

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

Complaint No.CC006000000055591

Ashok Kashinath Avhad,
901, Shalin, Dr. M.B. Raut Road,
Shivaji Park, Dadar (W),
Mumbai-400 028.

.. Complainant

Versus

Anil Ramrao Naik
301, Sai Prasad, Flat No.3,
Veer Savarkar Marg, Dadar (W),
Mumbai-400 028.

.. Respondent

**Coram : Shri M.V. Kulkarni
Hon'ble Adjudicating Officer**

Appearance :-

Complainant: Adv. Harshad Bhadbhade

Respondent : In person

**FINAL ORDER
(06.02.2019)**

1. The Complainant, who had booked a flat with the Respondent/Builder, seeks to withdraw from the project and seeks refund of the amount paid, with interest as the Respondent failed to deliver possession as per the agreement.

8-7-19

2. The Complainant has alleged that the Complainant had approached the Respondent with intention to purchase Flat No. 502, a 2BHK flat having carpet area of 704 sq. ft. in the project "Aditya High-rise Project" on S.K. Bhole Marg, Dadar, Mumbai. The price was agreed at Rs. 1,50,00,000/- + Rs. 15,00,000/- for parking. The Complainant paid Rs. 1,46,00,000/- since the year 2012 and agreement was executed on 12th June, 2013. The Complainant insisted on getting agreement for sale registered, but Respondent kept avoiding. Lastly, the agreement was notarised on 13th Nov. 2016, which was, dated 12th June, 2013. After paying more than 20% of the consideration, the Complainant had requested the Respondent to execute registered agreement for sale, but Respondent did not show any intent to do so. The Complainant has suffered mental agony as the Respondent failed to complete the project on time. The Complainant therefore, seeks refund of the amount paid with interest @ 12% p.a. from the Respondent.
3. The matter came up before Hon'ble Member on 24th Sept. 2018 and came to be adjourned to 9th Oct. 2018. Then it came to be adjourned to 16th Oct. 2018 and then to 1st Nov. 2018. On that date, the matter came to be transferred to the Adjudicating Officer. The Respondent has filed his reply. His plea was recorded on 19th December, 2018.

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4. Respondent has alleged that this is a false complaint filed to extract money from Respondent and is liable to be dismissed. The complaint does not fall within the ambit of RERA law and proper forum will be civil court. The agreement has not been registered and therefore, not enforceable by law. The Complainant had filed intervener application vide Chamber Summons No.. 626/2018 and sought to be impleaded as necessary party. The Hon'ble High Court was pleased to dismiss the said Chamber Summons. The Complainant is alleging delay in completion of project, but making contrary prayers. The complaint therefore, deserves to be dismissed.
5. On the basis of rival contentions, following points arise for my determination. I have noted my findings thereon 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 ? | In the Affirmative |
| (2) | Is the Complainant entitled to the reliefs claimed ? | In the Affirmative |

6-2-19

(3) What order ? As per final order.

REASONS

6. POINT Nos. 1 and 2 :- The Complainant has placed agreement, dated 3rd Nov. 2016 on record, which was notarised. Payment of Rs. 1,36,00,000/- has been acknowledged. As per clause 'D', the owner and developer has agreed to hand over possession on or before Gudipadva of the year 2016. But he failed to do so. He promised to hand over possession on or before Gudipadva of 2017. Agreed terms and conditions, dated 12th June, 2013 are also placed on record. Accordingly, agreed date of possession was Gudipadva in the year 2016. There is no dispute that Respondent has not handed over possession as per terms of the agreement and no reason whatsoever has been given by Respondent for the same.
7. Thrust of the defence is that there is no valid agreement since the agreement in question is not a registered agreement. It is well settled that merely because agreement is not registered, it does not become illegal. What steps the Respondent took to execute registered agreement is nowhere made clear. The Respondent cannot take disadvantage of the errors committed by him. His defence therefore, deserves to be rejected. Further it is alleged that Complainant had

6.2.19

taken Chamber Summons No. 626/2018 and it came to be dismissed on 2nd July, 2018. Copy of Chamber Summons No. 626/2018 which was filed by Pinak Bharat & Co. is placed on record. It was in Execution Application No. 22 of 2016 against the preset Respondent. The property in question is Final Plot No. 309, TPS No. IV, Mahim S.K. Bhole Road, Dadar, admeasuring 2178 sq. Yards. Decree Holders were confirmed as the purchasers and the decree claim of Rs. 9,39,21,640/- was fully satisfied. The balance amount was Rs. 5,40,78,360/-. The decree holders were M/s. Win Win Associates. In para 9 of the order, the Hon'ble High Court has observed that, there are claims received from various associations of tenants, occupants, etc. They are at liberty to pursue those claims against original owners in the court of competent jurisdiction. All contentions in that behalf are open. Therefore, subject to the orders of the Hon'ble High Court, the Complainants are entitled to refund of amount paid to the Respondent. I therefore, answer Point No.1 and 2 in the affirmative and proceed to pass following order.

ORDER


- (1) The Complainant is allowed to withdraw from the project.
- (2) Subject to the orders of the Hon'ble High Court, the Respondent to pay Rs. 1,36,00,000/- to the

6.12.19

complainant together with interest @ 10.70% p.a. from the date of payments till final realization.

- (3) The Complainant to execute cancellation deed at the cost of the Respondent.
- (4) The Respondent to pay Rs.20,000/- to the Complainant as cost of this complaint.
- (5) The Respondent to pay the aforesaid amounts within 30 days from the date of this order.

Mumbai (Camp at Pune)
Dated :- 06/02/2019


(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA