

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

Complaint No.CC006000000056847

**1. Bhawana Piyush Kumar
2. Piyush Kumar, .. Complainant**

Versus

**1. Origin Realtors LLP .. Respondent
2. Ravi Developments
3. JVPD Properties Pvt.Ltd.
MahaRERA Regn No.P51700009680**

**Coram : Shri M.V. Kulkarni
Hon'ble Adjudicating Officer**

**Appearance :
For Complainant – Adv Satish Dedhia
For Respondents 1&2-Adv Makrand Raut**

FINAL ORDER

21.08.2020

1. Two Complainants-allottees who had booked a flat with the respondent/promoters seek withdrawal from the project and refund of the amounts paid together with interest and compensation.

2. The complainants appear to be wife and husband. They claimed to have booked flat No. 802 in the project of the respondent no. 3, "Bhagtani Riyo" vide allotment letter, dated 30.10.2013. It is claimed that the respondent did not obtain land title and IOD approval. The respondent executed credit note to complainant on 21.11.2015. By letter dated 20.07.2017, the

M.V. Kulkarni

respondent informed that it has transferred the project to the respondent No.1 "Shubh Atika" vide letter, dated 20.07.2017. Respondent asked the complainants-applicants to shift to project "Shubh Atika". Complainants-applicants were forced to sign that writing on 12.08.2017. It is not binding on the complainants. Respondent arranged site visit. The price of the flat was proposed at Rs. 58,78,548/- . Rs. 16,78,125/- which were already paid and Rs. 10,06,875/- as accrued interest were to be adjusted towards price of the new flat. The respondent No.1 offered a discount of Rs. 139/- per sq. ft. amounting to Rs.1,31,673/-. The complainants therefore, paid the amount to respondent No.1. The amounts were directly paid to respondent No.1 and respondent No.1 entered into deed of understanding . Respondent No.2 was not in picture and Bhagtani told that respondent Nos.1 and 2 were different entities. Complainant further paid Rs.7,59,441/- and respondent No.1 issued allotment letter, dated 28.10.2017. Bhagtani transferred Rs. 2,04,431/- to respondent No.1. Thereafter Dipesh Bhagtani surrendered to the police. and other Bhagtanis fled India The respondent No.2 assured settle dispute amicably and the complainants agreed to withdraw the police complaint. Respondent No.1 insisted upon deduction of Rs. 3,68,495/- towards 7% brokerage and GST. The complainants have therefore filed this complaint.

3. The complaint came up before the Hon'ble Member on 08.04.2019. It came to be transferred to the Adjudicating Officer, as per request of the complainant and came up before me on 21.06.2019. It was adjourned for filing written explanation/settlement. On 25.07.2019 respondent was absent. Matter was adjourned to 28.08.2019. Again it was adjourned to 16.09.2019. Again it was adjourned to 25.09.2019 and then to

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14.10.2019. Respondent filed written explanation and arguments were heard on 14.10.2019 and 22.10.2019. As I am working at Mumbai and Pune offices in alternative weeks and due to huge pendency in this office, and due to lockdown conditions on account of outbreak of pandemic of Covid-19, this matter is being decided now with the help of video conferencing.

4. Respondent Nos.1 and 2 have alleged that the complaint is misconceived. The respondent No. 1 is not concerned with the allotment letter, dated 28.10.2017 in respect of project "Shubh Atika. Respondent Nos.1 and 2 never demanded amounts payable to respondent No.3. The complainant had agreed under allotment letter, dated 28.10.2017 to purchase Flat on 8th floor no 806 in the building "Shubh Atika" being constructed by respondent NOs.1 and 2 in the project "Shubh Atika", for a consideration of Rs. 47,00,184/-. The complainants have paid RS. 9,63,872/- including GST amount of Rs. 3,03,273/-. Complainants in Sept. 2018 had approached respondent Nos.1 and 2 for purchase of the flat. If the complainants want to cancel the allotment, they are liable to pay brokerage of Rs. 3,32,773/-. It is denied that complainants paid amount under allotment letter, dated 30.10.2013. The complaint therefore, deserves to be dismissed.

