

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

COMPLAINT NO: CC006000000044261

MARIA DEVARAJAN ... Complainant.

Versus

SAI UNIVERSAL REALTORS &
DEVELOPERS LLP

(Through its Partners)

MahaRERA Regn: P99000009277

... Respondent.

Coram:

Hon'ble Shri Madhav Kulkarni.

Appearance:

Complainant: In person

Respondent: In person

Final Order

23rd April 2019

1. The complainant who had booked a flat with respondent/ builder seeks withdrawal from the project and refund of his amount with interest.
2. The complainant has alleged that he had booked a Row House No. 22, Building No.2, Type A in the project of Respondent SAI RIVER PALACE COMPLEX, Mauje Lalonde, Taluka & District Palghar for a price of Rs. 54,50,000/-/. The Agreement for Sale was executed and registered on 28.06.2017. The complainant paid Rs. 5 lakhs as booking amount on 12.04.2017. He paid Rs. 1 lakh on 25.07.2017. He paid Rs. 53 lakhs by seeking loan from Diwan Housing Finance Ltd., i.e. DHFL. Thus, the complainant has paid the entire consideration. The respondent had informed that the Row House was 95% completed and project was 70% completed and actual possession will be delivered by the end of

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December 2017. The complainant after waiting till Dec. 2017, the complainant further waited till April, 2018. In April, 2018 complainant visited the Row House to find that the project had not moved even an inch ahead. The partner of the Respondent Shri Sinder Gupta informed that possession will be handed over soon. The complainant was running a small business of Mobile repairs which was shut in February 2018. The complainant has been paying monthly instalment of Rs. 52,367/- to DHFL. The complainant learned that there is a dispute between the Landlord and Respondent and therefore construction has come to a stop. The Respondent is bringing Landlord into picture to evade performance of the contract. The complainant therefore seeks cancellation of agreement and refund of price Rs. 54,50,000/- with interest @ 9% p.a. with further direction to the respondents to pay all EMIs from May, 2017 to March, 2018 of Rs. 52,367/- each.

3. The complaint came up before Hon'ble Member-I on 4th Oct. 2018 and came to be adjourned to 22nd Oct. 2018. On that day complaint came to be transferred to Adjudicating Officer. On 17th Dec. 2018, the matter was adjourned for plea of the Respondents and written explanation by respondents to 21st January 2019. The respondents filed written explanation on 21.01.2019. The matter was adjourned to 20.02.2019. On that day arguments were partially heard. The arguments were concluded on 18.03.2019. As I am working at Pune and Mumbai offices in alternate weeks, this matter is being decided now.

4. The Respondents have alleged that the partners of the firm Sai Universal REALTORS & DEVELOPERS LLP are (1) Mr. Viresh Dutt (2) Mr. Sinder Krishanlal Gupta (3) Mr. Deepak Vedprakash Bansal

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(4) Mr. Vijay Mahasukhlal Sanghvi (Resigned) (5) Mr. Raza Ali Nurani (Resigned) (6) Mr. Rampher Dhana Yadav. They commenced the project in the year 2014 as a joint venture with Mr. Mahendra Kartarsingh Sandhu, i.e. Landowner. The Landlord was entitled to 40% of the sale proceeds from the project. The developers have paid Rs. 1 crore to the landowner on the commencement of the project which was estimated to be worth Rs. 5 crores. In the year 2017 the landowner started creating unnecessary hurdles by denying supply of water, cutting of electric connection. The respondents tried to settle the matter but in May 2017 landowner erected a wall in front of a main gate thereby halting supplies. The project came to a halt but salaries were continued to be paid to the staff. In June 2017 a letter was received from landowner that the agreement period was over. The respondents are keen to settle the matter with landowner. The project will be completed in 2020. 70% of the work is already completed in the year 2017.

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.

Points	Findings
1. Have the respondents failed to deliver Possession of the flat to the complainant as per agreement without there being circumstances beyond their control?	Affirmative
2. Is the complainant entitled to the reliefs claimed?	Affirmative
3. What order?	As per final order

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Reasons.

6. Point no. 1, 2

The complainant has placed copy of Agreement dated 20th June 2017 on record. As per clause No. 26 possession was to be delivered by completing construction by April, 2018. If it was not completed, then it was to be done within a further period of 6 months. Then, further extension under usual circumstances was also to be given. If the developer was unable to hand over possession by stipulated date on the purchaser making the demand, the developer was liable to refund the amount received with interest @ 9% p.a. Under Clause 24 purchaser was not to raise objection to the title, right, authority of the original owner and the developer. Under Clause N Developer had exclusive right to sale Bungalows, Row houses, etc. and to receive the sale proceeds.

7. As per clause A of the Agreement one Mr. Hemant Atmaram Chinchankar was the owner of the land. He sold the land to Mr. Mahendra Kartarsingh Sandhu. A Development Agreement was executed on 07.05.2014 between Mr. Mahendra Kartarsingh Sandhu and Sai Universal Realtors Developers Private Limited LLP through its Directors. Row house No.12 in bldg. No. 2, Type A in the complex of Sai River Palace was agreed to be sold to complainant for Rs. 54,50,000/-.

8. The respondents are defending the delay on the ground of dispute with the landowner. It is the contention of the respondents that landowner is the necessary party and needs to be joined in this complaint. The landlord took away the money and obstructed respondents in carrying out construction.

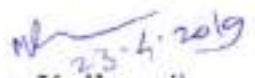
9. As rightly contended by the complainant there is no privity of contract between complainant and the landowner nor complainant has been made aware of the dispute with the landlord. The respondents took all the money from the complainant by promising to deliver possession of Row house by the end of Oct. 2018. The respondents claimed that 90% of the construction is completed. However, possession is not in sight because of the internal dispute between the builder and the landlord. The complainant is not at fault nor was made aware of the dispute with the landlord. When the respondents took all the money from the complainant they are duty bound to deliver the possession as per terms of agreement. No circumstances which were beyond their control have been brought on record by respondent due to which possession was delayed. Therefore, complainant is entitled to withdraw from the project and for the refund of the amount paid with interest as provided under Rule 18 of the Maharashtra Rules. I therefore answer Point No. 1 & 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 Rs. 54,50,000/- to the complainant subject to the charge of the financier as per terms of Tripartite Agreement with the Financer together with interest at the State Bank of India's highest marginal cost of lending rate which is at present 8.75% p.a. plus 2% i.e. 10.75% p.a. from the date of receipt of those amounts till realisation.

- 3) The respondent to pay Rs. 20,000/- to 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: 23.04.2019


(Madhav Kulkarni)
Adjudicating Officer
MahaRERA