

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

COMPLAINT NO. CC006000000079491

Alka Jayraman

..Complainant

Versus

Karm Infrastructure Ltd.

..Respondent

MahaRERA Regn. No.P51700010325

Coram:

Hon'ble Shri Madhav Kulkarni.
Adjudicating Officer, MahaRERA.

Appearance:

Complainant: Adv. Pooja Gaikwad
Respondent : Absent

**ORDER
(Date 14.01.2020)**

1. The complainant allottee who had booked two flats with the respondent/promoter, seeks withdrawal from the project and refund of her amount with interest and compensation.
2. As per online complaint, complainant booked flat nos. 402 and 403 in A wing in building 9 project of the respondent at Kasgaon, Tal. Shahapur, Dist. Thane on 15.08.2015. Allotment Letter was issued without mentioning possession date. Respondent represented that he was entitled to develop the land in the project Karm Panchayatva-Phase II, in phased manner subject to setback areas, land being handed over to the Competent Authority. Respondent claimed to be sufficiently equipped with the right skilled man force. Total consideration of two flats was agreed at Rs.12 lakhs, i.e. Rs.6 lakhs for each flat. Complainant has paid Rs.7,72,877/-. Rs.40,000/- were paid in 2018 to M/s. Sumit Tiles for the respondent. From August, 2015 till 30.09.2018, complainant had paid

about 70% of the amount. i.e. Rs.8,12,877/-. At the time of booking, date for possession stated was August, 2018. On the MahaRERA record, possession date is given as 31.10.2021. Therefore, complainant gave cancellation letter on 26.02.2018. Respondent did not give proper reply. There is no progress in the construction, since few years. Hence, the complaint.

3. Complaint came up before me on 16.07.2019. Respondent was absent. Matter was adjourned for ex-parte hearing to 22.08.2019. On 22.08.2019 against respondent was absent. Arguments for complainant 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 Is Complainant allottee, and respondent promoter?	Affirmative
2 If yes, has respondent failed to deliver possession of the flat to the complainant as per agreement, without there being circumstances beyond his control?	Affirmative
3 Is the complainant entitled to the reliefs claimed?	Affirmative
4 What Order?	As per final Order.

REASONS

5. **Point Nos. 1 to 3** – Complainant has alleged that respondent issued allotment letter on 15.08.2015. Said allotment letter is not placed on record. However, copy of the ledger of the respondent, pertaining to the account of the complainant is placed on record. Also copy of cancellation request form addressed by the complainant to the respondent giving all the payment details is placed on record. There are two cancellation request forms, one in respect of flat no. 402 and another

is in respect of flat no. 403. Respondent has not denied booking of the flats by the complainant. It appears that complainant filed cancellation request. However, respondent does not seem to have accepted the request and has not repaid amount received. I therefore, hold that complainant is an allottee and respondent promoter and answer point no.1 in the affirmative.

6. Copy of the ledger shows that on 29.08.2015, complainant issued cheque nos. 27091 and 27092 each for Rs.20,000/-. It shows that complainant booked flats on that day. The allotment letters are not placed on record and it was submitted that complainant returned the allotment letters alongwith cancellation request forms. Respondent has not challenged this version. Complainant has alleged that respondent had promised possession in August, 2018, when complainant booked the flats. It means that possession was expected within 3 years, since booking of the flats. This was a reasonable period for the respondent to deliver possession by completing project, which is now settled position of law. It appears that respondent did not mention date for delivery of possession in the allotment letters. However, price of each flat was agreed at Rs.6 lakhs. Flats were also ascertained. Respondent accepted more than 20% of the amount from complainant without executing registered agreement in contravention of provisions of MOFA. Respondent cannot be allowed to take disadvantage of his own wrong. Now respondent has unilaterally extended date for completion to 31.12.2021 while registering project with MahaRERA. This cannot be binding upon complainant as her consent was not obtained for the same. I therefore, hold that respondent failed to deliver possession as promised without there being circumstances beyond his control. I therefore, answer point no.2 in the affirmative.
7. Complainant claims that she has made total payment of Rs.8,12,877/- inclusive of Rs.40,000/- paid to M/s. Sumit Tiles on behalf of respondent. Extract of accounts from ledger of the respondent is placed on record. The amounts were transferred to the respondent by the complainant

either by cheque or through ECS. The cheque nos. are also mentioned. Respondent has not denied having received this amount. It was submitted on behalf of complainant that receipts were also surrendered to the respondent alongwith cancellation request form. Complainant is therefore, entitled to receive Rs.8,12,877/- together with interest as provided under Rule 18 of Maharashtra Rules. I therefore, answer point no. 3 in the affirmative and proceed to pass following Order:

ORDER

1. The complainant is allowed to withdraw from the project.
2. The respondent to pay Rs.8,12,877/- to the complainant, together with interest @10.35% p.a. from the date of payments till final realisation.
3. Complainant to pay deficit court fees in respect of 2nd flat no.403 as complainant filed joint complaint in respect of two flats.
4. The respondent to pay Rs.20,000/- to the complainant as costs of this complaint.
5. The complainant to execute cancellation deed at the cost of the respondent.
6. Charge of the above amounts is kept on the flats booked by complainant.
7. The respondent to pay above amounts within 30 days from the date of this Order.

Mumbai

Date : 14.01.2020

MS signed on 16.1.2020
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA