

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

COMPLAINT NO: CC00600000078448

1) RAKESH SHARAD DESAI
2) SMT. SUCHITA RAKESH DESAI ... Complainants

Versus

1) Shree Mahalaxmi Developers
2) Mrs. Shilpa Parag Thakkar
3) Parag Pankaj Thakkar
4) Paresh Prabhakar More ... Respondents.

MahaRERA Regn: P52000002828

Coram:

Hon'ble Shri Madhav Kulkarni.

Appearance:

Complainants: Present

Respondents: Absent

Final Order

15th November 2019

1. Two complainants/allottees who had booked a flat with the respondents / promoters seek withdrawal from the project and refund of the amount paid to the respondent with interest and compensation as the respondent failed to deliver possession as per agreement and made false and incorrect statement inducing complainants to make payments.
2. The complainants have alleged that they booked Flat No. 203 in the project of the Respondents SMR Essencia also referred as Mahalaxmi Residency in the Building Janhavi in Block No. 30 to 32 at Neral. On 06.07.2014 complainant came across an advertisement by ARIES MEDIA inviting Mahagruha Mahotsav at Horizon, Manpada Road, Dombivali (East). The rate quoted by Respondents was Rs. 2424/- per sq.ft. The basic cost of the flat thus was Rs. 15,99,840/-. A lottery was declared and the winner was promised of Gold worth Rs. 1,50,000/- once the registration of the flat was done. Booking form cum allotment letter dated 31.03.2014 was

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tendered by complainant along with cheque for Rs. 51,000/- dated 02.04.2014. Out of it Rs. 49,471/- were towards cost of the flat and Rs. 1,529/- towards G.S.T. As per verbal demand of the respondent complainants paid further Rs. 3,12,875/- by cheque dated 30.04.2014. Complainants further paid Rs. 1,81,937/- on 26.06.2014 and Rs. 90,500/- on 18.02.2017. Thus, total amount paid is Rs. 6,36,312/-. The respondent was facilitating obtaining of housing loan from linked banks and complainant pursued the matter vide mail dated 05.07.2014. Respondent sent draft agreement to the complainant on 24.11.2014 by email for approval. Complainant was given to understand that super built up area was 625 sq.ft. and therefore carpet area 462 sq.ft. In the draft agreement carpet area shown was 387 sq.ft. After much deliberations Mr. Parag from the respondents agreed to refund Rs. 84,840/- for deficit carpet area. However, despite complainants sending email dated 05.01.2016, by email dated 11.01.2016 respondent demanded Stamp Duty and Registration charges in respect of 625 sq.ft. super built up area. Actually super built up area comes to 606 sq.ft. and therefore Stamp Duty and Registration charges were required to be revised. Complainants were in communication with respondents. However, on 31.01.2017 promoters again sent draft agreement without rectifying the errors. Complainants deposited Rs. 90,500/- towards Stamp Duty and Registration Charges and paid more than 30% of the cost of flat. Developer has avoided to register Agreement for Sale. After several communications and meetings on 10.02.2018 developer informed that it was not possible to deliver possession of the booked flat by May 2018 though email dated 12.06.2017 was sent about date for delivery of possession. The complainant on 20.03.2018 made it clear that alternative flat was not agreeable and therefore Rs. 6,36,312/- should be refunded with interest. The Developer on 03.04.2018 sent a cancellation letter and complainant sent the completed cancellation letter on 09.04.2018. The

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Developer sent letter dated 25.08.2018 about cancellation of booking and sent a cheque for Rs. 5,70,481/- towards refund of the amount paid. Said cheque bounced due to stop payment instructions given by respondent. Developer issued cheque on 03.11.2018 for Rs. 5,70,481/- which bounced on 20.11.2018 for want of sufficient funds. Now the rate per sq.ft. in the said locality has gone up to Rs. 3200/- Complainants will have to pay Rs. 5,12,160/- more if they want to book similar flat. Complainants therefore claim this amount as compensation. Complainants also claim refund of their amount with interest and gold worth Rs. 1,50,000/- or its price as was promised.

