

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

COMPLAINT NO: CC006000000057551

Mrs. Rajarajeswari Rajeev Nair ... Complainant.

Versus

Vijaykamal Properties Pvt. Ltd.
(Meridian Court 1) ... Respondents.

MahaRERA Regn: -P51800007441

Coram: Shri B.D. Kapadnis,
Hon'ble Member II.

Appearance:

Complainant: CA Mr. Ramesh Prabhu.

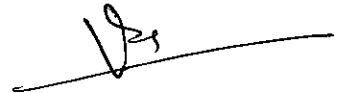
Respondents: Adv. Mr. Krishna Agarwal.

Final Order.

23rd October 2019

The complainant has filed this complaint under Section 12 of the Real Estate (Regulation and Development) Act, 2016 (RERA).

2. The complainant contends that she has booked flat no. 0306 in the building previously known as Vuelta-A of respondents' Era -Vuelta-A project situated at Borivali, Mumbai and the respondents verbally agreed to deliver its possession within 3 months from the date of booking, that is, in April 2017. They have failed to deliver the possession as agreed. She contends that the respondents have changed the proposed date of possession as 31.12.2023. The complainant further alleges that when she booked the flat, name of project was 'Era'. Thereafter the respondents changed its name as "Meridian Court -1", in order to avoid the liability of the original allottees to cheat them. The respondents have unilaterally changed the plan and layout thereby they have reduced the area of the flat from 720sq.ft. to 448sq.ft.



Complainant withdraws from the project. Therefore, she claims her amount with interest.

3. The respondents have pleaded not guilty. They have filed their explanation to contend that they are developing the project however, due to recent changes in the policy guidelines of Municipal Corporation and Slum Rehabilitation Authority due to amendment in the D.C. Regulation the respondents amended the layout plan of construction to utilise balance potential FSI on the subject property. Therefore, delay is not deliberate. They deny that they agreed to handover the possession within 3 years from the booking of the flat and changed the name of project to avoid their liability. They contend that when the complainant is cancelling the booking she is liable to bear cancellation charges of 2% of the agreement value namely Rs.1,44,000/-. They request to dismiss the complaint.

4. Following points arise for determination. I record my findings thereon as under:

Points.	Findings.
1. Whether the respondents made false statement at the time of booking that they shall handover the possession of the flat in April 2017?	Affirmative.
2. Whether the respondents changed name of the project, its layout, area of the flat and date of possession without the consent of the complainant?	Affirmative.
3. Whether the complainant is entitled to get refund of her amount with interest?	Affirmative.

REASONS.

5. The complainant claims refund of her amount with interest under Section 12 of the Act which permits the allottee to claim the amount with interest when the allottee makes an advance or deposits money depending upon promoter's any false



or incorrect statement provided the allottee sustains loss or damage by reasons of incorrect or false statement.

6. Respondent have admitted that they have changed the name of the project from 'Era' to "Meridian Court Tower-1", so this fact has been established.

7. The allotment letter produced by the complainant shows that the area of the flat is 720 sq. ft. whereas this area is reduced to 448 sq. ft. without the consent of the allottee. This fact is not denied by the respondents. The complainant has relied upon old and new brochures to show that the entire scheme has been changed. The respondents have also contended by their letter dated 02/12/2016 that the earlier construction is demolished and new construction as per the revised plan is being proposed. Therefore, I am convinced that there is change in the plan of the project for which no express permission of the complainant has been taken.

8. The complainant has filed the affidavit to show that when she booked flat she was orally promised that the possession would be given in April 2017 and now the respondents have revised the proposed date of completion as 31.12.2023 while registering the project. This shows that the respondents made the false statements regarding the date of possession. So all these facts are sufficient to show that the statements/representation of the respondents regarding name of the project, area of the booked flat, and date of possession on the basis on which the complainant booked the flat proved to be false and incorrect. Therefore, Section 12 applies to her case to claim her amount with interest. I record my finding to this effect.

9. The respondents contend that they are entitled to deduct 2% of agreement value on cancellation of the booking as contended in the allotment letter. I do not find that they are entitled to do so because the complainant is withdrawing from the project because the respondents made the false statement regarding name of the project, area of the booked flat, and date of possession.

