

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,  
PUNE  
Complaint No.CC005000000011099

Sachin Kulkarni

.. Complainant

Versus

OM Associates

.. Respondent

Coram : Shri M.V. Kulkarni

Hon'ble Adjudicating Officer

Appearance :

Complainant : In person

Respondent : In person

FINAL ORDER

21-08-2018

1. The complainant who had booked a flat with respondent/developer seeks refund of the money paid with interest and penalty as respondent failed to deliver possession as per agreement. Since I am working at Mumbai & Pune offices in alternate weeks as per availability of dais and due to non availability of stenographer, this judgement is being delivered now.
2. The complainant has alleged that he had booked flat No.103, area 67.17 sq.mtrs in the project Sahyadri City at

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Nasrapur Taluka Bhor, Dist. Pune and agreement was made on 16-12-2015. It is alleged that complainant was promised possession within 24 months. Other necessary details are required to be fished out from the documents annexed to the complaint. It is alleged that respondent made structural changes in the project without the consent of the complainant. The price agreed is shown as Rs.19,52,100/- Total amount paid is shown as Rs.15,81,000/- Since possession is not delivered, complainant seeks refund of total amount paid alongwith interest and compensation.

3. On 13-6-2018 the complainant appeared in person and one Anil Deshpande appeared for respondent. The respondent failed to file written explanation on 27-6-2018. On 11-7-2018 after the arguments for complainant were heard, respondent representative filed his written explanation. It is alleged that with the consent of respondent complainant had mortgaged flat No.B1-103 booked by him with Sharda Sahakari Bank after taking loan of Rs.13,00,000/- The respondent asked the complainant to pay Rs.1,75,331/- and take possession of the flat but complainant has not responded. There is no change in the construction of B1-103. The complainant cannot cancel the flat without written permission from the bank. The complainant was informed by letter dated 18-2-2018 to take possession of the flat but no communication can be sent to the complainant as he has changed the address. The respondent has given the date for completion of project as 31-3-2019 to the MahaRERA. The complainant can take possession of the flat by paying Rs.5,61,751/-.

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

<b>POINTS</b>	<b>FINDINGS</b>
1. Has the respondent failed to deliver possession of flat to the complainant as per agreement without circumstances beyond his control?	Yes
2. Is the complainant entitled to the reliefs claimed?	Yes
3. What order?	As per final order.

#### **REASONS**

5. Point Nos.1 & 2: The complainant annexed copy of agreement to his complaint which is not the complete agreement. Later on complete agreement came to be produced. The date mentioned is 16-12-2015. The price agreed was Rs.19,52,100/-. As per clause-9 possession was to be delivered on or before expiry of 24 months from the date of execution of agreement.
6. The complainant claims to have paid Rs.15,86,000/- towards cost of the flat inclusive of government charges. The grievance of the complainant is that respondent has not delivered possession as per agreement. Further respondent has made alteration in the flat without consent of complainant. What changes are being made by

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respondent is not explained in the complaint. The respondent alleged that no change is being made in the construction of flat No.103. By filing rejoinder the complainant has alleged that the respondent has started work of second lift in front of this flat, which is not acceptable. No evidence of any kind is adduced in that respect.

7. So far as delivery of possession is concerned as per agreement date of delivery of possession was on or before 15-12-2017. Though the respondent alleged that said flat is ready for delivery of possession, no document in that respect is produced by him. Generally occupation certificate is issued by competent authority on completion of the building as per sanctioned plan. No such completion certificate is produced on record by the respondent. More than 8 months have gone by since the date for delivery of possession expired. The complainant has placed on record copy of notice dated 6-2-2018. The complainant demanded refund of the amount paid as respondent failed to deliver possession of the flat as per agreement.
8. The complainant has placed on record receipt for Rs.51,000/- dated 22-10-2015, Rs.2,35,000/- dated 6-11-2015. Copy of cheque for Rs.13,00,000/- dated 31-3-2016 is also placed on record. The respondent is not denying having received these amounts. The grievance of respondent is that with his consent said flat had been mortgaged by complainant with Sharada Sahakari Bank, Sinhgad Road Branch, Pune. The respondent is worried about the encumbrance created by complainant on the said flat which is justified. Any way the respondent failed to deliver possession of the flat to the complainant as per

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agreement without justifiable reason. There is no evidence that occupation certificate was issued to the respondent and he notified the complainant to take possession of the flat. Consequently the complainant is entitled to withdraw from the project subject to his redeeming the mortgage created by him.

9. I therefore answer point No.1 and 2 in the affirmative to proceed to pass following order:

**ORDER**

1. Subject to the complainant redeeming the mortgage of the flat booked by him, he is allowed to withdraw from the project.
2. After redemption of the mortgage by complainant the respondent shall refund Rs.15,86,000/- (minus) – stamp duty which is refundable if included in it with interest at the rate State Bank of India highest marginal cost of lending rate plus 2% prevailing as on date, from the date of payment.
3. The complainant shall execute cancellation deed at the cost of respondent.
4. The respondent shall pay costs of Rs.20,000/- to the complainant.
5. The respondent shall pay the aforesaid amounts within 30 days from the date of this order.

Pune  
Date :- 21.08.2018

*21-8-2018*  
(M.V.Kulkarni)  
Adjudicating Officer,  
MahaRERA