

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 58 OF 2022

1. KISHOR V. PATIL & ANR.

R/o Flat No.801, Orchid Building, Park Spring, Porwal Road,
Lohegaon,
PUNE - 411047
MAHARASHTRA

2. MR. BALBHIM D. MORE

R/o Flat No.403, Amarnath Dnyanganga, Near D. Y. Patil,
Lohegaon,
PUNE - 411047
MAHARASHTRA

.....Complainant(s)

Versus

1. M/S. MARVEL ZETA DEVELOPERS PVT. LTD. & ANR.

Through its Director, Shri Vishwajeet Subhash Jhavar,
Registered Office At : Jewel Tower, 301 - 302, Lane Number 5,
Ashok Chakra Society, Meera Nagar, Koregaon Park,
PUNE - 411001
MAHARASHTRA

2. M/S. EMPIRE EXCELLENCE DEVELOPERS

Through its Partners Shri Manoj Vijay Agarwal & Shri
Ghanshyam Jangaldas Sukhwani, Registered Office at :
Sukhwani Associates Promoters and Builders, Survey no. 208,
Gokul Chowk, Pimpri,
PUNE - 411018
MAHARASHTRA

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING
MEMBER**

HON'BLE BHARATKUMAR PANDYA, MEMBER

FOR THE COMPLAINANT : MR. SIDDHARTH YADAV, SENIOR ADVOCATE
MR. PRASHANT R. DAHAT, ADVOCATE
MR. VASU DEV, ADCOATE
MS. PRIYA MITTAL WITH COMPLAINANTS IN PERSON

FOR THE OPP. PARTY : MR. MALAK BHATT, ADVOCATE
MS. SAMRIDHI, ADVOCATE

Dated : 05 August 2024

ORDER

1. Heard Mr. Siddharth Yadav, Senior Advocate assisted by Mr. Prashant R. Dahat, Advocate, for the complainants and Mr. Malak Bhatt, Advocate, for the opposite parties.

2. Kishor V. Patil and Balbhim D. More have filed above complaint, for directing the opposite parties to (i) handover peaceful possession of the flats to them; (ii) reimburse the amount charged for the piece of the land which is fraudulently transferred to Pune Municipal Corporation for construction of 20 meter wide road; (iii) pay compensation of Rs.25/- lacs, for not providing external amenities as promised by the opposite parties; (iv) pay interest @18% p.a., on the total amount deposited by them, as delay compensation; (v) pay Rs.50/- lacs, as compensation for harassment and mental agony; (vi) pay Rs.15/- lacs as litigation cost; (vii) pay compensation as per clause 14 of the agreement; and (viii) any other relief, which is deemed fit and proper in the facts of the case.

3. The complainants stated that the opposite parties launched a group housing project in the name of "Marvel Piazza" on Survey No.226, at Viman Nagar, village Lohegaon, taluka Haveli, district Pune, for which they obtained sanction from the office of the Collector on 02.01.2013 for conversion of the land from agricultural to non-agricultural use and 'commencement certificate' on 04.03.2015 from Pune Municipal Corporation. The complainants visited the office of the opposite parties on 30.04.2015 and they confirmed that the project had been sanctioned and would be completed in time and the possession would be handed over on or before 31.05.2017. The opposite parties represented that the flat would consist of open terrace admeasuring 47.21 sq. mts. and two covered car parking and other amenities like basketball court, volleyball court etc. On the assurance of the opposite parties, complainant-1 booked Flat No.A-104 and complainant-2 booked Flat No.A-103 and in building 'A' 'Marvel Piazza', for basic sale consideration of Rs.28378750/- (total Rs.32681000/-) as quoted in agreements dated 07.08.2015. Third Schedule of the agreement provides "construction linked payment plan". Clause-5(b) of the agreement provides that possession would be handed over on or before 31.05.2017. As per demand of the opposite parties, complainant-1 deposited Rs.26353434/- and complainant-2 deposited Rs.28050000/-. Thereafter, the complainants regularly followed up with the opposite parties about the progress of the project but no satisfactory reply was given. The complainants came to know that the opposite parties got registered the project 'Marvel Piazza Phase 01' with the Maharashtra Real Estate Regulatory Authority on 01.05.2017, giving completion date as June, 2018. The registration shows that a portion of northern side of the project 'Marvel Piazza' is falling under 'Air Force Restriction Area' because its proximity to the outer perimeter of Lohegaon Air Force Station. Due to falling of the part of the project land within 'Air Force Restriction Area', the common amenities have not been developed. Although, the opposite parties with malicious intention published the flats and amenities of 'Marvel Piazza' to the prospective buyers. They also allocated 20 mtr. wide land inside the project for development of road (D.P. road) to the Pune Municipal Corporation without consent of the complainants and other allottees, after execution of the agreement. The complainants sent a legal notice to the opposite parties on 24.08.2017, seeking possession of the flat or refund the entire amount with interest @ 9% p.a. from the date of respective deposit till realization and pay compensation of Rs.50/- lacs. The opposite parties neither replied to the legal notice nor delivered possession of the flat. On 26.09.2017, the complainants filed a police complaint with the Police Commissioner requesting to register an FIR under Sections 406, 417, 420 120(B) read with Section 34 IPC but the police authorities did not register the FIR. Then the complainants filed Criminal Writ Petition No.6096 of 2019 before the Bombay High Court. During the pendency of the writ petition, the police authorities registered an FIR under Sections 3, 4 & 13 of MOFA and not under Sections 406, 417, 420 120(B) read with Section

