

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

COMPLAINT NO: CC006000000044428

Ritika Kohli ... Complainant.

Versus

K.T. Group through its Partner  
Sandeep Sheth ... Respondent.  
MahaRERA Regn: P51800008567

**Coram:**

Hon'ble Shri Madhav Kulkarni.

**Appearance:**

Complainant: Present

Respondent: Absent

**Final Order**

24<sup>th</sup> October, 2018

1. The complainant who was promised allotment of flat in redevelopment project by respondent / builder seeks withdrawal from the project and refund of the amount paid to the respondent with interest.
2. The complainant has alleged that the respondent executed agreement in her favour on 11.04.2016. Accordingly, Sai Vishal CHS Ltd., the owner of land bearing CTS No. 307/99 of Village Malad, Taluka Goregaon, Mumbai agreed to grant Development Rights to the respondent on 7<sup>th</sup> November 2010. Development Agreement was executed on 30<sup>th</sup> August 2014 and new residential building was agreed to be constructed. The respondent agreed to allot Flat No. 801 having 530 sq.ft. carpet area in the new building Sai Vishal for extra consideration of Rs. 85,00,000/- Agreement in that respect was executed on 11.4.2016. The

*24-10-18*

complainant paid Rs. 37,00,000/- as initial payment. As per clause 12 of the agreement respondent agreed to delivery possession within 18 months plus 6 months' grace period. Thus, the respondent was supposed to deliver possession by 10<sup>th</sup> April 2018. Vide letter dated 29<sup>th</sup> May, 2017 the respondent informed that respondent is unable to proceed for redevelopment due to non-cooperation of member Sanjeev Abrol (Flat No. 30). The respondent handed over keys of their flats to the existing members. The issue of Abrol was in existence since prior to execution of agreement in favour of the complainant. Thus, the respondent has stalled the project for frivolous reason. The complainant had correspondence with the respondent on many occasions and the respondent only orally assured to refund the total amount received from complainant. There are malafide intentions of the respondent and lack of interest in building the project. The complainant therefore seeks refund of Rs.37,00,000/-

3. The matter came up before the Hon'ble Chairperson on 6<sup>th</sup> June 2018 and the Roznama shows that both parties were heard. The matter therefore came to be transferred to Adjudicating Officer. On 18<sup>th</sup> July 2018 respondent failed to appear and the matter proceeded exparte against him. Even on 10<sup>th</sup> October 2018 the respondent failed to appear. Arguments of complainant were heard.

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

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Of the flat to the 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 the agreement dated 11.04.2016 on record. It shows that the respondent agreed to sell. Flat No. 801 having 330 sq.ft. carpet area to complainant for a price of Rs. 85,00,000/- It is also admitted that complainant paid Rs. 37,00,000/- towards the cost of flat. As per clause 12, the respondent agreed to deliver possession of the flat within a period of 18 months plus 6 months' grace period. The agreed date for delivery of possession therefore comes to 10<sup>th</sup> April 2018.

6. The complainant has alleged that on frivolous ground the respondent is avoiding to carryout construction and delivery of possession of the flat to the complainant. The respondent has not challenged this version of the complainant. The payment made by the complainant to the respondent also stands proved and not denied by the respondent. Consequently, I hold that respondent has failed to deliver possession of the flat to the complainant for no justifiable reason and therefore complainant is entitled to refund of all the amount paid to the respondent. I therefore answer point No. 1 & 2 in the affirmative and proceed to pass following order.

**ORDER**

h-1219

- 1) The complainant is allowed to withdraw from the project.
- 2) The respondent to pay Rs. 37,00,000/- except stamp duty which can be refunded to the complainant together with interest at the State Bank of India's highest MCLR prevalent as on today plus 2% as provided under Rule 18 of MahaRERA Rules from the date of receipt of payment till final realisation.
- 3) The respondent to pay Rs. 20,000/- to the complainant as cost of this complainant.
- 4) The complainant to execute cancellation Deed at the cost of the respondent.
- 5) The respondent to pay the above amounts within 30 days from the date of this order.

Mumbai.  
Date: 24.10.2018

*MD 24-10-2018*  
(Madhav Kulkarni)  
Adjudicating Officer,  
MahaRERA