

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

COMPLAINT NO: CC0050000000011224.

Ashok Tukaram Khaladkar

... Complainant.

Versus

Sandeep Satav
(Grassland)

...Respondent.

MahaRERA Regn: P51800007949

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

Appearance:

Complainant: In person.

Respondent: Adv. Jairam Chandnani.

FINAL ORDER
5th September 2018.

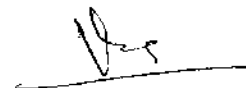
The complainant contends that he booked flat no. 704, A-wing with common parking space in respondent's registered project 'Grassland', Pune. The respondent agreed to deliver its possession within 36 months from the date of agreement for sale dated 18.12.2014. The respondent has failed to hand over the possession on agreed date. Therefore, he claims compensation and interest on his investment u/s 18 of RERA. The complainant further contends that the respondent has failed to complete the entire scheme and the flat as agreed. He has failed to provide agreed amenities. He has not connected sewerage line to the main line of Gram panchayat. He closed the entry gate. He has not made provision for drinking water as agreed and safety grills have not been designed properly. Therefore, he claims compensation.



2. The respondent has filed his reply after pleading not guilty. He has denied all the allegations levelled against him. According to him, he has received the occupancy certificate of A-wing where the complainant's flat is situated on 31.07.2017 itself. The complainant has failed to pay the balance amount of Rs. 4,07,298/-, though he sent demand notice on 14.11.2017. Therefore, he has filed a Civil Suit in the Court of C.J.S.D., Pune on 07.07.2018 for rescinding complainant's agreement. He contends that the project is complete. The real grievance of the respondent appears that the complainant provided his services as Accounts Consultant to the respondent. In that capacity complainant siphoned Rs. 2,90,000/- and therefore he has filed the FIR in Police also. Therefore, the respondent has prayed to rescind the agreement by deducting Rs. 3,24,800/- being 10% of the consideration with interest as per the terms of the agreement and also the compensation.

3. Following points arise for determination and findings thereof are as under:

POINTS	FINDINGS
1. Whether the respondent has failed to hand over the possession of complainants' flat on agreed date?	Affirmative.
2. Whether the complainant is entitled to get interest on his investment for every month of delay in handing over the possession under Section 18 of RERA?	Affirmative.
3. Whether the complainant proves that the respondent has violated/contravened and Section 11(4) by not completing the scheme and flat as agreed?	Negative.
4. Whether the complainant proves that the respondent are guilty of deficiency in services/	Negative.

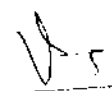


construction and quality of the construction
and thereby contravened Section 14(3) of RERA?

5. Whether the respondent is entitled to Affirmative.
to get Rs. 4,07,298/- from the complainant?

REASONS

4. The parties are not at dispute that the complainant booked the flat no. 704 of A-wing and the respondent agreed to hand over its possession within 36 months from the date of agreement for sale dated 18.12.2014 i.e. on 17.12.2017. The respondent has produced the part occupancy certificate issued by PMRDA, Pune dated 31.07.2017. Therefore, it appears that A-wing has been completed by 31.07.2017 i.e. much before the agreed date of possession. However, the respondent has claimed Rs. 4,07,298/- from the complainant on 14.11.2017 but demand letter does not mention that it is the letter of possession. Therefore, I hold that though the O.C. is received, the respondent has not offered the possession of the flat till the date. The respondent has agreed that the complainant has paid them Rs. 28,40,701/- hence, the complainant is entitled to get the interest on this amount at prescribed rate i.e. 2% above SBI's highest MCLR which is currently 8.5% from the date of default i.e. from 17.12.2017 till he receives the possession.
5. The respondent has claimed Rs. 4,07,298/- by their letter dated 14.11.2017. Admittedly, the complainant has not paid this amount. The respondent is entitled to get the same with the prescribed rate of interest from 15.11.2017 till the same is paid.
6. So far as the allegations regarding incomplete work is concerned, the respondent has produced the occupancy certificate on record. Once the occupancy certificate is issued by the Competent Authority then, it is not necessary for this Authority to go into details thereof because it is presumed that the Authority issuing the occupancy certificate verified all



the facts relating to the project and got the necessary compliances complied with, this is one aspect of the matter.

7. The other aspect is, it is alleged that the drinking water supply has not been provided to A-wing. The respondent has produced the receipt dated 29.05.2018 showing that he has paid Rs. 90,000/- for the water connection. This fact therefore falsifies the allegation of the complainant that the water connection has not been connected.

8. Another allegation of the complainant is, the respondent has not connected the sewerage line to the main line. However, the respondent has produced the letter of Gram panchayat, Khadakwasla showing that on receipt of the occupancy certificate, it allowed to join the sewerage to the main line. The respondent has produced the photographs of the complainant's booked flat and also of the A-wing. On their perusal, I find that there is evidence to show that the project has been substantially completed. Therefore, I hold that the complainant has failed to prove that the project is incomplete.

9. The complainant has failed to produce evidence to prove that the respondent is guilty of deficiency in services, construction and quality of construction.

10. The respondent has prayed for rescinding the agreement for sale entered into by the parties only because of non-payment of the amount of Rs. 4,07,298/- demanded by him on 14.11.2017. In fact, he himself has admitted that Rs. 28,40,701/- have already been paid by the complainant. If the complainant is not paying the amount demanded by him, he is at liberty to claim the same under Section 19(7) of RERA. In view of this fact, I find that the complainant is liable to pay the same to the respondent with interest at prescribed rate as held above. But on this count his agreement for sale cannot be rescinded or cancelled. So far as the real grievance of the respondent regarding siphoning his funds is concerned, he has filed FIR



against the complainant and the law will take its own course in the said matter.

10. Section 11(5) of RERA relates to the matter of cancellation of booking/agreement of sale. So it is the jurisdiction of the real estate regulatory Authority to adjudicate this matter. Section 79 of RERA has barred the jurisdiction of the Civil Court from entertaining any matter which the Authority or the Adjudicating Officer is empowered under the Act to determine. Therefore, in view of these provisions of RERA, the Civil Suit filed before the Civil Court may not be maintainable.

In view of the facts and circumstances, I find that both the parties are not entitled to get any compensation.

I hope this decision may help to resolve the dispute of the parties. Hence, the following order.

ORDER

The complainant shall pay the respondent Rs. 4,07,298/- with interest at the rate of 10.5% from 15.11.2017 till its payment.

The respondent shall pay the interest at the rate of 10.5% on complainant's amount of Rs. 28,40,701/- from 17.12.2017 till handing over the possession on receiving the aforesaid amount payable by the complainant.

The parties are permitted to adjust the amount payable to each other.

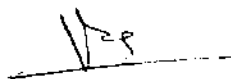
The respondent shall hand over the possession of the booked flat to the complainant on satisfaction of their claim.

The respondent claim for cancellation/rescinding the agreement for sale is rejected.

Both the parties to bear own cost.

Mumbai.

Date: 05.09.2018.


5.9.18
(B. D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.