34 IPC against the opposite parties on 12.10.2010. Bombay High Court dismissed the writ petition with the observation that the complainants have remedy to file a complaint before the Judicial Magistrate First Class under Section 156 (3) Cr. P.C. On 31.12.2016, other purchasers, namely, Vivek Rameshchandra Dholia and Rameshchandra Dholia filed a complaint before the RERA authority seeking possession of the flat or interest for every month's delay. The RERA authority vide order dated 25.05.2018 directed the opposite parties to pay simple interest @ 10.05% p.a. on their deposit from 01.01.2017 till handing over possession and Rs.10000/- as litigation cost, but the opposite parties failed either to handover the possession or pay interest as directed by the RERA authority. Aggrieved due to delay in handing over possession about 102 complaints have been filed against them by the purchasers of different projects before the RERA authority. The complainants also approached Maharashtra Real Estate Regulatory Authority by filing complaint No.64405 and 64415 which are still pending. Then the complainants filed the above consumer complaint on 28.03.2022.

5. Opposite party-1 filed its written reply on 17.10.2022, in which booking of the flats, agreements for the flats and deposit made by the complainants, have not been disputed. It is stated that the project 'Marvel Piazza' consists 11 buildings. Sanctioned plan and the brochure did not show any amenities in the 'Air Force Restricted Zone'. Annexure C-11 filed by the complainants is a fabricated document. The amenities including club house, badminton court, and basketball court have been provided. The complainants took possession of the flats on 17.01.2018 on the pretext of finishing the interior works, for which they were given rebate of Rs.1664462/-. They raised illegal construction in the terrace area in their respective flats and thereafter, locked the flat and kept the keys with them. Due to illegal construction raised by the complainants, municipal authorities raised objection in issuing "occupancy certificate". The opposite parties obtained 'part occupancy certificate' on 28.04.2021 and 'part occupancy certificate' in respect of remaining wing on 21.07.2022. The complainants tried to lodge a false police complaint in order to cover up breach and violation of the agreement committed by them. Opposite party-1 filed Criminal Writ Petition No.3923/2022 before the High Court for quashing of the FIR lodged by Rameshchandra Dholia against the Directors of OP-1. Later on Rameshchandra Dholia has filed his affidavit dated 18.05.2022 before the High Court giving his consent for quashing of the FIR. Criminal Writ Petition No.6096/2019 filed by the complainants seeking direction to the police authorities to register an FIR against the opposite parties was dismissed by the High Court vide order dated 17.06.2021. The complainants filed SLP No.7456/2021 against the order of the High Court, which was also dismissed by Supreme Court on 06.12.2021. Maharashtra Government imposed specific reservation of land for road on 05.01.2017 and vide notification dated 17.02.2018, reserved 20 meter wide area in the northern side of the project from east to west for construction of road in public interest. Opposite party-2, who is land owner, never received any consideration nor any Transferable Development Right for the said land. The cases filed against OP-1 were for various commercial or civil reasons which have no relevance with this case. Most of the cases filed against OP-1 before the Maharashtra RERA have been settled. Monthly compensation for delay in delivery of possession was to be given as per clause 16 of the agreement if the complainants had made timely payment, despite issue of various demands letters time to time. The complainants were defaulters in making payments, therefore, they are not entitled for delay compensation. Rs.7698690/- is due against Flat No.A-103 and Rs.9972217/- is due as against Flat No.A-104. Complainant

