the project.
2. Respondent to pay Rs.84,41,789/- to the complainants, except stamp duty amount, which can be refunded as per rules, and Rs.9,00,000/- already paid to the complainants together with interest @10.35% p.a. from the date of payments till final realisation.
3. The respondent to pay Rs.20,000/- to the complainants as costs of this complaint.
4. Complainants to pay deficit court fees in respect of claims in respect of flat nos. 704 and 705 as per Rules.
5. The complainants to execute cancellation deeds at the cost of the respondent.
6. Charge of the above amount is kept on the flats booked by complainants.
7. The respondent to pay above amounts within 30 days from the date of this Order.

Mumbai

Date : 04.12.2019

MD
Signed on 17.12.2019
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA

**BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI**

COMPLAINT NO. CC006000000078646

Shailendra Dwiwedi & anr

..Complainant/s

Versus

Mateshwari Reltors

..Respondent/s

MahaRERA Regn. No. P51700010188

Coram:

Hon'ble Shri Madhav Kulkarni.
Adjudicating Officer, MahaRERA.

Appearance:

Complainant: Adv. Avinash Pawar

Respondents : CA Ashwin Shah

**ORDER BELOW APPLICATION
OF THE RESPONDENT CHALLENGING JURISDICTION OF THE AO
TO DEAL WITH NON-COMPLIANCE APPLICATION.
(Dated 12.10.2021)**

1 .Final order in this matter was passed on 4.12.2019 and respondent/ promoter was directed to refund the amount received with interest, within 30 days. Since the respondent did not comply with the order, complainants filed application about non-compliance.

2 .The respondent in present application alleged that the execution proceeding jurisdiction lies with the authority as per Section 34(f) and 34(g) of the Act and not with the AO. The Authority has delegated powers recently to the Secretary u/s 81 of the Act ,for execution of the orders. Even Hon'ble High Court in the matters of Arunesh Prasad Vs. Tata Housing and Lavasa Corporation Vs. Jitendra Tulsiyani has held that administrative powers lie with the authority and recovery proceedings u/s 40 of the Act falls in the basket of administrative function. Hence, this non-compliance application needs to be transferred to the Authority. The prayer has been opposed by the complainant.

3 .Heard CA Mr. Ashwin Shah for Respondent and Adv. Avinash Pawar for complainant. Both made submissions on expected lines. Shri Shah cited Judgement of Hon'ble Kerala High Court in CRP no. 253 of 2013 in the matter of S. K. Pandit Vs Shri Krishna Swami Devaswam. There dispute was in respect of assets of temple. According to Shri Shah powers are conferred on AO u/s 71 of the RERA for adjudging compensation u/s 12, 14, 18 and 19 of the Act. Section 40 provides for execution of orders passed by AO or the Authority or the Appellate Authority but does not provide that powers are conferred on AO in that respect. Shri Avinash Pawar pointed to Rule 3 and 4 of Maharashtra Rules

2017. Shri Shah pointed out that only orders of the AO contemplated under Section 40 sub-section 2 can be enforced by AO which means, orders except those about interest, penalty and compensation. Section 40 sub-section (1) only speaks that the above stated sums shall be recoverable as arrears of land revenue. According to Shri Shah powers directing recovery as arrears of land revenue are not conferred on AO.

4 . Division Bench of Hon'ble Bombay High Court in WP NO. 3221 of 2020 in the matter of Marval Sigma Homes Vs. Rustom Mehta alongwith the WP no. 2627 of 2020, framed issue no. 2 as to whether order directing return of consideration amount with interest is required to be executed or enforced under sec.40 r/w Rule 3 or Rule 4 of Maharashtra Rules. There the AO had directed issuance of recovery warrant u/s 40 sub-section (1). Para 12 enumerates relevant provisions in the Act and Rules. In para 13 sub-para v- it is observed that in view of the above, we are of the clear view that expression compensation as used in Section 40(1) must be understood in the sense of Section 71 of the Act viz. to include all amount that the promoter is liable to pay to an allottee inter alia u/s 18 of the Act or for that matter u/s 12, 14, and 19 of the Act. Under sub-para (vi)- It is also clear from reading Section 40(1) of the Act when contrasted with 40(2) of the Act that clear intention of the Legislature was to group all directions to pay or monetary relief granted against the promoter in one category that is section 40(1) of the Act and to treat them differently from all other orders for the purpose of means of enforcement or recovery. There is no valid explanation or justification for treating some monetary reliefs granted to allottees differently from others as has been suggested by Respondent no. 4. The intention of legislature as is apparent from preamble of the Act was to provide for speedy and efficacious remedy to allottees against the breaches of promoters and developers.....

Para 13.1 - for the above reasons we are of the view that recovery certificate resulting order from AO has rightly been issued u/s 40(1) of the Act read with Rule 3 of RERA Rules.

In view of the observation of the Hon'ble Bombay High court submission of the respondent cannot be accepted that AO has power to enforce orders u/s 40 sub-section (2) but no power to execute orders referred in Section 40 sub-section (1) I therefore, pass following order :

ORDER

Application of respondent challenging jurisdiction stands rejected.

Mumbai
Date : 12.10.2021

(Madhav Kulkarni)
Adjudicating Officer
MahaRERA

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

Complaint No. CC006000000078646

Mr. Shailendra Dwiwedi & Mrs. Preeti
Dwiwedi

..Complainant/s

Vs

Mateshwari Realtors through Mr. Hiren Patel

..Respondent/s

MahaRERA Project Registration No. P51700010188

Coram: Shri A. L. Alaspurkar,
Hon'ble, Adjudicating Officer, MahaRERA.

Appearance:
Complainant/s: None appeared
Respondent/s : None appeared

**ORDER
(21.03.2022)**

The original complainant has filed this execution application dated 27.02.2020 for execution of the final order dated 04.12.2019. On perusal of the withdrawal application, dated 17.12.2021 uploaded by the org. Respondent on 21.12.2021. It is apparent that after passing of the final order, both the parties have settled the claim with the following contentions.

"The dispute between Complainant and Respondent has been settled amicably and there are no outstanding claims of complainant arising out of the above named complaint.

The Complainant hereby agrees not to initiate any action against Respondent with regard to various reliefs pronounced by Ld. Adjudicating Officer in its order dated 4th December, 2019 before any forum including Consumer Forum, RERA, court etc.

The complainant unconditionally withdraw the Execution Proceedings in connection with the said order of Ld. Adjudicating Officer dated 4th December, 2019.

Complainant hereby request your Good Selves to kindly grant permission for withdrawal of this complaint on account of amicable settlement."

In view of the settlement, the execution application dated 27.02.2020 is hereby disposed of with no order as to costs.

Date : 21.03.2022
Mumbai


(Ashok Alaspurkar) 21.3.2022
Adjudicating Officer, MahaRERA