10. Section 12 of RERA allows the allottee to collect his amount with simple interest at prescribed rate which is 2% above the MCLR of SBI. The current rate of MCLR of SBI is 8.4%. Thus, the complainant is entitled to get simple interest at the



rate of 10.4% on her amount from the date of its receipt by the respondents till its refund.

11. The complainant has filed her statement of payment marked Exh.A. The respondents have not denied the receipts of those amounts. Therefore, she is entitled to get these amount from the respondents with interest at the rate of 10.4% from the date of their payments till they are refunded. She is also entitled to receive Rs. 20,000/- towards the cost of complaint. Hence, the following order.


ORDER

The respondents shall pay the complainant the amount mentioned in payment statement marked Exh. 'A' with interest at the rate of 10.4% from the respective dates of payment to the respondents till their refund.

Payment statement marked Exh. 'A' shall form the part of the order.

The respondents shall pay Rs. 20,000/- to the complainant towards the cost of the complaint.

The charge of the aforesaid amount shall be on the flat booked by the complainant till its repayment.


23.10.19

(B.D. KAPADNIS)

Member II,
MahaRERA, Mumbai.

Mumbai.

Date: 23.10.2019.

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

Complaint No. CC006000000057551

In the Matter of:

Mrs. Rajarajeshwari Rajeev Nair

.....Complainant(s)

And

Vijaykamal Properties Pvt.Ltd

.....Respondent(s)

INTEREST CALCULATION FROM DATE OF PAYMENT 23-02-2014 TO 31-10-2019
PAID AGAINST ALLOTMENT

PERIOD OF INTEREST @ 10.35 % TILL 31-10-2019

Sr.No	Date	Amount Paid	Months	Days	Int Amount(Months)	Int Amount(Days)	Total Amount
1	23-02-2014	5,00,000	67	6	2,88,937.50	850.6	2,89,788.10
2	12-03-2014	9,44,380	66	19	5,37,588.30	5088	5,42,676.30
3	12-03-2014	2,05,000	66	19	1,16,696.25	1,104.47	1,17,800.72
4	12-03-2014	1,00,000	66	19	56,925	538.76	57,464
5	12-03-2014	50,620	66	19	28,815.40	272.72	29,088.12
6	12-03-2014	55,620	66	19	31,661.68	299.66	31,961.34
	Total	1855620	66	19	10,60,624.13	8,154.21	10,68,778.34

Total Amount paid

Rs.18,55,620/- (Rupees Eighteen Lakhs Fifty Five Thousand Six Hundred and Twenty only)

Total Interest Receivable

{Amt(Months)+Amt(Days)}

Rs.10,68,778 (Rupees Ten Lakhs Sixty Eight Thousand Seven Hundred and Seventy Eight only)
(Rounded off)

Total Amount Receivable

Rs.29,24,398/- (Rupees Twenty Nine Lakhs Twenty Four Thousand Three Hundred and Ninety Eight only)
(Rounded Off)

Received & Confirmed

Kavitha. Aggarwal

23/10/19

Rajarajeshwari

**THE MAHARASHTRA REAL STATE REGULATORY
AUTHORITY, MUMBAI.**

COMPLAINT NO. : CC006000000057551

Mrs. Rajarajeswari Rajeev Nair

...Complainant.

Verses

Vijaykamal Properties Pvt. Ltd.
(Meridian Court 1)

...Respondents.

MahaRERA REgn: **P51800007441**

Coram : Shri B.D. Kapadnis,
Hon'ble Member II.


**ORDER ON THE RECOVERY APPLICATION FILED IN
COMPLAINT.**

Mr. Ramesh Prabhu, CA appears for the complainant and Adv. Krishna Agarwal appears for the respondents. Mr. Prabhu reports non-compliance of the order. Mr. Krishna Agarwal submits that because of the financial crises and prevailing market conditions, it is not possible for the respondents to comply with the order for the time being.

2/- Issue warrant under Section 40(1) of RERA against the respondents. The complainant is directed to submit his statement showing the amount to be recovered from the respondents.

Mumbai.

Date: 23.10.2020.


23.10.2020
(B.D. Kapadnis)
Member- II,
MahaRERA, Mumbai.