

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

COMPLAINT NO. CC006000000055428

Gajesh Dattatray Surve

..Complainant

Verses

Shivam Parivar Developers Pvt Ltd

..Respondent

MahaRERA Regn. No. P51800008681

Coram:

Hon'ble Shri Madhav Kulkarni,
Adjudicating Officer, MahaRERA

Appearance:

Complainant: Present in person
Respondent : Absent

**ORDER
(Dated 29.03.2019)**

1. The complainant who had booked a flat with the respondent/builder, initially filed this complaint for direction to the respondent to hand over possession of the flat booked and compensation. On 07.01.2019 when matter came up before the Hon'ble Member, the complainant expressed that he wanted refund of the amount paid and compensation.
2. The complainant has alleged that he booked Flat NO. 704/A on 7th floor in A wing in building nos. 48, 49 and 50 in Gulmohor CHSL, situated at Siddharth Nagar, Road NO. 2, MIG Colony, Goregaon (West), Mumbai for a consideration of Rs.20 lakhs. The agreement was executed on 18.08.2008 and complainant made cash payment of Rs.10 lakhs in addition. The complainant

paid Registration charges of Rs.28,750/- and stamp duty of Rs.1,01,500/-. Total payment made is Rs.31,31,530/-. The respondent has still not handed over possession, He gave assurance to hand over possession from time to time. The respondent has also not refunded the amount. The complainant is entitled to recover amount of Rs.31,31,530/- with interest @ 21% p.a. which comes to Rs.65,76,213/-.

3. The matter came up before the Hon'ble Member on 30.08.2018 and came up to be adjourned to 27.09.2018. Thereafter, it came to be adjourned to 22.10.2018. Then it came to be adjourned to 27.11.2018. Then it came to be transferred to Adjudicating Officer vide Order dated 07.01.2019. On 22.02.2019, complainant appeared. Respondent was continuously absent. Arguments for complainant were heard. As I am working at Mumbai and Pune Offices in alternative weeks, 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 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 is entitled to the reliefs claimed? | Affirmative |
| 3 What Order? | As per final Order. |

29.3.19

REASONS

5. Point Nos. 1 & 2 – The complainant has placed the agreement dated 18.08.2009 on record. It appears that it was a redevelopment project and complainant must be having his flat in the original building. It is not explained by the complainant in his complaint. The respondent appears to have agreed to sell a flat to the complainant after redevelopment of the building. The price for flat was agreed at Rs.20 lakhs, which was to be paid as earnest money. Under Clause 17 of the agreement, Rs.5,000/- were to be paid for meeting legal expenses etc. before possession was delivered. No date for delivery of possession appears to have been given in the agreement. Acknowledgement of payment of Rs.20 lakhs by RTGS on 17.08.2009 is annexed to the agreement.
6. Even though date for delivery of possession is not given in the agreement, still under Section 46 of the Contract Act, performance is to be made within a reasonable time. Now almost 10 years have gone by and respondent has not delivered possession of the flat booked to the complainant. No defence of any sort ^{is not} put up by the respondent. Consequently, I answer point no. 1 in the affirmative.
7. Under the agreement, the complainant has paid Rs.20 lakhs to the respondent as price of the flat. The complainant has alleged ^{that} he made a cash payment of Rs.10 lakhs and also paid for stamp duty and registration charges. One receipt dated 15.08.2009 for Rs.1 lakh and another receipt dated 17.08.2009 for Rs.9 lakhs are placed on record. Consequently, the complainant has proved payment of Rs.31,31,530/- inclusive of stamp duty. In the event of cancellation of agreement, complainant will be

entitled to refund of stamp duty as per rules. Except that amount, complainant will be entitled to refund of remaining amount together with interest provided under Rule 18 of Maharashtra 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. Respondent to pay Rs.31,31,530/- to the complainant, except stamp duty amount, which can be refunded as per rules, together with interest @10.70% p.a. from the date of payments till final realisation.
3. The respondent to pay Rs.20,000/- to the complainant as costs of this complaint.
4. The complainant to execute cancellation deed at the cost of the respondent.
5. The respondent to pay above amounts within 30 days from the date of this Order.

Mumbai

Date : 29.03.2019

MD 29-3-2019
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA