

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000023547

Vishal Manohar Pathe

... Complainant.

Versus

Rupji Constructions

... Respondent.

MahaRERA Regn: P51900007380

Coram:

Hon'ble Shri Madhav Kulkarni.

Appearance:

Complainant: In person.

Respondent: Absent.

Final Order.

12th September, 2018

1. The complainant who had booked a flat with respondent / builder seeks withdraw from the project and refund of the amount paid with interest as the respondent failed to carry out construction.
2. The complainant has alleged that he invested RS. 17 lakhs in the year 2016-17 for purchasing flat from respondent in the project Rupji Akanasha at Sahakar Market C.H.S. Ltd. Pant Nagar, Ghatkopar East, Mumbai. Agreement for sale was executed on 23.06.2017. The respondent agreed to hand over possession of the flat on or before 31.03.2018. It was a redevelopment scheme and the tenement was reserved for project affected persons. The respondent has not under taken construction work. A complaint has been filed with Pant Nagar police station registered by F.I.R. no. 177 / 2016 u/s. 406, 409, 420, 454 and 120B of I.P.C. as well under MOFA at the instance of complainant and came to be transferred to EOW. The respondent is a habitual offender. He collected more than 5.5 crore rupees and spent only rupees 1.5 crores on the project. His bail

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petition came to be rejected by court. The complainant has therefore, filed this complaint.

3. The respondent failed to appear in response to the notice. The complaint has proceeded exparte against the respondent.

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 flat booked by complainant as per agreement without there being circumstances beyond his control?	Affirmative
2. Is the complainant entitled to the reliefs claimed?	Affirmative
3. What order?	As per final order.

Reasons.

5. Point no. 1 & 2-

The complainant has placed on record copy of agreement dated 23rd June, 2017. Accordingly, the respondent prepared a scheme or slum rehabilitation and submitted to S.R.A. The complainant booked flat no. 1204 of 297 sq.ft. area in the project Rupji Aakansha. Price agreed to be paid was Rs. 50 lakhs. Rs. 17 lakhs were to be paid on or before execution of agreement. As per clause 14 respondent agreed to deliver possession on or before March 2018. It is the contention of the complainant that the respondent has not yet started the construction activity. There is no dispute that the respondent has not handed over possession of the flat booked by complainant in terms of agreement i. e. before 31st of March, 2018. Clearly the respondent has committed breach of agreement.

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6. The complainant averred that he invested Rs. 17 lakhs in the year 2016-17. What is apparent is that complainant booked flat with the respondent. In the agreement the respondent has admitted having received Rs. 17 lakhs as earnest money or deposit. The complainant now wants to withdraw from the project as there are no prospects of getting possession as per agreement. The complainant has alleged that respondent is a criminal and has cheated many persons by collecting rupees 5.5 crores and spending only rupees 1.5 crores on the project. The criminality or otherwise will be tested in the criminal courts. Since respondent has committed breach of agreement, the complainant is entitle to withdraw from the project and refund of the amount paid by him with interest from respondent. I therefore, answer point no 1 & 2 in the affirmative and proceed to pass following order.

ORDER

1. The complainant is allowed to withdraw from the project mentioned above.
2. The respondent shall pay Rs. 17 lakhs in the complainant together with interest at State Bank of India MCLR plus 2% prevailing as on date i. e. $8.65 + 2 = 10.65\%$ p.a. from the date of payment till realisation except stamp duty which is refundable.
3. The complainant shall execute a cancellation deed at the cost of the respondents.
4. Charge of above amount is kept on the flat in question.
5. Respondent shall pay Rs. 20,000/- to the complainant as costs.
6. The respondent shall pay above amounts within 30 days from the date of this order.

Mumbai
Date: 12.09.2018.

MD 12.9.2018
(Madhav V. Kulkarni)
Adjudicating Officer.
MahaRERA, Mumbai