

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000000050

Mrs.Vandana Vitthal Salunke ... Complainants.

Versus

Shub Corporation.
M/s. Darshan Developers.
Hitesh Girish Bangari
Sunil Sitaram Kulkarni
(Casa Feliz Phase I) Respondents.

MahaRERA Regn: P52100003013

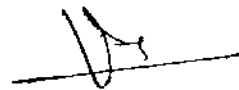
Coram: Shri B.D. Kapadnis, Hon'ble
Member & Adjudicating Officer.

Complainant: in person.
Respondent: Adv. AIBR.P
(Wadia Gandhi & Co.)

Final Order
19th March 2018.

The complainant has complained that she booked flat no C-904 in Casa Feliz, the registered project of the respondents' situated at Hadpsar, Pune through Mr. Rajendra Walunj and paid consideration in part to Darshan Developers. However, the respondent no. 1 Shub Corporation agreed to sale the said flat to Mr. Bhaskar Kode and Mr. Madhu Kode, and thereby indulged in fraudulent act and unfair practice within the meaning of Section 7 (c) &(d) of Real Estate (Regulation and Development) Act, 2016. (RERA)

2. The respondent no. 1, Shub Corporation contends that Adjudicating Officer has no power to adjudicate the matter arising out of Section 7. According to them, the complainant has produced receipts showing



payment made to the Darshan Developers in respect of flat no. 904. She herself is not sure whether she booked flat no B-904 or C-904 as by amending the complaint she substituted flat no. C-904 in place of B-904. The complainant is not the allottee and therefore, she has no locus standi to file this complaint, that too against respondent no. 1 because the complainant herself contends that she booked the flat through Mr. Rajendra Walunj by paying part of the consideration to the Darshan Developers. According to them, they developed the land under the joint venture agreement dated 19.04.2012 with the Darshan Developers. As per this agreement 50% of the built-up area was to be shared by Darshan Developers and 50% is to be retained by them. The flat no C-904 has come to their share and they have executed its agreement for sale in favour of Mr. & Mrs. Kode. Hence, this complaint is not maintainable against them.

3. The other respondents have failed to appear and therefore, the complaint proceeds exparte against them.

4. Following points arise for determination. I record my findings thereon as under:

Points	Findings
1. Whether the respondents indulged into a fraudulent act and/or unfair practice by selling flat no. C-904 booked by the complainant to Mr. & Mrs. Kode?	Only Darshan developers are guilty.
2. Whether the complainant is entitled to get refund of her amount with interest?	Yes, from Darshan Developers.

REASONS

5. Before entering into controversy, it is necessary to bear in mind that initially the complainant sought refund of her amount under Section 18 of RERA by contending that she booked flat no. B-904 in respondents' project



and paid Rs. 20,00,000/- through Mr.Rajendra Walunj to the Darshan Developers but the respondent no. 1 sold the said flat to Mr.& Mrs. Kode.

6. The complainant has thereafter amended the complaint to complain that the respondents are guilty of indulging in fraudulent act and unfair practice within the meaning of Section 7 (c) & (d). On this background it is necessary to look at some legal issues raised by the learned advocate of the respondent no. 1.

Jurisdiction.

7. The respondent no. 1 submits that the complaint filed under Section 18 has been converted into the complaint under Section 7 of RERA and therefore, it is not maintainable before me. It is true that the complaint under Section 7 of RERA cannot be adjudicated upon by the Adjudicating Officer. However, I am the Member of MahaRERA holding the additional charge of Adjudicating Officer. I have authority to adjudicate upon the complaints under Section 7 of RERA in the capacity of Member of MahaRERA. Hence there is no substance in this contention.

8. The respondent no. 1 submits that the complainant is not the allottee and therefore she cannot file the complaint. The reliance has also been placed on the case of Ishtekhar Yusuf Shaikh-v/s- Dhruva Woollen Mills Pvt.Ltd. in Complaint No. CC006000000000259 decided by the Authority and Circular No. 9 of 2017 (SOP) for handling complaints issued by it. The Section 31 of RERA provides that any aggrieved person may file the complaint with the Authority or Adjudicating Officer for any violation or contravention of the provisions of RERA and the Rules, Regulations made thereunder against any promoter, allottee or real estate agent as the case may be. Therefore, according to the Act any aggrieved person can file the complaint for any violation or contravention of the provisions of the Act.