3. The complaint came up before Hon'ble Member on 17.05.2019 and came to be transferred to Adjudicating Officer. The matter came up before me on 23.07.2019. The Respondent failed to appear. The matter was adjourned for ex parte hearing to 9.08.2019. Respondent was absent even on 09.08.2019. Arguments for complainants were heard. As I am working at Mumbai and Pune Offices in alternative weeks and due to huge pendency in this office, 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. Have the respondents made incorrect or false Statement inducing the complainant to make Advance thereby causing loss to the complaints?	Negative
2. Have the respondents failed to deliver possession of the flat to the complainant as per agreement without there being circumstances beyond their control?	Negative

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3. ~~Is~~ the complainant entitled to the reliefs claimed? Negative
3. What order? As per final order

Reasons.

5. Point no. 1 and 2 3-3

As per complaint on the basis of advertisement complainant participated in Mahagraha Mahotsav at Dombivali, therefore, complainant was awarded price i.e. gold worth Rs. 1,50,000/- in the lottery. The price was to be received once the registration of the flat was done. It is the contention of the complainant that respondent has avoided registration of the agreement and therefore deprived the complainant of gold worth Rs. 1,50,000/-. The complainant made payment of Rs. 6,36,312/- towards price of the flat and registration of the agreement. Complainant has placed on record booking form dated 31.03.2014 and also the receipts issued by respondent which show that the complainant booked a flat with the respondent. Premises number mentioned in the receipts is 30-2031. First cheque was issued on 18.04.2014. Complainant, however, contented that he participated in Mahagraha Mahotsav on 6.7.2014 where a lottery of gold worth Rs. 1,50,000/- was awarded to him which sounds absurd because complainant had already booked the said flat with the respondent.

6. Copy of advertisement dated 6.7.2014 has been placed on record by complainant. Concessional rate in Shree Mahalaxmi Residency was declared as Rs. 2424/- per sq.ft. One receipt about winner of first price of gold worth Rs. 1,50,000/- issued by Shree Mahalaxmi Developers in the name of Smt. Suchita Rakesh is placed on record. When the complainant No.1 had already booked the flat on 18.04.2014, why he had to participate in the Mahagraha Mahotsav on 6.7.2014 is not made clear. The terms and

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conditions of said lottery are not placed on record. It cannot be imagined that without booking any flat the person would be entitled to participate in the lottery. May be that there was another booking by complainant No.2 on 06.07.2014 and said facts are being suppressed by the complainants. The complainants had already paid Rs. 5,29,452/- towards price of the flat by 26.06.2014. They claim to have paid Rs. 90,500/- on 18.02.2017 towards stamp duty and registration charges. Anyway, since the conditions of lottery are not placed on record it cannot be said complainants made payments under the promise of participation in the lottery and thereby suffered loss. I therefore answer point No.1 in the negative.

7. As per booking form, complainants booked flat No. 203 in block No. 30 to 32 having super built up area of 660 sq.ft. The payments as claimed by the complainants have been proved. There is no whisper in the complaint as to the date given by the respondent for delivery of possession. Amount for stamp duty for the agreement was paid by the complainants on 18.02.2017, i.e. 3 years after booking the flat. It is alleged that draft agreement was received on 24.11.2014 but there was discrepancy about carpet area. However, there is a letter of 2017 to the effect that possession will be delivered on or before 2018. Vide mail dated 20.03.2018 complainant appears to have expressed willingness for cancellation of booking on 10.04.2018. Respondent promised to pay Rs. 5,70,481/- vide letter dated 20.05.2018. Respondent accepted the cancellation and offered Rs. 5,70,481/- as the refund. Vide mail dated 26.10.2018 complainant informed that the cheque issued by respondent had bounced.

8. One thing is clear that complainant cancelled the booking and cancellation was accepted by respondent. Respondent issued refund cheque but it is bounced. Therefore, complainant has approached this forum. Once the complainant cancelled his booking and accepted refund

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cheque, in my opinion he is no more an allottee. Question of promoter delivering possession as per agreement did not survive. The complainant has approached a wrong forum for redressal of his grievance and complainant is required to approach appropriate forum. I therefore answer point No. 2 & 3 in the negative and proceed to pass following order.

ORDER

- 1) The complaint stands dismissed.
- 2) No order as to costs.

Mumbai.
Date: 15.11.2019

MV
555 mad on 20.11.2019
(Madhav Kulkarni)
Adjudicating Officer,
MahaRERA