

BEFORE THE ADJUCATING OFFICER WITH  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

**COMPLAINT NO: CC0060000000012034**

Santosh Dubey ... Complainant.  
Devendranath Upadhay

Versus

S. N. Builders ... Respondent.

MahaRERA Regn No. : P51700013010

**Coram:** Shri Madhav Kulkarni,  
Hon'ble Adjudicating  
Officer.

**Appearance:**

Complainants: Santosh Dubey  
Respondent: Mithilesh Singh

**ORDER**

**Date:** 20 June 2018

1. The Complainants claim that the Respondent builder agreed to deliver possession of the booked flat in December 2015. Since he failed to deliver possession as agreed the Complainants claim interest on the amount paid by them.
2. The Complainants have alleged that they booked a flat with the Respondent in the project having Registration No.P51700013010 at Mira-Bhayander, District Thane. The name of the project has not been mentioned in the complaint. It is alleged that the Respondent promised to deliver possession by December 2015. How much amount was paid to the Respondent is not mentioned in the complaint. The prayer of the Complainant is for recovery of interest @ 24% per annum from November 2014

20.6.2018

onwards, as well as recovery of rent of 1 BHK flat @ Rs.12,000/- per month from December 2015 till possession is received.

3. The complaints have placed on record the Agreement that was executed by the Respondent in his favour on 17.11.2014. Accordingly, the name of the building is Meditya Raviraj A Wing. The no.of the flat agreed to be sold 401 is having built up area of 50.93 Sq.Mtrs. The price of the flat is Rs.39,04,500/-. Para-6 of the Agreement about date of delivery of possession has been kept blank. There is a receipt for Rs.5,85,675/- annexed to the agreement. That was the initial amount mentioned in the payment schedule in the agreement. No other receipt has been placed on record by the Complainant.
4. The Hon'ble Chairperson of MahaRERA, in his order dated 21.2.2018 transferred this file to the Adjudating Officer i.e. me. The matter came up before me on 20.3.2018. The Respondent on that date showed willingness to settle the matter amicably. On the next date i.e. 27.3.2018, the Respondent showed his willingness to file his written defence and appears to have filed it on 17.4.2018.
5. The Respondent has alleged that complainant has suppressed true and material facts. The complaint is premature and liable to be rejected. The Respondent had started construction at old survey no.316/2 new 40/2 as per Mira Bhyayander Municipal Corporation commencement certificate No.MB/MNP/NR/3102/2013-2014, dated 21.11.2013. The agreement of sale is executed by Respondent in favour of the Complainants. The Complainants have violated terms and conditions of the Agreement. After coming into force of the RERA Act, the project has been registered with the Authority. The contentions of the Complaint, that Respondent promised to deliver possession by December 2015 is false and baseless. The Respondent has uploaded all the necessary and mandatory documents on the RERA web-site. As per norms, new carpet area has been mentioned. The Respondent has not reduced area of the flat of the

20-6-2018

Complainants. The date of delivery of possession has been mentioned while registering the project. The claim of the Complainant is premature and he does not deserve to get interest.

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

<u>Points</u>	<u>Findings</u>
1. Has the Respondent committed Default in handing over the Possession of the flat as per Agreement?	Yes
2. Is the Complainant entitled for Reliefs claimed?	Yes
3. What Order?	As per final Order.

#### REASONS

7. Point 1 & 2 : The Complainant has provided a chart about the payments made by him. Accordingly, he paid Rs.4,85,675/- + Rs.1,00,000/- on 20.10.2014. On 30.10.2014, he paid stamp duty of Rs.2,37,500/- and Registration fee of Rs.31,600/-. On 24.12.2014 he issued cheque from LIC Housing bearing No.525597 for Rs.13,66,575/-. As stated earlier, the complainant did not mention either the consideration that was agreed or the amount that he had paid. It may be mentioned that the agreement in respect of flat 401 is in favour of Santosh Radhesham Dubey i.e. complaint no.1 and Rashmi Santosh Dubey. Then there is agreement in favour of complaint no.2 Devendranath Upadhyay as well as Divyansh Upadhyay. This is also in respect of flat No.401. It appears that the same flat has been jointly agreed to be purchased by Complainants under separate agreements.

