

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

COMPLAINT NO: CC006000000055844

Rajesh Zolai Gupta ... Complainant.

Versus

Anil Thahurdas Kursij ... Respondent.
MahaRERA Regn: P51700016602

Coram:

Hon'ble Shri Madhav Kulkarni.

Appearance:

Complainant: In person

Respondent: Absent.

Final Order

20th February, 2019

1. The complainant who had booked a flat with respondent / builder seeks withdrawal from the project and refund of the amount paid to the respondent with compensation.
2. The complainant has alleged that the respondent offered flat No. 1902 when he met owner of the Project Mr. Kursija with Mr. Patkar in the Project "Trinity Oasis". The location of the project or the price that was fixed are not given in the complaint. From the agreement it can be made out that the agreement is dated 2nd September 2015 in respect of Flat No. 1902 in bldg. No. 3 and the agreed consideration was Rs. 40,61,250/-. The property is situate at Bhyandar Pada, Thane Dist. The agreed date for delivery of possession as per clause No.11 is 31.03.2018. The complainant has alleged that he paid Rs. 4,50,000/- in cash and Rs. 41,61,250/- by cheque. Two cheques one for Rs. 3,00,000/- and one for Rs. 2,50,000/- were also issued on 04.08.2015. In his several visits the complainant found that no work was started. The respondent

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never gave replies to the communications. The complainant found out that the respondent has given the date of possession to MahaRERA as 2023. The complainant therefore seeks refund of Rs. 57,55,707/-.

3. As per Roznama dated 31.10.2018, Hon'ble Member-1, transferred the matter to the Hon'ble Chairperson. On 20th November 2018, the Hon'ble Chairperson transferred the matter to the Adjudicating Officer. The respondent had in the meanwhile filed his written statement. The matter came up before me on 20th Dec. 2018. The respondent was absent. Arguments of complainant were heard. As I am working at Mumbai and Pune Offices in alternative weeks, this matter is being decided now.

4. The respondent has^w alleged that he never promised to deliver possession of the flat in 2014. Before an agreement is registered, no financial institution will advance loan. The complainant has not come with clean hands. Therefore, complaint needs to be dismissed. Along with Mr. Rajesh Gupta, Mrs. Mamta Gupta is also party to the agreement but she has not been joined as a party. The construction work was stopped due to reasons beyond the control of the respondent and complainant was well aware of it. Despite such knowledge complainant has booked the flat. From the year 2015 to 2017 due to recession and due to other problems work of building No. S-3 was not in progress. Since 2017-18 the construction has been started. The respondent will hand over possession of the flat No. 1902 to the complainant in Dec. 2023. The complaint therefore deserves to be dismissed.

5. On the basis of rival contentions of parties following points arise for my determination. I have noted my findings against them for the reasons stated below.

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Points	Findings
1. Has the respondent failed to deliver possession of flats 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.

6. The complaint filed by the complainant is not in proper form, but nowhere it is mentioned that possession was promised in Nov. 2014. The date of Registration is given as 2nd Sept. 2015 and date of delivery of possession is given as 31.03.2018. Therefore, the alleged defence carries no weight. Clause No.11 of the agreement gives the date of possession as 31.03.2018. Usual circumstances under which respondent was entitled for extension of period for delivering possession are mentioned. All that is contended by the respondent is that there was recession in real estate field in the years 2015 to 2017 and there were other problems which were beyond the control of the respondent. During the year 2015 to 2017 many builders have completed their projects and handed over possession to the flat purchasers. How much the alleged recession had affected the real estate business is not made clear by the respondent. What were the special circumstances under which the respondent failed to carryout construction are not enumerated. A vague allegation that there was recession in real estate business and there were problems beyond the control of the respondent is not sufficient to entitle respondent to claim extension of the period. It appears that the respondent has informed date of delivery of possession to MahaRERA as Dec. 2023. This extension is done by the

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respondent without the consent of the complainant. The respondent alleges that complainant was aware of his difficulties and still booked the flat. However, there is nothing on record to substantiate such claim. Clearly the respondent has failed to deliver possession as per agreement without there being circumstances beyond his control. I therefore answer point No.1 in the affirmative.

7. The price of the flat that was agreed was Rs. 40,61,250/-. The complainant claims to have paid this amount by cheque. Then he claims to have paid Rs. 4,50,000/- by cheque. Further, Rs. 2,43,700/- as Stamp Duty, Rs. 30,000/- as Registration fee, Rs. 8,000/- as Document charges, Rs. 40,630/- as VAT, Rs. 1,42,144/- as Govt. taxes. The complainant has placed on record the receipts;

- 1) for Rs. 1,42,144/- dated 26.08.2015
- 2) for Rs. 40,612/- dated 26.08.2015
- 3) for Rs. 35,11,250/- dated 4.9.2015
- 4) for Rs. 3,00,000/- dated 4.9.2015
- 5) for Rs. 2,50,000/- dated 4.9.2015

The first two receipts are for Service Tax and VAT. Complainant claims to have paid Rs. 2,43,700/- as Stamp Duty and Registration charges of Rs. 30,000/- and document charges of Rs. 8,000/-. However, the complainant will be entitled to refund of stamp duty as per rules. The complainant claims to have paid Rs. 4,50,000/- by cash. Neither its date is given nor any receipt is placed on record. This amount is not reflected in any document. Consequently, the said amount cannot be allowed. Consequently, complainant is entitled to refund of Rs. 45,25,707/- except

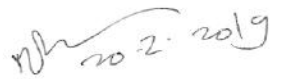
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the Stamp Duty refundable as per rules. I therefore answer point No.2 in the affirmative and proceed to pass following order.

ORDER

- 1) The complainant is allowed to withdraw from the project
- 2) The respondent to repay Rs. 45,25,707/- except the Stamp Duty which can be refunded as per Rules together with interest @ Rs. 10.70% p.a. from the date of payments till final realisation.
- 3) The respondent shall pay Rs. 20,000/- to the complainant as costs of the complaint.
- 4) The complainant to execute cancellation deed at the cost of the respondent.
- 5) The respondent to pay above amount within 30 days from the date of this order.

Mumbai.
Date:20.02.2019


(Madhav Kulkarni)
Adjudicating Officer
MahaRERA