paid total Rs.24703434/- (inclusive taxes and interest and towards BSP Rs.21567494/-). Complainant-1 paid total Rs.26986161/- (inclusive taxes and interest and towards BSP Rs.23816167/-). As per clause 14 of the agreement, the OPs were entitled for extension of time due to force majeure conditions. Due to demonetization of currency notes of Rs.500/- and Rs.1000/- in 2016, real estate sector was disturbed which also caused delay. The complainants tried to initiate criminal proceeding against the opposite parties and harassed them. However, the occupancy certificate was obtained on 28.04.2021. Complainant-1 has carried out construction of illegal building at village Kalas Taluka Haveli, district Pune without permissions from the competent authority. He also sold the shops and flats in the said illegal building by showing forged documents to the purchasers. In this respect, an FIR being No.309/2020 dated 20.08.2020 was lodged against complainant-1 under Section 420, 465, 468, 471, 506, 323, 466, 467 read with Section 34 IPC wherein he was sent to jail and thereafter released on conditional bail. OP-1 also stated that the complaint is barred by limitation as the cause of action arose on 24.08.2017 when the complainants sent a legal notice to the opposite parties. The complainants are investors and purchased the flats in question for commercial purpose. The complaint is bad for non-joinder of necessary parties as the complainants have not impleaded the co-purchasers in the same agreement as complainants. The complainants have already filed complaint before MRERA, which are pending and this complaint is not maintainable. The complaint has no merit and deserves to be dismissed.

6. The complainants filed Affidavit of Evidence of Kishor V. Patil and documentary evidence. The complainants filed Additional Affidavits of Kishor V. Patil on 13.02.2022, 25.01.2023 on 29.03.2023 and 28.07.2023 stating that OP-1 received occupancy certificate on 28.04.2021 and offered possession vide email dated 11.05.2021 with final demand with interest @18 p.a. and that the complaints filed before MRERA were withdrawn vide order dated 21.03.2023. The complainants immediately replied to the email of OP-1 intimating that they are ready to take possession. Thereafter, the complainants sent various reminders to OP-1 but there was no reply. Later on a settlement was executed between on the parties on 16.07.2023 and on that day possession of the flat and car parking were delivered. Bhalbhim D. More (complainant-2) also filed Additional Affidavit on 13.02.2022 and 28.07.2023. OP-1 also filed Additional Affidavit on 04.01.2024 stating that complainant-1 has settled the dispute with OP-1 and in view of the settlement OP-1 has withdrawn the allegation of illegal construction by complainant-1 and accordingly complainant-1 has withdrawn the complaint filed before the RERA authority against OPs. Now, there is no dispute with regard to maintainability of the present complaint. The complainants took peaceful possession of the flat and parking. Kishor V. Patil again filed Additional Affidavit on 04.06.2024. Opposite party-1 filed the Affidavit of Evidence of Vishwajeet Subhash Jhavar and documentary evidence. OP-1 also filed Additional Affidavit on 16.01.2023. Both the parties have filed their written arguments.

8. We have considered the arguments of the counsel for the parties and examined the record. Relying upon the judgment of Supreme Court in **Ireo Grace Realtech Private Limited Vs. Abhishek Khanna (2021) 3 SCC 241**, the counsel for the opposite party submitted that this complaint has been filed subsequent to the complaints filed before MRERA by the complainants as such estoppel by election will apply and this complaint is liable to be dismissed.

In this complaint, the complainants filed IA/2566/2022 for directing the opposite parties to handover possession of the flats allotted to them. This Commission, vide order dated 17.11.2022 directed the complainants to pay admitted amount to opposite party-1 and deposit disputed amount with this Commission and gave liberty to opposite party-1 to withdraw the amount after giving undertaking and handover possession, subject to payment as directed above. In compliance of the order, complainant-1 paid Rs.5626735/- to OP-1 on 17.12.2022 and deposited Rs.3191557/- with this Commission on 19.12.2022. Complainant-2 paid Rs.3334385/- to OP-1 on 16.12.2022 and deposited Rs.2200079/- with this Commission on 19.12.2022. Vishwajeet Subhsh Jhavar submitted his undertaking before this Commission on 16.01.2023 for withdrawal of the amount deposited by the complainants. Then amount deposited by the complainants in this Commission were transferred to opposite party-1. The complainants withdrew the complaints filed before MRERA vide order dated 21.03.2023. Thereafter, the parties executed a settlement on 16.07.2023 and on that day possession of the flat and car parking were delivered to the complainants. It has been further agreed that the complainants may pursue their other remedies in this complaint. Opposite party-1 consciously submitted to the jurisdiction of this Commission relating other claims as such they cannot be permitted to raise the plea of maintainability of the complaint on the ground of estoppel by election.

9. So far as argument that the complaint is barred by limitation is concerned, under the agreement, the opposite parties are obligated to offer possession after obtaining 'occupation certificate'. 'Occupation certificate' was obtained on 28.04.2021. Possession was offered on 13.05.2021 and this complaint has been filed on 25.03.2022, i.e. within two years from the date of offer of possession. Supreme Court in **Lata Construction Vs. Dr. Ramesh Chandra Ramaniklal Shah, (2000) 1 SCC 586**, **Meerut Development Authority Vs. Mukesh K. Gupta, IV (2012) CPJ 12 (SC)** and **Samruddi Cooperative Housing Society Limited Vs. Mumbai Mahalaxmi Construction Pvt. Ltd., AIR 2022 SC 428**, held the builder is contractually and legally bound to handover possession of the unit complete in all respect as per specification and execute conveyance deed. So long as these obligations are not fulfilled, it is continuing wrong and gave continuous cause of action.

10. The complainants claimed for reimbursement the amount charged for the piece of the land which is transferred to Pune Municipal Corporation for construction of 20 meter wide road. Opposite party-1 has stated that Urban Department, Maharashtra Government imposed specific reservation of land for road on 05.01.2017 and vide notification dated 17.02.2018, reserved 20 meter wide area in the northern side of the project from east to west for construction of road in public interest. Maharashtra Government did neither give any compensation of that land to opposite party-2, the land owner, nor granted any 'Transferable Development Right' for the said. The complainants have not filed any evidence to prove that the opposite party have received any consideration or Transferable Development Right for the said land. The government being 'eminent domain' can acquire any land. Individual flat owner cannot claim any compensation for it. If at all, only cooperative housing society can claim compensation for it.

11. The complainants have claimed compensation of Rs.25/- lacs, for not providing external amenities as promised by the opposite parties. Opposite party-1 has stated that sanctioned plan and the brochure did not show any amenities in the 'Air Force Restricted Zone'. Annexure C-11 filed by the complainants is a fabricated document. The amenities

including club house, badminton court, and basketball court have been provided. As such no compensation is payable in this head. The opposite party has filed photographs of amenities.

12. The complainants have claimed delay compensation in form of interest @18% per annum on their deposit from due date of possession till the handing over actual possession. Clause-5(b) of the agreement provides that possession would be handed over on or before 31.05.2017, while, opposite party-1 obtained 'occupation certificate' on 28.04.2021 and offered possession on 13.05.2021. As such there is delay in offer of possession. Opposite party-1 attributed delay to (i) the complainants, who stopped payment of instalments; (ii) Due to demonetization of currency notes of Rs.500/- and Rs.1000/- in November, 2016 by Government of India; (iii) The complainants took fit-out possession of the flats on 17.01.2018 on the pretext of finishing the interior works of their own choice, for which, they were given rebate of Rs.1664462/-. They raised illegal construction in the terrace area in their respective flats and thereafter, locked the flat and kept the keys with them. Due to illegal construction raised by the complainants, municipal authorities raised objection in issuing "occupancy certificate"; (iv) The complainants tried to initiate criminal proceeding and other allottee lodged FIR against the opposite parties forcing them in unwanted litigation and harassed; (v) Spread of pandemic Covid-19 in the country and consequent lockdown by the government from 22.03.2020.

