

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

COMPLAINT NO. CC006000000055784

Kamlesh Ummedmal Nagar
Sandeep Ummedmal Nagar

..Complainants

Verses

M/s. Poonam Developers
Poonam Mega Developers.
Ashwin Manek Mehta
Ramesh Jugraj Mehta
Punit Ramesh Mehta
Jinit Ramesh Mehta
Amrish Dulraj Pipada
Amit Dulraj Pipada

..Respondents

MahaRERA Regn. No. P99000001663

Coram:

Hon'ble Shri Madhav Kulkarni.

Appearance:

Complainant : Present in person.

Respondent : Representative Adv.
Kothavale present with
Shri Ramesh Mehta

**ORDER
(Dated 27.03.2019)**

1. The complainants whose late father had booked a flat with the respondent/builder, seek withdrawal from the project and refund of the amount paid, with interest.
2. The complainants have alleged that, their father had booked flat No.901 in D wing in the Building Poonam Heights building no.4 in Global City, Virar (West), Taluka Vasai, Dist. Palghar, but the

father has since expired. Father had paid Rs.5,00,000/- vide receipt dated 01.03.2013 as against agreed amount of Rs.22,47,750/-/- . The respondent unilaterally changed the flat being allotted to 704 alleging that there was mistake and there was nothing to worry. Further, Rs.1,00,000/- were paid vide receipt dated 20.05.2013. The respondents have cheated and misguided the complainants. The respondents have not executed Agreement for Sale in respect of flat No.901. In abusive language, the respondent informed that flat no.704 will be allotted. The complainants issued a notice dated 27.07.2010. Complainants therefore, seek refund of Rs.23,62,508/- paid with interest at the rate of 21% p.a. from 04.11.2010 because respondent failed to deliver possession.

3. The matter came up before Hon'ble Member on 31.10.2018 and came to be transferred to Adjudicating Officer. Matter came up to me on 20.12.2018. Plea of the respondent was recorded. The respondent also filed written explanation. Arguments in the matter were heard on 25.01.2019. Since I am working at Mumbai and Pune Offices in alternative weeks, this matter is being decided now.
4. The respondent has alleged that the complainants are not allottees, therefore, complaint is not maintainable. The heirs of Late Ummedmal Nagar are not joined and complainants suffers from misjoinder and non-joinder of necessary parties. It is alleged that MahaRERA does not have jurisdiction to try this complaint. It is denied that flat no. 901 was booked, but it is admitted that father of the complaints paid Rs.23,62,508/-. It is denied that the respondents have failed to register agreement for sale. It is further denied that by taking disadvantages, flat no. 704 was allotted. The respondent received Rs.1,00,000/- on 20.05.2013

from Kartik Nagar. Late Ummedmal Nagar in the year 2010 booked flat no. 901 by paying amount of Rs.51,001/- on 04.11.2010. Late Ummedmal requested to change flat to 704. Late Ummedmal paid instalments for flat no. 704. He failed to pay Rs.1.05 lakhs for flat no. 704. Complainants are trying to take disadvantage of their own wrong and are trying to mislead.

5. On the rival contentions of the parties, following points arise for my determination. I have noted my findings against them for the reasons stated below:

POINTS	FINDINGS
1 Has the respondent failed to deliver possession of the flat to the complainant as per agreement, without there being circumstances beyond his control?	Affirmative
2 Is the complainant is entitled to the reliefs claimed?	Affirmative
3 What Order?	As per final Order.

REASONS

6. Point Nos. 1 & 2 – Receipt dated 26.01.2011 in respect of flat NO. D-704 for Rs.11,25,001 is placed on record. Likewise, receipt dt. 01.03.2013 for Rs.4,96,562/- in respect of flat No. D-704 is placed on record. Receipt dated 01.03.2013 for Rs.3,438/- in respect of flat no. D-704 is placed on record. Receipt dated 20.05.2013 for Rs.1.50 lakhs placed on record for flat no. D-704. Receipt dt. 20.05.2013 of Rs.1,00,000/- is placed on record. Receipt dated 17.08.2013 of Rs.1.50 lacs for flat no. D-704 is placed on record. Receipt dated 24.12.2013 for Rs.1,00,000/- for flat no. D-704 is placed on record. Receipt dt. 05.02.2014 of Rs.50,000/- for Flat

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no.D-704 is placed on record. All these receipts are placed on record by the respondent.

7. It is the contentions of the complainants that their father had booked flat No. D-901. There is one demand letter dated 12.07.2011 and another demand letter dated 30.11.2011 in respect of the flat No. D-701. Two receipts dated 29.01.2011 for Rs.1.25 lakhs and dated 06.01.2011 for Rs.2,00,000/- in respect of flat No. D-901 are placed on record. It is contention of the respondent that late Ummedmal in the year 2010 had booked flat no. D-901 by paying Rs.51,000/- on 04.11.2010 but subsequently changed to flat no. 704. On the other hand, it is the contention of the complainants that respondent cheated them by changing flat unilaterally to D-704 which was never intended by them or their father. There are so many receipts placed on record to show that payment were made by the complainants and the father for flat no. D-704. There is no dispute that flat no. has been changed from D-901 to D-704. Further, respondent has admitted having received Rs.23,62,508/- and not executing the agreement nor delivering possession of the flat since the year 2010. Clearly the respondent has failed deliver the possession for about 9 years. I therefore, answer point No.1 in the affirmative.
8. Complainants have paid Rs.23,62,508/- to the respondent and they are entitled for refund together with interest as per the rule 18 of the Maharashtra Rules. I therefore, answer point No.2 in the affirmative and proceed to pass following Order.

ORDER

1. The complainants are allowed to withdraw from the project.

2. Respondent to pay 23,62,508/- to the complainants, together with interest @10.70% p.a. from the date of payments till final realisation.
3. The respondent to pay Rs.20,000/- to the complainants as costs of this complaint.
4. The respondent to pay above amounts within 30 days from the date of this Order.

Mumbai

Date :27.03.2019


27.3.2019
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA