

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

COMPLAINT NO: CC006000000055820.

Shridhar Kamat

... Complainant.

Versus

M/s. Disha Direct Marketing
Agency Services Pvt. Ltd.
(Cida De Vida)

... Respondents.

MahaRERA Regn: P52000012762.

Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

Appearance:

Complainants: Adv. Pradnya.

Respondents: Adv. Babasaheb Bansode.

FINAL ORDER

13th December 2018.

The complainant contends that he booked flat no. B-1, 411 in respondents' project 'Cida De Vida' at village Kavir, Brahamanwadi, Taluka Alibaug by initially paying Rs. 51,000/- on 31st January 2016. Thereafter he paid Rs. 10,50,000/- on 29th February 2016 on the assurance of the respondents that they will provide the copies of the permission obtained for the project but they did not provide any such copies. The complainant came to know by resorting to the provisions of Right to Information Act that no permission was given for the 4th floor of the project. Then he filed Complaint No. CC006/871 before this Authority.

2. Thereafter the respondents offered a flat bearing no. 105 in Durga Building of the registered project Wolly Wood situated at Gates village, Sirish Pada, Taluka Wada, Dist. Palghar for Rs. 18,25,273/- and told the complainant that they would not be able to return his amount of Rs. 11,01,000/- but shall transfer it to project Wolly Wood. The complainant found in this situation accepted the offer and the parties entered into MOU

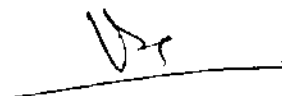


on 19.01.2018. The complainant deposited Rs. 51,000/- with Nirvana Lifestyle Ventures to whom the said project belongs. The respondents are the marketing agent having registration no. A51700007314. They acted as marketing agent for Nirvana Lifestyle Ventures in the matter. The complainant applied for loan of Rs. 6,73,273/- and got it sanctioned by bearing its processing fee of Rs. 5,900/-. The respondents failed to execute necessary agreement for sale within next 150 days of signing the MOU and to give the possession of the said flat as agreed therein. Thus, the complainant feels that the respondents have cheated him at the time of booking of the flat no. B-1 411, Cida De Vida project and thereafter at the time of executing MOU for the flat no. 105 of Durga Building situated in Wholly Wood project. Not only that, the complainant has deceived him and made him to withdraw the complaint filed before this Authority.

3. The plea of the respondents has been recorded under Section 7 & 12 of RERA. The respondents have pleaded not guilty. They took adjournment for settling the matter but did not respond to the complainant. They have failed to file their reply also.

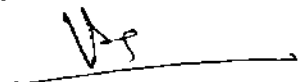
4. Following points arise for my determination and I findings thereof as under:

POINTS	FINDINGS.
1. Whether the respondents made false statement of having all the permissions for constructing the flat no. B-1, 411 and thereby contravened Section 12?	Affirmative.
2. Whether the respondents indulged in unfair practice by executing MOU which they never intended to act upon and induced the complainant to withdraw the earlier complaint?	Affirmative.
3. Whether the complainant is entitled to get back his amount with interest and compensation?	Affirmative.



REASONS

5. The respondents have failed to file their reply to raise the defence. Therefore, by their conduct they have admitted the complainant's claim. Moreover, the complainant has produced the documents showing that he paid the respondents Rs. 11,01,000/- for purchasing the flat no. B-1, 411 of Cida De Vida project. The respondents have failed to prove that they have the building permission for constructing 4th floor where the proposed flat is to be constructed. So this fact has been proved, which demonstrates that the respondents made false representation/statement about their Cida De Vida project.
6. The complainant relies upon the MOU dated 19.01.2018 and the order passed in complaint no. CC006/871. These documents do show that the respondents offered flat no. 105 in Durga Building in the project Wholly Wood and made the complainant to pay Rs. 51,000/- more. The loan sanction letter has also been placed on record by the complainant. This shows that though the complainant was ready to perform his part of the agreement, the respondents failed to respond him. This clearly shows that the complainant has been cheated twice by the respondents. These acts are sufficient to hold that the respondents have indulged into fraudulent act and unfair practice. Such practice needs to be curbed down with high hand. Therefore, I hold that the complainant has proved that the respondents are guilty of contravening Section 7 of RERA also.
7. The most serious consequence of this matter is, the respondents gave false promises by entering into MOU and made the complainant to withdraw the earlier complaint. I feel that this mischief must be checked and prevented by this Authority in such manner so that no mischief monger in future dares to commit it. I find that the respondents are liable to refund Rs. 11,01,000/- paid to them. The complainant has paid Rs. 51,000/- as per terms of the MOU to Nirvana. The respondents acted as Real Estate Agent in that transaction and therefore, they have to reimburse



this amount. The complainant has to spend Rs. 5,059/- as fee while lodging the first complaint and Rs. 5059/- while filing this complaint. He has spent Rs. 5,900/- for loan processing. The respondents are bound to reimburse these amounts also.

8. The complainant is an aged person whose wife is suffering from cancer and his son is to be sent to USA for further education. The respondents have taken undue advantage of this difficulty of the complainant to defeat his claim. Therefore, instead of revoking registration of the respondents' project, I find it necessary to exercise my power conferred by Section 7 (3) and Section 12 of RERA to direct the respondents to pay the aforesaid amount with interest at the rate of 10.5% which is prescribed prevalent rate from the date of the receipt/payment of the amount till their refund. The respondents are liable, in the peculiar facts and the circumstances of the case, to pay Rs. 5,00,000/- towards the compensation for causing mental torture to the complainant and for harassing him by abusing the process of law. Hence, the following order.

ORDER


The respondents shall refund the amount mentioned in Exh. 'A' with interest at 10.5% per annum from the date of their payment/receipt till they are refunded.

The respondents shall also pay Rs. 5,00,000/- to the complainant towards the compensation.

The respondents are hereby warned and have been directed not to indulge in unfair practices henceforth. In case, of their failure, stringent action in accordance with the law shall be taken against them.

Mumbai.

Date: 13.12.2018.


13-12-18
(B. D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.

Complainant Name: Shridhar Mallinath Kamat

Date : - 05/10/2018

Complaint No: CC00600000055820

Sr.No	Date	Amount in Rs	Purpose	Receipt No/Cheque No with Bank Name
1	31 st Jan 2016	51,000/-	Paid the booking amount to Disha Direct Marketing Services Pvt. Ltd. Against Flat No B1/411 in the project of Cida De Vida, Alibaug	Cheque No 208554 from Union Bank Mumbai
2	29 th Feb 2016	10,50,000/-	Paid amount to Disha Direct Marketing Services against Flat No B1/411 in the project of Cida De Vida, Alibaug	Receipt No 865/871 Cheque No 9013479 Union Bank Mumbai
3	24 th Sept 2017	5059/-	Payment done for lodging case in MahaRera against Santosh Naik for beguilement (Complaint No CC00600000000871)	Application no REA51800024072
4	6 th Jan 2018	51,000/-	Booking amount paid to Nirvana as per terms and conditions of the MOU	Receipt No 2013 Cheque No 10041368 Union Bank Mumbai
5	6 th June 2018	5900/-	Loan processing amount paid to Tata Capital Housing Finance. Loan was processed because Santosh Naik agreed to provide flat in Nirvana against Cida De Vida as per MOU	Cheque No 760379 Janata Sahakari Bank, Vile Parle East
6	15 th August 2018	5059/-	Payment done for lodging new case against Santosh Naik for not abiding by the terms and conditions of MOU (Complaint No CC00600000055820)	Application No REA51800041935

Shridhar Mallinath Kamat