

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

COMPLAINT NO: CC005000000011809

Kiritkumar Maganbhai Patel

... Complainant.

Versus

Darshan Developers
Shubh Corporation
(CASA FELIZ - PHASE I)

... Respondents.

MahaRERA Regn: P52100003013.

Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

Appearance:

Complainant: Adv. Sagar Kokate.

Respondent No.1: Absent.

Respondent No. 2: Adv. Nicki Milani.

FINAL ORDER

15th March 2019.

The complainant contends that he purchased 4,500 sq.ft. area in the registered project 'CASA FELIZ - PHASE I' situated at Pune and paid the respondent no. 1 Rs. 1,48,50,000/- which was more than 10% of the total consideration. However, the respondents failed to execute and register the agreement for its sale and thereby contravened Section 13 of RERA.

2. The respondent no. 1 Darshan Developers have been represented by Adv. Mr. Pawar. At the time of recording of the plea, none appeared for respondent no. 1 except Mr. Pawar. The respondent no. 1 has not filed any reply.

3. The respondent no. 2 have pleaded not guilty. They have filed the reply to contend that the respondent no. 1 intended to develop 61 Are land of Survey no. 133 Hiss No. 4A, Hadapsar, Pune. The respondent no. 1



entered into the joint venture agreement with them on area sharing basis. The ratio of it was 50:50. The respondent no. 2 contend that they do not have any concern with complainant's transaction transacted with respondent no. 1 and they were not consenting party to it. Therefore, they deny their liability to execute the agreement for sale in complainant's favour.

4. Following points arise for determination and my findings recorded thereon as under:

POINTS	FINDINGS
1. Whether the complainant is entitled to get the agreement of sale of 4,500 sq.ft. area of the respondent's project executed from respondent no. 1?	Yes.
2. In alternative, whether he is entitled to get refund of Rs. 1,48,50,000/- from the respondent no.1?	Yes.

REASONS

5. The respondent no. 2 has brought to my notice that the respondent no. 1 & 2 entered into joint venture agreement of built up area on sharing basis. Each of them were entitled to get 50% of the built up area and accordingly the area has been earmarked. The complainant has produced MOU executed by respondent no. 1 in his favour, which shows that the respondent no. 1 acknowledged the receipt of Rs. 1,48,50,000/-. It further shows that in lieu of this consideration the respondent no. 1 agreed to sell 4,500 sq.ft. area of the project. Though, this MOU is not registered it can be looked into under Section 4A of Maharashtra Ownership Flats Act.

6. The respondent no. 1 has not contested the complainant's claim. The MOU and the receipt passed by the respondent no. 1 in complainant's favour are sufficient to hold that the respondent no. 1 agreed to sell constructed area of 4,500 sq.ft. of the project to the complainant for Rs. 1,48,50,000/- received by them.



7. The MOU has been executed on 07.03.2014 and therefore under Section 4 of Maharashtra Ownership Flats Act, the respondent no. 1 was liable to execute the agreement for sale and register it in complainant's favour. This liability continues as per Section 13 of RERA when RERA came into force. The respondents no. 1 have failed to discharge this liability. It is necessary to direct the respondent to execute the agreement in complainant's favour, in the alternative, if the area of 4,500 sq.ft. out of respondent no. 1's share is not available then the respondent no. 1 shall refund the amount of Rs. 1,48,50,000/- to the complainant with interest at prescribed rate which is 2% above the SBI's highest MCLR which is currently 8.55% from the date of receipt of the amount till its refund.

Therefore, the following order.

ORDER

The respondent no. 1 shall execute and register the agreement for sale of 4,500 sq.ft. constructed area of the project out of his share to the complainant at complainant's cost within one month of this order.

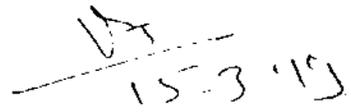
In the alternative, if the area of 4,500 sq.ft. out of respondent no. 1's share is not available, then the respondent no. 1 shall refund the amount of Rs. 1,48,50,000/- to the complainant with interest at prescribed rate which is currently 8.55% from the date of receipt of the amount till its refund.

The respondent no. 2 shall accord his consent in the case of execution of the agreement.

The respondents shall pay the complainant Rs. 20,000/- towards the cost of the complaint.

Mumbai.

Date: 15.03.2019.


(B. D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.