

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

COMPLAINT NO: CC006000000078396

- 1) Mukund Gupta  
2) Arti Gupta ... Complainants.

Versus

- 1) Lotus Logistics and Developers Pvt. Ltd.  
2) Sai Estate Consultants Chembur Pvt. Ltd. ... Respondents  
MahaRERA Regn: P51800006403

**Coram:**

Hon'ble Shri Madhav Kulkarni.

**Appearance:**

Complainant: Adv. Namrata  
a/w Karan Bhosale

Respondent: Adv. Prasham Shah  
a/w Rep. Dilip Kumar Dugar

**Final Order**

19<sup>th</sup> November 2019

1. Two complainants/allottees who had booked a flat with the respondents/ promoters seek withdrawal from the project and refund of the amount paid with compensation as the respondent induced them make advance on the basis of incorrect statement.
2. Complainants husband and wife alleged that after going through advertisement given by respondents on 10.06.2018 they booked flat on 9<sup>th</sup> floor in the project of the respondents Unity By Lotus at Versova, Taluka Andheri, Mumbai. The price quoted was Rs. 2,50,00,000/-. Booking amount was Rs. 50,00,000/-. Possession was promised in the year 2019. Complainants came to know that the price for flat on 9<sup>th</sup> floor was Rs. 2,43,00,000/-. Therefore, they opted for Flat No. 1006 on 10<sup>th</sup> floor for the price of Rs. 2,50,00,000/-. Possession was to be handed over by Respondent No.1 by 30.09.2019. Complainants paid Rs. 45,00,000/- vide cheque dated

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14.06.2018. Rs. 5,40,000/- were paid vide cheque dated 11.06.2018. Complainants repeatedly requested respondents to send Draft Agreement for Sale which was finally received. It indicated date for delivery of possession as 30.09.2020 and not 30.09.2019. Complainants sent email dated 18.09.2018 but did not receive any reply. Complainants visited project site and found that no progress was made and the project was at a standstill. Respondents have taken more than 10% of the total cost as advance which is illegal. Complainants are residing in Mumbai on rental basis and they had booked flat on the condition of receiving possession by September 2019. The respondents refused to change the Agreement for Sale. Complainants sent withdrawal letter dated 22.10.2018. It was informed by the respondent that refund of entire money was not possible by email dated 26.11.2018 and 10% will be deducted. Respondents thus misrepresented and induced complainants to advance money. Hence, this complaint.

3. The complaint came up before Hon'ble Member on 05.04.2019. It came up before me on 23.07.2019 and came to be adjourned to 20.08.2019 for plea of the respondents and written explanation by respondents. Respondents had already filed written explanation. On 20.08.2019 arguments for the parties were heard. As I am working at Mumbai and Pune Offices in alternative weeks and due to heavy pendency in this office, this matter is being decided now.

4. The respondents alleged that respondents commenced construction in the said project in December 2015 and completed approximately 76% of the construction in about three years. Complainants booked flat vide application form dated 10.06.2018. Respondents never demanded more than 10% of the price and complainants paid the amounts out of their free will. Advertisement was published by respondents in the Times of India dated 25<sup>th</sup> January 2018 in respect of special scheme introduced in

  
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Association with certain Banks and Financial Institutions under which buyers were entitled to buy a unit in 2018 and take possession in 2019 and pay from the year 2020. The scheme was valid till 14.02.2018. The complainants on the other hand approached on 14.06.2018 through one Shri Devendra Naik from Sai Estate. Also in order to make a case under Section 12 complainants are required to prove that they sustained any loss or damage by reason of alleged incorrect or false statement by Respondents. The revised date for completion is 30.09.2020. All other customers have signed agreements as per draft provided to them. However, complainants have avoided to do so. The complaint therefore deserved to be dismissed.

5. Following points arise for my determination; I have noted my findings against them for the reasons stated below.

| <b>Points</b>  | <b>Findings</b>                    |
|--|------------------------------------|
| 1. Have the respondents induced the Complainants to make advance on the basis of information in advertisement by making incorrect statement thereby inflicting loss to the complainants. | Negative                           |
| 2. Are the complainants entitled to the reliefs claimed?   | <del>Affirmative</del><br>Negative |
| 3. What order?   | As per final order                 |

**Reasons.**

6. Point no. 1, 2

The complainants claim that they came across advertisement put up by respondents and approached the respondents on 10.06.2018. It is not made clear whether advertisement was there in newspaper or it was a brochure. Copy placed on record by them appears to be in brochure form. The description part reads that Lotus Surprising City blip buy live pay offer add. This advertisement has

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been printed in Times of India, Mumbai edition on 25.01.2018. Thus, it is clear that it was an advertisement in the newspaper Times of India dated 25.01.2018. The advertisement reads buy in 2018 and live in 2019 and pay from 2020, save up to Rs. 75,00,000/-. Offer valid till 20.02.2018. In the description page complainants have alleged that advertisement was widely circulated in various media.

7. Complainants have alleged that they issued a cheque for Rs. 5,40,000/- on 11.06.2018 and issued cheque for Rs. 45,00,000/- on 14.06.2018 and thus booked Flat No. 1006 on 10<sup>th</sup> floor in the project Unity by Lotus. It is the contention of the complainants that after lot of persuasion draft agreement was served on them by respondents and the date for delivery of possession was shown as 2020. There is email dated 27.06.2018 asking to revise agreement for sale. It appears that draft was again sent on July 2018. By email dated Oct. 2018, the complainants made a grievance that the date for delivery of possession was extended from 30<sup>th</sup> Sept. 2019 to Sept. 2020. The complainants therefore sought to withdraw from the project. Copy of draft agreement is also placed on record. As per clause 18.1 date for delivery of possession is shown as Sept. 2020.

8. Respondents on their part placed on record copy of application dated 10.06.2018 in respect of booking Flat No. 1006. There is no term about delivery of possession in 2019. Copy of advertisement produced by complainants appears to have been tampered with. Copy placed by respondents clearly reads that the offer to live in 2019 was valid till 14.02.2018. Complainants have failed to prove that due to the false statements made by respondents in their advertisement they were induced to make payment for booking of the flat. There is nothing on record to substantiate the contention of the complainants

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that the offer was valid in June, 2018 when they booked their flat. Consequently, complainants have failed to discharge their burden and are not entitled for compensation under Section 12 of Real Estate (Regulation & Development) Act, 2016. I therefore, answer Point No. 1 & 2 in the negative and proceed to pass following order.

**ORDER**

- 1) Complaint stands dismissed
- 2) No order as to costs.

Mumbai.  
Date: 19.11.2019

*MS signed on 21.11.2019*  
(Madhav Kulkarni)  
Adjudicating Officer,  
MahaRERA