

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

COMPLAINT NO: CC006000000055911

Rajendra Pawar ... Complainant.

Versus

Bright Sky Heights Builders and
Developers Private Limited ... Respondent.
MahaRERA Regn: P51700009788

Coram:
Hon'ble Shri Madhav Kulkarni.

Appearance:
Complainant: Present in person
Respondent: Representative Mrs.
Snehlata Salunkhe a/w
Adv. Deepali Patil

Final Order
26th February, 2019

1. The complainant who along with his wife booked a flat with the respondent / builder seeks withdrawal from the project and refund of the entire amount paid to the respondent with interest @ 18% p.a.
2. The complainant has alleged that along with his wife he booked a 2 BHK flat having carpet area of 611 sq.ft. in the project of the respondent. Agreement for sale was registered on 03.10.2014. Agreed date for delivery of possession was Dec. 2016. Despite complainant making all payments as demanded, the respondent has failed to deliver possession. As usual the name of the project, its location, flat No., the price that was agreed and the actual mount are all missing in the online proforma complaint. In the rejoinder filed on 24.01.2019 the complainant has added name of his wife as complainant No. 2. Necessary details are still lacking. From the written submissions filed by the respondent it

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can be made out that complainant booked flat in the project Saptashree Galaxy Phase-I. The price of the flat in the agreement is Rs. 47,00,000/-.

3. The matter came up before me on 20.12.2018. It came to be adjourned to 24.01.2019 for filing written explanation by respondent and plea of the respondent. On 24.01.2019 the respondent filed written explanation and arguments for the parties were heard. As I am working at Mumbai and Pune Offices in alternative weeks, this matter is being decided now.

4. The respondent has alleged that agreement dated 03.10.2014 was executed under provisions of MOFA. Date of possession was mentioned as Dec. 2016. However, while registering project under MahaRERA date of possession was revised to Dec. 2019 to the knowledge of the complainant. The complainants also continue to make payments towards purchase price. Construction of bldg. No.5 was completed up to 13th floor. Accordingly, letters for payments of instalments were sent. Now construction up to 16th floor is completed. As per Clause 20 and 24 of the agreement complainant agreed to pay amounts mentioned therein other than the purchase price. The details of the payments shown by complainant in Exhibit E are correct. Stamp Duty, Registration charges, VAT, Service Tax and GST are paid to the Govt. and not to the respondent and therefore respondent is not liable to the refund of amount mentioned in Exhibit F. The respondent had not delayed the possession without reasons. The delay is due to notices, orders, rules, notification from Govt., TMC and or other public local, Competent Authority, Courts, etc. and shortage of cement, steel, building materials, etc. The complainants were informed about it. The delay was not intentional. While registering the project with MahaRERA the date of possession is mentioned as Dec. 2019. It is the complainant who made default in making payments as per schedule. Vide demand

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letter dated 4.11.14 payment of Rs. 4,50,425/- was demanded and the payment was delayed by more than 6 months. The complainant did not raise dispute after coming into force of RERA. By letter dated 7.11.2016 complainant raised dispute about payment of Service Tax. On 9.1.2017 complainant requested the respondent to confirm revised date of possession. Lastly on 22.2.18 the complainant again requested to confirm revised date of possession by raising dispute about liability to pay Service tax. The complainant was aware that name of respondent was changed to Bright Sky Height Builders and Developers Pvt. Ltd. and receipts Exhibit D-6 & Exhibit D-7 were issued in that name. The complaint therefore deserves to be dismissed.

5. On the basis of rival contentions, 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 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? order	As per final

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Reasons.

6. Point no. 1 & 2 None of the parties placed copy of the agreement that was executed on record for the reasons best known to the parties. The complainant has not cared to give the details in his complaint which is a basic necessity for deciding the dispute between the parties. The fact that agreement was executed on 3.10.2014 is not in dispute. It is the respondent who has given the price of flat as Rs. 47,00,000/-. The respondent has also admitted that the date of possession mentioned in agreement was Dec. 2016. It is alleged that while registering the project under RERA the date of possession has been given as Dec. 2019 which is to the knowledge of the complainant.

7. There is mail annexure A to rejoinder to complaint dated 27.11.2017 from the complainant enquiring when the construction of building No. 5 will restart. It has been reminded that assurance of handing over possession by Dec. 2016 has not been met with. There is nothing on record to show that the complainant had either agreed to the extension of the date for delivery of possession or conceded to the extend date for delivery of possession. Only a vague ground has been taken that the delay is caused due to notice, orders, rules and notifications of Govt., etc. and shortage of cement, steel and building materials, etc. If at all complainant had delayed payment of instalment respondent was entitled to recover interest for the delayed period. That is not the ground for extension for date of possession. The correspondence produced by the complainant is of no help to the respondent and respondent has failed to prove that delay has occurred due to reasons beyond his control. The extension of the date of delivery of possession is made by the respondent without the consent of the complainant. I therefore answer point No.1 in the affirmative.

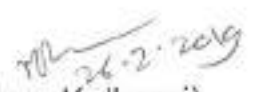
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8. In view of finding on point No.1 as above complainant is entitled to withdraw from the project and refund of the amount paid with interest as provided under Rule 18 of Maharashtra Rules. At arguments stage the complainant has alleged that he has paid Rs. 33,70,810/- including Stamp Duty. All that is placed on record is statement of LIC housing finance showing disbursement of Rs. 4,50,425/- on 18.2.2105 and the statement of interest paid on EMI. The complainant will be entitled to refund of the amounts including taxes that were paid except the stamp duty which can be refunded as per rules. I therefore answer point no.2 in the affirmative and proceed to pass following order.

ORDER

- 1) The complainant is allowed to withdraw from the project.
- 2) The respondent to refund all the amounts received from the complainant including taxes except stamp duty which can be refunded ✓ as ✓ per ✓ rules ✓ & together with interest @ 10.70% p.a. from the date of payments till final realisation as provided under Rule 18 of MahaRERA Rules.
- 3) The respondent to pay Rs. 20,000/- to the complainant as costs 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: 26.02.2019


(Madhav Kulkarni)
Adjudicating Officer,
MahaRERA