

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

Complaint No.CC00600000044266

Universal Medicare Private Ltd.

Registered Office at Capsulation Premises.

Deonar, Sion Trombay Road,

Deonar, Mumbai-400 088

.. Complainant

Versus

- 1. Ekta Shubham Venture,**
401, Hallmark Busiess Plaza
Off.WesternExprss Highway,
Kalanagar, Bandra (E),
Mumbai-400 051.

- 2. Vivek Mohnani,**

- 3. Dinesh Shah**

Address at 401, Hallmark Busiess Plaza

Off.WesternExprss Highway,

Kalanagar, Bandra (E),

Mumbai-400 051.

.. Respondents

(P.R. No. P51800001112)

Coram : Shri M.V. Kuilkarni

Hon'ble Adjudicating Officer

Appearance :

Complainant : Adv. Gautam Sahani

Respondents : Absent

FINAL ORDER

(4thSept. 2019)

1. The complainant, who had booked ² flats with the respondent/promoter, seeks withdrawal from the project and refund of the amounts with interest.

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2. The complainant has alleged that it is a private limited company and booked Flat Nos.1501 and 1502 in the project of respondents "Panorama" at Purav Marg, Chembur, Mumbai under agreements for sale, dated 22nd Feb. 2017. The complainant has paid a total consideration of Rs. 8,21,55,169/- for purchasing the flats. The respondents undertook to hand over possession of the flats by 31st Dec. 2017. Subsequently, complainant and respondents entered into a letter of agreement, dated 1st March, 2017, whereby respondents undertook that in the event of termination of agreements, all monies will be paid to the complainant within 30 days since termination. In July, 2017 respondents approached the complainant with a proposal that complainant purchase additional area to combine the flats. The complainant refused it. The respondents confirmed that construction was on track and there will be no delay in handing over possession. The respondents pleaded that lifts were yet to be installed and therefore, were unable to take the complainant toward the flats booked. The complainant called upon respondents to explain the delay in delivery of possession by letter, dated 8th Jan. 2018, 18th Jan. 2018 and 9th Feb. 2018. The respondents sated that possession date is 31st Dec. 2019. The complainant has therefore, filed this complaint.
3. The matter came up before the Hon'ble Member on 31st July, 2018. It was adjourned for plea to 14th August, 2018. On 14th August, 2018 matter came to be transferred to the Adjudicating Officer. The matter came up before me on 29th March, 2019. It was submitted on behalf of respondents that matter is likely to be settled amicably. It was

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adjourned to 26th April, 2019. On 26th April, 2019 again it was submitted that settlement talks are going on. The matter was adjourned to 20th May, 2019. Again it was adjourned to 26th June, 2019. On that day, respondents were absent. Arguments for complainant were heard. As I am working at Mumbai and Pune Offices in the alternative weeks and due to heavy pendency in this office, this matter is being decided now.

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

POINTS

FINDINGS

- (1) Have the Respondents failed to deliver possession of the flat to the complainant as per agreements, without there being circumstances beyond their control ? In the Affirmative.
- (2) Is the complainant entitled to the reliefs claimed ? In the affirmative.
- (3) What order ? As per final order.

REASONS

5. **POINT Nos.1 and 2** :- The complainant is a private limited company and claims to have booked Flat Nos.1501 and 1502 in the project "Panorama" at Chembur. The area of the flat is given as 121.66 sq. mtrs. and 105.82 sq. mtrs. However, combined price of Rs. 8,21,55,169/- has been mentioned in the complaint. Agreement in respect of Flat No. 1501 is dated 22nd Feb. 2017 and it's copy is placed on record. The

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price of the flat mentioned is Rs. 4 crores. Rs. 3,78,00,000/- were to be paid before execution of agreement and Rs.22,00,000/- in phases, as and when demanded. Floor plan has been annexed, but flat Nos. are not mentioned. Copy of agreement for sale, dated 22nd Feb. 2017 in respect of Flat No. 1502 is also placed on record. The consideration agreed was RS. 3,65,00,000/-. Out of it, Rs. 3,49,15,000/- were to be paid before execution of agreement and the balance as per demand. As per clause 38 in both agreements, date for delivery of possession is mentioned as 31st Dec. 2017. Usual circumstances under which respondents were entitled for extension of time are mentioned in clause No. 39.

6. It is the contention of the complainant that respondents went on assuring that the project will be completed in time. When the representative of the complainant visited site on 5th Jan. 2018, he was surprised to find that construction was not close to completion and the complainant therefore, wrote letters on 8th Jan., 18th Jan and 9th Feb. 2018. Copy of letter, dated 1st March, 2017 by respondents are placed on record. Payment of Rs. 3,78,00,000/- were acknowledged. Respondents undertook to refund the amount paid, if the complainant cancelled the booking. Similar letter in respect of Flat No. 1502 acknowledged payment of Rs. 3,49,15,000/-. Copies of letters, dated 8th Jan. 2018, 18th Jan. 2018 and 9th Feb. 2018 are also placed on record. Reply of the respondents, dated 12th Feb. 2018 is placed on record. It was informed that for the reasons beyond control of the respondents, possession was delayed and the date for possession was extended up to 31st Dec. 2019.

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7. There is only the reply of the respondents to the notice, which is dated 12th Feb. 2018 justifying the delay on the grounds that there were circumstances beyond reasonable control of the respondents. This is a vague plea. It appears that as per MahaRERA record, date for delivery of possession is 31st Dec. 2019. The respondents have extended the date for possession without the consent of the complainant and therefore, it is not binding on the complainant. It appears that complainant had made payment of considerable consideration at the time of execution of the agreement. When the respondents undertook to deliver the possession on 31st Dec. 2017, the respondents were bound to honour that commitment especially after receiving so much of consideration amount. Only a vague plea by the respondents cannot be accepted. I therefore, hold that the respondents failed to deliver possession as per agreement without there being circumstances beyond their control. I therefore, answer Point No.1 in the affirmative.
8. The complainant claims that he has paid total payment of Rs. 8,21,55,169/-. By a letter, dated 1st March, 2017, respondents acknowledged payment of Rs. 3,78,00,000/- in respect of Flat No.1501 and RS.3,49,15,000/- in respect of Flat No. 1502. Thus the total payment acknowledged is Rs. 7,27,15,000/-. The agreements do show that the balance amounts were to be paid in two equal instalments, first on commencement of floor and second before possession. The complaint is silent whether flooring was completed or not. When complainant had grievance that construction was not completed, it is difficult to believe that complainant paid


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subsequent instalments without getting possession from the respondents or without verifying the stage of construction. I therefore, hold that complainant has paid Rs. 7,27,15,000/-. The complainant is entitled to refund of this amount together with interest as provided 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. I therefore, answer Point No.2 in the affirmative and proceed to pass following order.

ORDER

- (1) The complainant is allowed to withdraw from the project.
- (2) The respondents to pay Rs. 7,27,15,000/- to the complainant together with interest @ 10.75% p.a. from the date of payments till final realization.
- (3) The respondents to pay Rs.50,000/- to the complainant as costs of this complaint.
- (4) Charge of the aforesaid amounts be kept on the flats booked by the complainant.
- (5) The complainant to execute cancellation deeds^v at the cost of the respondents.
- (6) The respondents to pay above said amounts within 30 days from the date of this order.

Camp at Pune
Date :-4.09.2019

MV
4-9-2017
(M.V. Kulkarni)
Adjudicating Officer,
MahaRERA