9. In this case the complainant has produced the receipts showing that she paid Rs. 15,00,000/- to the Darshan Developers in respect of the purchase of flat no. 904 of the respondents' registered project. Therefore,



she is aggrieved party having interest in the project. Hence, this contention is also not acceptable. Hence, I hold that the complaint is maintainable.

Booking of the flat and payment of part consideration.

10. Following facts are not in dispute.


i) The respondent no. 1 Shub Corporation and Darshan Developers entered into the joint venture agreement on 19.04.2012 and thereby the respondent no. 1 agreed to develop the land of Darshan developers and agreed that their share would be 50:50.

ii) The mutual deed of understanding has been executed between the Darshan Developers and Mr. Rajendra Walunj on 22.03.2014 whereby Darshan Developers agreed to transfer 4228 sq.ft. usable area consisting of flat nos. C-404, B-703, B-603, C-904 to Mr. Rajendra Walunj for Rs. 1,50,09,400/-. It shows the payment of Rs. 15,00,000/- collected from the complainant is included in the consideration paid by Mr. Walunj to Darshan Developers.

iii). The memo of understanding has been executed by respondent no. 1, Shub Corporation and Darshan Developers on 18.06.2014 whereby the flats in the project have been allocated. The allocation shows that flat no. C-904 is given to the respondent no. 1, Shub Corporation.

Consideration paid by complainant.

11. The complainant has produced the receipts issued by Darshan Developers that she paid Rs. 10,00,000/- on 04.04.2014, Rs.1,50,000/- on 05.04.2014, Rs. 1,50,000/- on 05.04.2014. There is receipt dated 05.04.2014 bearing receipt no. 008, it appears that the figure 6 is over written and the figure "1" has been converted into "6" to make it the amount of Rs. 6,00,000/-. Similarly, in words, "one" is scored off and "six" is written above it, but on all these changes nobody has signed. Therefore, I find that this is the payment of Rs. 1,00,000/- only. It is cash transaction. I say so with a confidence because this figure tallies with the amount of



consideration purported to be paid by Mr. Rajendra Walunj to the Darshan Developers shown as cash transaction. In view of this, I hold that the complainant has paid Rs. 15,00,000/- only to the Darshan Developers.

Fraudulent act and unfair practice.

12. It appears that the Darshan Developers have not issued any allotment letter except the receipts referred to above. The complainant does not have any other documentary evidence to show that the Darshan Developers agreed to sell flat no. C-904 because in her receipts the number of flat is 904. The complainant appears to be confused because while filing the complaint she mentioned flat no. B-904 and after amendment mentions C-904. Darshan Developers agreed to transfer 4228 sq.ft. usable area consisting of flat nos. C404, B703, B603, C904 to Mr. Rajendra Walunj for Rs. 1,50,09,400/-. MOU executed between Mr. Walunj and Darshan Developers shows the payment of Rs. 15,00,000/- collected from the complainant is included in the consideration paid by Mr. Walunj to Darshan Developers.

13. The facts to which I referred to above clearly show that she paid the consideration to Darshan Developers through Mr. Walunj who agreed to give 4228 sq.ft. usable area. Therefore, I am convinced that the respondent no1 have not played any role in the said transaction, even the MOU entered into by Darshan Developers and Rajendra Walunj has not been signed by the Respondent No. 1, Shub Corporation as consenting party. The allotment made by Shub Corporation and Darshan Developers clearly indicates that flat no C-904 came to the share of Shub Corporation and therefore, they are entitled to sell it to Mr. Kode.

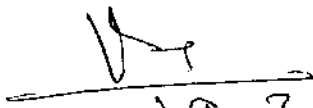
14. The facts and circumstances referred to above at the most indicate that Darshan Developers have indulged into fraudulent act and practised unfair practice while dealing with the complainant. They assigned right to transfer flat C--904 to Mr. Walunj but subsequently agreed to give it to respondent no.1. In these circumstances, Darshan Developers alone are



liable to refund the amount of the complainant with simple interest at the prescribed rate under the rules framed under the RERA, namely 10.05% p.a. from dates of their receipt till repayment. Hence, the following order.

ORDER

1. Darshan Developers shall pay the complainant Rs. 15,00,000/ with simple interest at the rate of 10.05 % from the date of its receipt till the repayment.
2. Darshan Developers shall pay the complainant Rs. 20,000/- towards the cost of the complaint.


19.3.18
(B.D. Kapadnis)

Member & Adjudicating Officer
MahaRERA, Mumbai.

Mumbai.
Date: 19.03.2018