

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY  
AUTHORITY

CORUM : Shri M.V. KULKARNI, ADJUDICATING OFFICER, PUNE

AT : PUNE

Complaint No. CC005000000011922

Ramrao Shantaram Thakur,  
R/at 276, Thakur Pimpri,  
Tal. Khed, District Pune.

.. Complainant

Versus

Vimal Gordhanbhai Pipalia,  
R/at C/6/1/2/1, Sector No.5,  
C.B.D. Belapur,  
Navi Mumbai-400614.

.. Respondent

**APPEARANCE :-**

Complainant : Absent.

Respondent Nos.1 & 2 : Adv. Sachindra H. Jadhav

**FINAL ORDER**

(Delivered on 04.04.2019)

1. The Complainant, who had booked a flat with the Respondent/Builder, seeks refund of the amount paid to the Respondent, with interest, as the Respondent failed to deliver possession as per agreement.
2. The Complainant has alleged that he booked a flat with the Respondent under agreement, dated 17.10.2014. Possession was promised in July, 2017. The Respondent did not deliver possession as per agreement. The complainant therefore, wants to cancel the booking. Along with interest, the amount

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claimed is Rs. 6,68,499/. The Complainant had sought personal loan carrying interest @ 10.25 p.a. The Complainant claims interest at the same rate, though as per the agreement, interest was payable @ 9% p.a.

3. The complaint came up before me on 02.01.2019. The Complainant was absent. The Respondent sought time to file written explanation. Respondent filed written explanation on 04.02.2019 after pleading not guilty on 07.01.2019. Complainant was absent on 04.02.2019. On 05.03.2019 Complainant was absent and Respondent was also absent. On 02.04.2019 again Complainant was absent. Arguments for Respondent were heard. Matter was adjourned to 03.04.2019 for arguments of the Complainant. However, Complainant failed to appear on 03.04.2019. As I am working with Mumbai Office and Pune Office in the alternative weeks, this matter is being decided now.
4. The Respondent has alleged that no cause of action arose for filing of the present complaint. Complainant has already terminated contract with the Respondent by accepting almost all the money that was paid by him. The agreement was entered into and acted upon much prior to coming into force of RERA. Flat No. 405 was agreed to be sold to Complainant vide agreement, dated 17.10.2014 for a consideration of Rs. 24,36,000/-. Complainant paid Rs. 8,00,000/-, out of which Respondent repaid Rs. 4,00,000/- on 23.09.2017, Rs. 2,00,000/- on 26.10.2017 and Rs.1,00,000/- on 01.01.2018 through Laxmi Vilas Bank. Only Rs. 1,00,000/- remained to be repaid. The Complainant is intentionally refusing to accept

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that amount. Therefore, Respondent is not liable to pay any interest to the Complainant.

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

### POINTS

### FINDINGS

- (i) Has the agreement between the parties being terminated by the Complainant? If yes, whether the present complaint is tenable? .. .. . Yes, Complainant is not an allottee after cancellation and therefore, complaint is not tenable.
- (ii) Has the Respondent failed to deliver possession of the flat without there being any circumstances beyond his control? .. .. . In the negative.
- (iii) Is the Complainant entitled to the reliefs claimed? .. In the negative.
- (iv) What order? .. .. . As per final order.

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### REASONS

6. POINT Nos.1 to 3 :- In the complaint, the Complainant has claimed that he desires to cancel the booking and seeks refund of the amount paid with interest, which he has quantified at Rs.6,68,499/-. As usual, the online complaint lacks all the basic necessary details like number of the flat that was booked, the price that was agreed and various amounts that were paid from time to time. On the other hand, it is the contention of the Respondent that Complainant had in all paid Rs.8,00,000/-.
  
7. Copy of the agreement has been placed on record. The agreement, dated 17.10.2014 shows that the project of the Respondent is at Chakan, Tal. Khed, District Pune. The name of the building is "Urja Corner Stone Building No.2," and the Flat No. is 405 having carpet area of 428.84 sq. ft. The price agreed was Rs.24,36,000/-. As per receipt annexed to the agreement, Rs. 1,00,000/- were paid on 16.09.2014, Rs. 2,00,000/- on 22.09.2014, Rs.29,000/- on 13.10.2014 and Rs. 71,000/- on 09.10.2014 and Rs. 2,00,000/- on 13.10.2014. Thus the total amount received till then was Rs. 6,00,000/-. As per clause No.13, date for delivery of possession was July, 2017.
  
8. The defence of the Respondent is that Complainant has already cancelled the agreement. Out of Rs.8,00,000/- received from Complainant, Respondent has repaid Rs. 7,00,000/-. The extract of ledger account of the Complainant maintained by Respondent is placed on record. Initial receipt of Rs. 6,00,000/- has been shown. Further Rs.2,00,000/- are

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shown as received on 22.11.2015. Then Rs.4,00,000/-are shown as paid on 23.09.2017. Rs. 2,00,000/- on 26.10.2017 and Rs.1,00,000/- on 16.04.2018. The exact date on which the Complainant terminated the agreement is not pleaded by Respondent. But first amount refunded is claimed to be dated 23.09.2017. The Complainant on the other hand, has insisted that amount due with interest is Rs.6,68,000/-. The Complainant has placed on record his account statement. Accordingly, up to 30.09.2017 he paid Rs. 9,56,160/-. This is inclusive of stamp duty of Rs. 1,21,800/- and registration fee of Rs. 24,360/-. By adding interest amount up to 30.09.2017, the figure is calculated as Rs.12,63,841/-. Then return of Rs. 7,00,000/- is mentioned. In that event, the amount due is Rs. 5,63,841/-. Perhaps by adding further interest, the Complainant has claimed Rs. 6,68,499/-. But he has not explained that figure. The refund dates are exactly as mentioned in the written explanation by Respondent.

9. Even going by version of the Complainant, it becomes clear that Respondent had started repaying amounts received from the Complainant. The amounts cannot be refunded unless agreement stands cancelled. The Complainant not only repudiated the agreement, but also received part of the consideration paid by him. It is thus clear that the contract between the parties stood cancelled. The Complainant no more remains an allottee as defined under the Real Estate (Regulation & Development) Act 2016. If any amount is to be recovered by Complainant from Respondent, it is the civil court, which is the proper forum. Claiming compensation for not delivering possession as per agreement only is possible by approaching this authority. I am of the opinion that present

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complaint is not tenable since the Complainant is no more an allottee, as he has already cancelled his booking. The question of granting compensation under Section 18 of the RERA Act therefore, does not survive. I therefore, answer Point No.1 <sup>as</sup> Yes, Complainant is not an allottee after cancellation of booking and therefore, complaint is not tenable and I answer Point Nos.2 and 3 in the negative and proceed to pass the following order.

**ORDER**

- (i) The Complaint stands dismissed.
- (ii) No order as to costs.

Pune  
Date :- 04.04.2019

*M.V. Kulkarni*  
( M.V. Kulkarni )  
Adjudicating Officer,  
MahaRERA, Pune