*22.6.2018*

8. As stated earlier, para no.6 of the agreement about the date of delivery of possession has been kept blank in the agreement in favour of Complainant No.1. No time limit is found in the 2<sup>nd</sup> agreement.
9. So far as area of the flat is concerned, it was shown as 55.93 sq.mtrs. built up area in the Ist Agreement and 55.92 sq.mtrs. in the 2<sup>nd</sup> agreement. The Respondent alleges that as per norms and conditions of the RERA, now carpet area has been uploaded on RERA web-site. The Respondent agrees to make necessary corrections in respect of the area. Infact the exact controversy is not mentioned in complaint.
10. The Respondent has placed on record the commencement certificate issued by the Municipal Corporation on 11.9.2013. The date of present agreement is ~~17.11.2014~~ <sup>28.1.2015</sup> and the Respondent in his say, alleged that after getting commencement certificate, he started construction activities. What was stage of the construction on date of agreement is not made clear. However, more than one year had gone by since commencement certificate was received. There were three blocks A, D & E having 5 storyes, 7 storyes and 7 storyes. The flat in question is in A building on 4<sup>th</sup> floor. The construction was required to have made substantial progress on the date of agreements.
11. The complainant has alleged that the Respondent had promised to deliver possession by December 2015. The Agreement in favour of complaint no.1 is dated 17.11.2014. Agreement in favour of complaint no.2 is dated 28.1.2015. In both the agreements, date of delivery of possession is not mentioned. The reason for the same is not forthcoming. However, that was the tendency of builders to not to mention the date of delivery of flat in the agreements and to give oral promise to their customers in respect of date of delivery. Therefore, the version of the complainant cannot be rejected in that respect. The Respondent has now shown the date of delivery as 2020. That is done without the consent of the complainants and

21  
20.6.2015

therefore not binding on the complainants. The complainants have claimed the interest on the amount paid by them as well as rent of 1bhk flat. There is no term in the agreement about paying the rent of any flat. Such terms are found in the agreements for redevelopment. There occupants are required to vacate the flats to facilitate redevelopment of the building. Whether the complainants were forced to vacate their accommodation is not known. Consequently such claim cannot be allowed.

12. As stated earlier, the complaint is about the <sup>interest on</sup> refund total amount paid to the Respondent. The copy annexed to the agreement shows payment of Rs.5,85,675/- which is paid on 24.12.2014. It is claimed that, cheque of LIC Housing was handed over which was for Rs.13,66,565/-. No receipt in that respect is placed on record or no certificate from LIC Housing is placed on record. The complainant will be entitled to recover the interest on the amount if they had actually paid that amount. Since the Respondent failed to deliver the possession to the complainant as per agreement, complainants are entitled to recover the interest on the amounts paid by them to the Respondent. Section 18 provides that payment of interest on account of delay till handing over the possession. The rate of interest should be 10.05 %. I, therefore answer point Nos.1 & 2 in the affirmative and proceed to pass following order :-

#### ORDER

1. The Respondent shall pay interest @ 10.05% since date of payment on the amount of Rs.5,85,675/- paid under receipt as well as Rs.13,66,575/- from LIC Housing if actually paid to the Respondent till he hands over possession to the complainants.
2. The Respondent shall pay Rs.40,000/- as compensation to the complainant.

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20.6.2018

3. The Respondent shall pay 10,000/- as costs of this complaint to the complainants.
4. The Respondent shall pay all these above amounts within 30 days from the date of this Order.

*MV 20-6-2018*

(M. V. Kulkarni)

Adjudating Officer, MahaRERA.

Place: Mumbai

Date : *20 June 2018*