13. So far as allegation that the complainants stopped payment of the instalments. Third Schedule of the agreement provides 'construction linked payment plan'. The complainants gave break up payment made by complainant-2 (pg.291-A of the complaint), which shows that for Flat No.104-A, total Rs.21793316 (including TDS) was paid towards consideration till 30.03.2016 and Rs.2905188/- was paid towards taxes. Basic Sale Consideration was Rs.28378750/-. The complainants did not give break-up of payment of complainant-1. Opposite party-1, filed statement of account of the complainants (pg. 192 & 193 of reply), which shows that complainant-1 stopped payment after 29.04.2015 and by that time total Rs.24703434.02 (inclusive taxes) was paid and complainant-2 stopped payment after 29.04.2015 and total Rs.26986161.11 (inclusive taxes) was paid by that time. Additional Affidavit of Vishwajeet Subhash Jhavar (filed on 16.01.2023), shows that complainant-1 made one more payment Rs.39568.13 on 30.03.2016. Even according to the complainants Rs.5626735/- was balance against complainant-1 and Rs.3334385/- was balance against complainant-2. Last instalment 'on offer of possession' is of Rs.2637875/-. Thus it is proved that the complainants were defaulter. The date of possession as mentioned on clause-5(b) of the agreement is subject to payment of full agreed consideration and fulfilling other obligations.

14. Government of India demonetized currency notes of Rs.500/- and Rs.1000/- on 08.11.2016, which resulted in paucity of currency throughout the country. The builders were not in position to pay wages to the workers and purchasing building materials. The worker migrated to their villages. At least for a period of six months, the construction works were stopped in entire country. The opposite party is entitled to six months period for force majeure due to demonetization of currency notes. According to opposite party-1, the construction was completed till end of December, 2017. The complainants took fit-out possession of the flats on 17.01.2018 on the pretext of finishing the interior works of their own choice, for which, they were given rebate of Rs.1664462/-, which is proved from email communications between the parties as filed on pg.130 to 133 of the reply. They raised

illegal construction in the terrace area in Flat-A-104 and thereafter, locked the flat and kept the keys with them. Pune Municipal Corporation issued notice dated 27.01.2020 for removal of unauthorised construction in Flat No.-A-104 and the opposite party informed the complainant vide letter dated 04.02.2020. Opposite party-1 has stated that due to illegal construction, municipal authorities raised objection in issuing “occupancy certificate”.

15. Opposite party-1 has not given the date, when he has applied for issue of ‘occupation certificate’. Pune Municipal Corporation issued notice dated 27.01.2020 for removal of unauthorised construction in Flat No.-A-104. In the circumstances, there is nothing on record to prove that before January, 2020, opposite party-1 applied for issue of ‘occupation certificate’. From 22.03.2020, the country faced lock down. For unauthorised construction raised by the complainants and due to spread of pandemic Covid-19 in the country and consequent lockdown by the government from 22.03.2020, the opposite parties are entitled for extension of period due to force majeure from January, 2020 till offer of possession. Supreme Court in **Dhanrajmal Govindram Vs. Shyamji Kalidas, AIR 1961 SC 1285**, held that an analysis of the rulings on the subject shows that where reference is made to “force majeure” the intension is to save the performing party from the consequences of anything over which he had no control. Again in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna, (2021) 3 SCC 241**, extended period, for which, sanction of fire NOC was delayed.

16. So far as claim of interest @18% per annum for delayed period is concerned, the complainants have not deposited their money in any ‘fixed deposit’ scheme. None of the nationalised bank in country ever gave 18% interest even on ‘fixed deposit’. The complainants paid consideration of their flats, of which, they were handed possession. They were deprived possession of their flat for period after due date of possession as such for as such period compensation for loss of user in terms of money is payable. After excluding the period of force majeure, we found that the complainants are entitled for delay compensation from January, 2018 till December, 2019. So far as default committed by the complainants is concerned, the opposite parties have already charged interest on it in terms of the agreement. Three members Bench of Supreme Court in **DLF Home Developers Pvt. Ltd. Vs. Capital Green Flat Buyer’s Association, (2021) 5 SCC 537**, awarded delay compensation in form of interest @6% per annum on the deposit of the allottee from due date of possession, till the date of offer of possession.

O R D E R

In view of aforesaid discussion, the complaint is partly allowed. Opposite party-1 is directed to pay delay compensation in the form of interest @6% per annum on the deposit of the complainants (excluding taxes) for the period from January, 2018 till December, 2019. Opposite party-1 shall calculate the delay compensation within one month from the date of this judgment. If after adjusting balance amount, any amount is surplus it shall be paid to the complainants within two months. If after adjusting delay compensation in the balance amount, the complainants have to pay any amount they will pay it within two months from the demand. After settlement of the account the opposite parties execute conveyance deed if required without any further delay.

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RAM SURAT RAM MAURYA

PRESIDING MEMBER

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BHARATKUMAR PANDYA
MEMBER