5. Following points arise for my determination. I have noted my findings against them of the reasons stated below:

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POINTSFINDINGS

- (i) Are the complainants allottees and respondents promoters ?.. .. Affirmative only in respect of respondent Nos.1 and 2.
- (ii) If yes, have the respondents failed to deliver possession as per agreement without there being circumstances beyond their control ? In the Negative.
- (iii) Are the complainants entitled to the reliefs claimed ? In the Negative.
- (iv) What order? As per final order

REASONS

6. POINT No.(i) to (iii) : Complainants referred to respondent No.3 who has referred as JVPD Properties Pvt. Ltd. i.e. Bhagtanis. They have alleged that respondent No.3 agreed to sell Flat No. 802 in the project "Bhagtani Riyo" on 30.10.2013. However, the project did not materialise. Original Allotment letter, dated 30.10.2013 in respect of Flat No. 802 is placed on record. Complainants have paid Rs. 17,29,980/-. The receipt dated 30.10.2013 is also placed on record. Then a credit note dated 21.11.2015 issued by respondent no.3 in favour of complainant is placed on record. It was admitted that there was delay in obtaining IOD/LOI. Therefore, delay charges were agreed to be paid. Then there is letter, dated 20.07.2017 whereby respondent no.3 informed that allotment is cancelled as the project was cancelled. The -issues -- were to be discussed. Then there is a

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deed of cancellation, dated 12.8. 2017. Payment of Rs. 16,78,125/+RS51855- on the part of complainant was to be adjusted. The amount was agreed to be repaid as per terms that were being settled. So far as transaction with respondent no.3 is concerned, the matter came to end there.

7. Then there is letter, dated 28.10.2017 from Shubh to the complainants in respect of Flat No.806 in the project "Shubh Atika". The price quoted was Rs. 47,00,184/-. Payment of Rs.860600+ 2,04,431/- is acknowledged. Respondent Nos.1 and 2 have jointly filed written explanation. Therefore, it can be concluded that complainant booked Flat No. 806 in the project "Shubh Atika" with respondent No.1 and 2. Now the question is how the transaction with respondent No.3 is connected with transaction of respondent Nos.1 and 2. It is alleged that there was some proceedings before the Hon'ble High Court. What directions were given is not known as the copies are not placed on record. Respondent Nos.1 and 2 have denied any connection with respondent No.3. Therefore, complainants can be said to be allottees only of Respondent Nos.1 and 2 as the details of the claim against respondent No.3 are not clear. I therefore, answered Point No.1 in the affirmative only to the extent of respondent Nos.1 and 2.

8. Now the question is whether respondent Nos.1 and 2 have failed to deliver possession as per agreement without there being circumstances beyond their control. As it is, the date of allotment is 28.10.2017. The price of the flat No. 806 was agreed at Rs. 47,00,184/-. Exhibit 'H' shows that complainant No.1 had paid Rs. 16,78,125/-and Interest of Rs.10,06,875/- and service taxRs. 51,855/-. Then there is offer to sell flat of area 948 for Rs5878548

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After deducting interest amount as above, the price is shown as Rs. 47,04,000/-. Down payment is shown as Rs.22,00,000/-. Old DP adjustment is shown as Rs. 16,78,125/-. The remaining down payment is shown as RS. 5,49,675/- + GST of Rs. 2,09,566/-. This letter however, is not signed by respondent No.1 and 2 and 3. Letter from respondent No.2 dated 28.10.2017 acknowledges payment of Rs. 8,60,600/-. Further payment of Rs.2,04,431/- is acknowledged. Then there is letter, dated 14.09.2018 from complainants to respondent no.1 informing that brokerage deduction was not acceptable. The question is why the complainants want ~~to~~ refund from respondent Nos.1 and 2. Absolutely no reason has been put forth. There is no whisper that respondent Nos. 1 and 2 failed to deliver possession as per agreement. Consequently, complainants are not entitled to any relief from this forum and are required to, approach proper forum for redressal of their grievance. I therefore, answer Point Nos.2 and 3 in the negative. In the result, I pass following order.

ORDER

- (1) The complaint stands dismissed.
- (2) No order as to costs.

Mumbai
Date : 21 .08.2020
(Camp at Pune)

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

signed on 18.9.2020