

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

COMPLAINT NO: CC006000000056787

Shamala Dilip Patil ... Complainant.

Versus

Karm Infrastructure Pvt. Ltd. ... Respondent.
MahaRERA Regn: P51700003215

Coram:

Hon'ble Shri Madhav Kulkarni.

Appearance:

Complainant: In person

Respondent: Absent

Final Order

26th April 2019

1. The complainant who had booked a flat with respondent/ builder had earlier filed complaint No. 44106 for compensation as Respondent failed to deliver possession as per promise. A settlement was arrived at and on 08th June 2018 and complainant was allowed to withdraw her complaint with liberty to approach MahaRERA if settlement terms were violated by Respondent. Since the Respondent failed to comply with the terms, complainant has again filed this complaint for refund of amount paid with interest.
2. The complainant has alleged that she booked Flat with the Respondent in the year 2011. She paid Pre-EMIs. All the necessary details are missing in the complaint. From the Agreement it can be made out that the Agreement is dated 17.04.2012. The complainant along with her husband booked flat No. 303 in Bldg. No. 101 by name Sakhi in Section 4 in the project of Respondent at Village Dharai, Taluka

Shahapur, Dist. Thane. The price agreed was Rs. 11,86,350/- and the name of the project is Karrm Residency. Payment of Rs. 1,18,635/- vide cheque dated 12.12.2011 is acknowledged in the agreement. Since the respondent did not comply with the terms of agreement previous complaint and present complaint came to be filed.

3. The complaint came up before me on 25.02.2019. The complainant was present but respondent failed to appear. The matter was adjourned to 27.03.2019 for exparte hearing. On 27.03.2019 again the respondent was absent. Arguments for complainant were heard. As I am working at Pune and Mumbai offices in alternate weeks, this matter is being decided now.

4. 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 its control?	Affirmative
2. Is the complainant entitled to the reliefs claimed?	Affirmative
3. What order?	As per final order

Reasons.

5. Point no. 1& 2

As per Clause 7 at page 23 of the Agreement the respondent had agreed to deliver possession on or before 2014. In the earlier complaint, the complainant alleged that the work was incomplete

and possession was not delivered. The construction was not in good condition. The respondent promised possession after every 6 to 9 months but failed to keep promise. The prior complainant[✓] was for possession in the form of ready flat which was booked and money compensation.

6. As per consent terms filed in the earlier complaint which were dated 6.6.2018, the respondent agreed to pay a sum of Rs. 1,00,000/- as compensation to the complainant for the delay in possession. Out of it Rs. 30,000/- were to be paid on or before 24.06.2018; Rs. 30,000/- were to be paid on or before 24.07.2018. The term about balance payment is missing in the copy placed on record. The respondent was to allow complainant to temporarily shift in Flat No. 202 in B Wing Swaraj Building and the complainant was to pay monthly maintenance and electricity bill but no to claim any right in that flat. The respondent was admitted to have made Pre-EMI payment to DHFL. As per settlement the complainant has withdrawn that complaint.

7. Now it is the grievances of the complainant that three EMIs of DHFL are overdue. The Advocate for respondent took signature on consent terms before hearing. The complainant was asked to contact a person at Shahapur site office for shifting to the flat on temporary basis. At the site nobody was aware of the Consent Terms and no key was available at the site office. There is no other occupant in that building. As per the request of the respondent, complainant paid overdue EMIs of Rs. 8212/- to DHFL. The third instalment of compensation of Rs. 40,000/- was payable on 24.08.2018. Grievance

✓
26.8.19

has been made out that compensation has not been paid as per consent terms.

8. There is no challenge to the version of the complainant that respondent has not delivered possession of the flat booked by complainant till today. Also it is the grievances of the complainant that respondent did not pay compensation as per agreement and also did not allot temporary accommodation as per consent terms. There is no challenge to this version from the respondent. Almost 5 years have gone by since the agreed date for possession went by. Still the possession is not in sight. Clearly the respondent has failed to deliver possession as per agreement without justifiable reasons. I therefore answer point No. 1 in the affirmative.

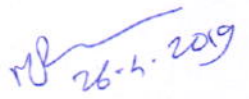
9. Complainant has placed some receipts on record. In the earlier complaint, the complainant alleged that DHFL has disbursed loan of Rs. 9,43,543/-. The complainant paid Rs. 3,47,089/- and registration charges of Rs. 62,464/-. The respondent had undertaken to pay Pre-EMIs to DHFL. (including the registration charges). The complainant claims to have paid Rs. 4,09,553/- & if it is inclusive of Stamp Duty; Complainant will not be entitled to recover Stamp Duty amount, if she is entitled for refund as per Rules. So far as DHFL amount is concerned Respondent will have to repay the amount received with interest as per Agreement. I therefore answer point No.2 in the affirmative and proceed to pass following order.

26.7.19

ORDER

- 1) The complainant is allowed to withdraw from the project.
- 2) The respondent to pay Rs. 4,09,553/- to the complainant except Stamp Duty amount, if included, which can be refunded to the complainant as per Rules, together with interest @ 10.75% p.a. from the date of payments 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: 26.04.2019


(Madhav Kulkarni)
Adjudicating Officer
MahaRERA