

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

COMPLAINT NO. CC006000000057786

Jay Jitendra Dedhia

..Complainant

Verses

Arham Engineers
Through its Partner Mr Jayesh C Mehta

..Respondent

MahaRERA Regn. No. P51800005828

Coram:

Hon'ble Shri Madhav Kulkarni.
Adjudicating Officer, MahaRERA.

Appearance:

Complainant: Adv. Ruta Bhide
Respondent : In Person.

ORDER

(Dated 18th November, 2019)

1. The complainant/allottee who had booked a shop with the respondent/promoter, seeks compensation as respondent failed to deliver possession as per agreement.
2. Complainant has alleged that he booked shop no. 3 admeasuring 13.57 sq. mtr. vide agreement dated 29.12.2014 in the project of the respondent 126 Florencio at Tilak Nagar, Chembur, Mumbai for a total consideration of Rs.22.50 lakhs. As per agreement, for the late payment, complainant was liable to pay interest @21% p.a. Complainant paid Rs.10 lakhs to the respondent by cheque on 25.11.2014. As per clause 26, possession was to be delivered on or before August, 2016. Complainant paid Rs.12.50 lakhs on 13.01.2015. Respondent has not handed over possession as per agreement, though more than 2 years

have gone by after agreed date for possession. It has caused mental agony to the complainant. Complainant has lost opportunity of doing business in the shop booked. Hence this complaint.

3. Complaint came up before Hon'ble Member on 22.03.2019 and again on 23.04.2019 and again on 13.05.2019. On that date, respondent filed written explanation. Matter came to be transferred to Adjudicating Officer. The complaint came up before me on 23.08.2019. On that day, plea of the respondent was recorded and arguments were heard. As I am working at Mumbai and Pune Offices in alternative weeks, and due to huge pendency in this office, this matter is being decided now.
4. Respondent has alleged that project is already at advanced stage and was due for handing over possession with Occupation Certificate on 31.03.2019. However, on account of delay in procurement of lift machinery from appointed vendor, respondent was compelled to avail extension from MahaRERA, which was granted till 30.03.2020. Respondent has obtained all necessary approvals and sanctions and complainant is well aware of the same. Project was delayed due to unforeseen volatile market conditions. Respondent has taken all necessary steps to hand over possession to the existing tenants and new purchasers. Respondent expects Occupation Certificate by 30.09.2019. Complaint therefore, deserves to be dismissed.
5. 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


A.O.

2 Is the complainant entitled to the reliefs claimed? Affirmative

3 What Order?

As per final
Order.

REASONS

6. **Point Nos. 1 & 2** – Complainant has placed on record, copy of the agreement dated 29.12.2014. Shop no. 3 in the building 126 Florencio at Tilak Nagar, Chembur, Mumbai, was agreed to be sold by the respondent to the complainant for a consideration of Rs.22.50 lakhs. It appears that respondent has undertaken re-development project at Vrindavan Palace Co-op. Hsg. Society. As per clause 26, promoter to the extent possible to endeavour to handover possession on or before August, 2016. Usual circumstances under which promoter was entitled for extension of time are also mentioned. Thus, possession was expected to be delivered within 1 year and 8 months since execution of the agreement and that was not unreasonable period, especially when shops are generally located at ground floor or lower floors in a building.
7. Ground put forth by the respondent is that ^{there} were unforeseen volatile market conditions. Complainant has claimed that he has paid entire consideration amount to the respondent. Therefore, volatile market conditions is no justification for delay in delivering possession. A builder is entitled to maximise profits when there are boom conditions. However, builder cannot delay delivery of possession only because of volatile market condition, especially when he accepts money from purchaser under the promise of delivering possession by certain date. Builder must keep his word even if transaction results in less profits or no profits. An excuse like delay in procurement of lift machinery is not acceptable from professional builder. When the builder accepts [✓] money from allottee, he is bound to deliver possession as per the agreement. I therefore, answer point no. 1 in the affirmative.
8. Complainant claims that he has made payment of total consideration of Rs.22.50 lakhs under the promise of delivering possession of shop by the

respondent. Agreed date for delivery of possession was August, 2016. More than 3 years have gone by since that time and possession is still not delivered by the respondent. Respondent is not denying having received entire consideration amount of Rs.22.50 lakhs from complainant. Therefore, complainant will be entitled to claim interest on this amount as provided under rule 18 of Maharashtra Rules from 01.09.2016 till respondent delivers possession of the shop or intimates about having received Occupation Certificate. I therefore, answer point no.2 in the affirmative and proceed to pass following order:

ORDER

1. Respondent to pay interest on Rs.22.50 lakhs to the complainant @10.35% p.a. from 01.09.2016 till respondent delivers possession by making shop ready in all respects or till he gives intimation about having received Occupation Certificate to the complainant.
2. Respondent to pay Rs.20,000/- to the complainant as costs of this complaint.
3. The respondent to pay above amounts within 30 days from the date of this Order.

Mumbai

Date : 18.11.2019

W signed on 21.11.2019
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA