

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

COMPLAINT NO: CC006000000012523

Gautam Pendharkar

... Complainant.

Versus

Boby Sundernath

... Respondent.

MahaRERA Regn: P52000011624

**Coram:**

Hon'ble Shri Madhav Kulkarni.

**Appearance:**

Complainant: Authorized Person

Mr. Sumit C. Kapure

Respondent: Absent

**Final Order**

20<sup>th</sup> August 2019

1. The complainant who had booked a flat with the respondent/ promoter seeks withdrawal from the project and refund of the amount paid with interest as the respondent failed to deliver possession as per agreement.
2. The Complainant has alleged that vide agreement dated 06.06.2014 respondent agreed to sell Flat No. 301 in his project in Albertsville Universe at Village Vihoor, Taluka Murud, Dist. Raigad. Under Clause 26 it was obligatory on the respondent to deliver possession within 30 months, i.e. by 31.12.2016. The respondent has not even started excavation work. The complainant had started making payments relying on the promise given by the respondent and as per demand notices issued by the respondent. As the respondent did not start the work, the complainant decided to sign Cancellation Deed. On 05.01.2018 complainant signed the cancellation format which was <sup>sent to</sup> signed by the respondent and <sup>give</sup> it to the respondent

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on 05.03.2018 at his office. Till this date the complainant has paid Rs. 13,69,844/-, out of which Rs. 2,09,844/- are towards Stamp Duty and Registration charges. The complainant has therefore filed this complaint seeking refund of the amount paid with interest and compensation.

3. The matter came up before me on 24.04.2019. Both parties were present and the matter was adjourned for final hearing to 23.05.2019. On 23.05.2019 on the request of the respondent the matter was adjourned to 21.06.2019 for further arguments. On 21.06.2019 arguments were concluded. As I am working at Mumbai and Pune Offices in alternative weeks and due to heavy pending in this office, this matter is being decided now.

4. It appears that the matter came up before Hon'ble Member on 08.10.2018 and came to be adjourned to 30.11.2018. It came up again on 06.12.2018 and was adjourned to 21.01.2019. On 21.01.2019 the matter was adjourned to 12<sup>th</sup> March, 2019. The respondent had filed application informing that he was unwell. Respondent had committed payment of Rs. 4,00,000/- before 31.12.2018 but paid only Rs. 1.25 lakhs. Respondent was expecting a loan of Rs. 75,00,000/- to Rs. 80,00,000/- and had applied to Canara Bank. On 12.03.2019 the matter came to be transferred to Adjudicating Officer. It appears that on 29.11.2018 Consent Terms were filed and order came to be passed that the complaint therefore stood disposed of.

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

#### Points

1. Has the respondent failed to deliver possession as per agreement without there being circumstances beyond his control?

#### Findings

Negative

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✓ to the complainant causing loss to him? ✓

2. Is the complainant entitled to the reliefs claimed?

Negative

3. What order?

As per final order

**Reasons.**

6. Point no. 1, 2

The complainant has placed copy of Agreement dated 06<sup>th</sup> June, 2014 on record. The respondent had agreed to sell Flat No. 301 in the building Cancer to the complainant for a consideration of Rs. 29,00,000/-. As per clause No. 26 possession was to be delivered within 30 months from the date of the agreement which means by 05<sup>th</sup> December 2017. It is the contention of the complainant that even excavation work was not started. Clearly the respondent was at fault.

7. The matter does not end there. The complainant has signed the cancellation form provided by the respondent and complainant was expecting refund of Rs. 13,69,844/- including flat cost of Rs. 11,60,000/-. The complainant has placed on record his account statement signed by him. Accordingly, on 12.12.2018 Rs. 75,000/- were refunded by the respondent. On 25.02.2019 Rs. 1,00,000/- were refunded by the respondent. Thus, complainant has received refund of Rs. 1,75,000/-. The agreement with the respondent was cancelled by complainant and the cancellation was acted upon by both the parties. Now, what the complainant is seeking is performance of the terms of the cancellation and not compensation for not delivering possession as per agreement. This is not the proper forum to seek such relief and complainant must approach the appropriate forum for

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relief. I therefore answer point No. 1 & 2 in the negative and proceed to pass following order.

**ORDER**

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

Mumbai.  
Date: 20.08.2019

*MP 20.8.2019*  
(Madhav Kulkarni)  
Adjudicating Officer,  
MahaRERA