

**BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY, PUNE  
Complaint No.CC005000000023067**

**Ganesh Shivaji Salunkhe**  
Salunke Wasti, Karhati  
Jalgaon Rd, Near VVK School  
Taluka Baramati, Karhati-412204

**.. Complainant**

**Versus**

**Nilesh Shivji Singh**  
C/o M/s.Shivtara Meredian Associates,  
114-115 Cannught Place Bund Garden  
Road, Pune-411001

**.. Respondents**

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

**Appearance :**

<b>Complainant :</b>	<b>Absent</b>
<b>Respondents :</b>	<b>Absent</b>

**FINAL ORDER**

**02-07-2019**

1. The Complainant who had booked a flat with respondent/promoter seeks withdrawal from the project and refund of the amount paid with interest as the respondent failed to deliver possession as per agreement.
2. As usual the online complaint lacks all the necessary details of complainant's case. All that is alleged is that as per agreement flat was required to be given in March, 2016 but builder failed to do so and currently work is not in progress. Hence refund of paid amount

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required to be given with 14% interest. Copy of agreement dated 27-8-2014 shows that M/s.Shivtara Meredian Associates through partner Ravindra Laxman Dhumal and M/s.Shivatara Properties Pvt Ltd through Director Nilesh Shivji Singh being promoters/developers agreed to sell flat No.705 in 'D' Wing in the project Tara Alicia at Kunjirwadi Dist. Pune for consideration of Rs.19,00,500/- including maintenance for 12 months.

3. The matter came up before me on 3<sup>rd</sup> June, 2019. Complainant was present but respondent was absent. Matter came to be adjourned for exparte hearing to 10<sup>th</sup> June, 2019. On 10<sup>th</sup> June, 2019 complainant was present. Respondent was absent. Arguments for complainant were heard. As I am working at Pune and Mumbai offices in alternative weeks, this matter is being decided now.
4. 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 complainant as per agreement without there being circumstances beyond his control? | Affirmative |
|--|-------------|

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2-7-19

2. Is the complainant entitled to the reliefs claimed? Affirmative.
3. What order? As per final order.

### REASONS

5. Point No.1 & 2 : Complainant has alleged that possession was promised in March, 2016. Date of agreement is 27<sup>th</sup> August, 2014. It means that possession was expected to be delivered in a period of one & half years since agreement. There is however, no date for delivery of possession mentioned in the agreement. Payment of Rs.1,50,000/- dated 28-4-2014 and Rs.1,65,000/- dated 10-5-2014 is admitted in the agreement. It means that complainant had booked the flat on 28<sup>th</sup> April, 2014. Expecting delivery of possession by March, 2016 was quite reasonable.

6. Under Section-3(2)(f) of Maharashtra Ownership Flats Act a promoter shall specify in writing the date by which possession of flat is to be handed over and he shall hand over such possession accordingly. The respondent has not complied with mandatory provision of law. Under Section-46 of the Contract Act when time for performance is not specified, the engagement must be performed within a reasonable time. Now about 5 years have gone by since agreement was executed and

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2-7-19



delivery of possession of the flat by respondent is nowhere in sight. No doubt complainant has thereafter made payment of Rs.1,26,383/- on 28-6-2016. That must have been made under promise to deliver possession of flat. Consequently, I hold that respondent has failed to deliver possession of flat to the complainant as per agreement. The respondent has not put forth date for delivery of possession or any reason for the delay, much less any reason beyond his control. I therefore answer point No.1 in the affirmative.

7. The complaint is silent about the amount paid by complainant to the respondent. The complainant has placed on record receipts about payments. There is a receipt for Rs.1,50,000/- dated 28-4-2014, Rs.1,65,000/- dated 5-5-2014, Rs.5,94,743/- dated 28-1-2015, Rs.2,94,224/- dated 28-4-2015, Rs.1,26,383/- dated 28-6-2016. The total comes to Rs.13,30,350/- As per accounts statement produced by complainant, he paid Rs.1,19,300/- towards stamp duty and registration charges. In the event of cancellation of agreement complainant will be entitled to refund of stamp duty from government as per rules. Except that amount, complainant will be entitled to refund of the balance together with interest as provided under Rule-18 of Maharashtra Rules. I therefore answer point No.2 in the affirmative and proceed to pass following order.

27.19

**ORDER**

1. The complainant is allowed to withdraw from the project.
2. The respondents shall pay Rs.14,49,650/- except the stamp duty amount which can be refunded as per rules together with interest @ 10.75% per annum from the date of payments till final realisation.
3. Respondent to pay Rs.20,000/- to the complainant as costs of this complaint.
4. The complainant shall execute cancellation deed at the cost of respondent.
5. Charge of the above amounts shall be kept on the flat booked by complainant.
6. The respondent shall pay above amount within 30 days from the date of issue of this order.

Pune  
Date :- 02.07.2019

*02-07-2019*  
(M.V.Kulkarni)  
Adjudicating Officer,  
MaharERA, Pune