

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

COMPLAINT NO. CC006000000055369

Siraj Ahmed Khan

..Complainant

Verses

1. M/s. Mahalaxmi Developers.
2. Mrs. Shilpa Parag Thaker
3. Mr. Parag Pankaj Thakker

..Respondent

MahaRERA Regn. No.P52000007555

Coram:

Hon'ble Shri Madhav Kulkarni.

Appearance:

Complainant : Present In person

Respondent : Absent

**ORDER
(Dated 20th March, 2019)**

1. The complainant who had booked the gala in the project of respondent seeks withdrawal from the project and refund of money paid with compensation as respondent failed to deliver the possession of the shop as per agreement.
2. The complainant has alleged that he is in the business of fuel oil. The respondent nos.2 and 3 are the partners of the respondent no.1 and had undertaken construction of building by name Saraswati in Shree Mahalaxmi Residency Project at Survey nos. 85/40, 85/41 and 85/44 at village Talwade, Tal. Karjat, Dist. Raigad and offered gala at shop no. 18 at ground floor admeasuring 33.50 sq. mtr. for a consideration of Rs.20.52 lakhs to the complainant.

3. Agreement for Sale was registered on 25.10.2013. Possession was promised on or before June, 2014. The respondent did not complete the construction and went on seeking more time. The respondent nos. 2 and 3 took the complainant to the site to show that the building was almost completed. In fact, that was not the building nos. 40, 41, and 44 and no construction was undertaken in respect of those buildings. The respondent cheated the complainant. In December, 2014 the respondent nos. 2 and 3 informed that there was little amendment in the original plans and Rectification Deed was required to be executed. Said Deed was executed on 30.01.2015. The respondent assured delivery of possession immediately on completing the building. The complainant is suffering from heart disease since last 3 years. The respondents are not giving firm answers as to when possession will be delivered. The complainant has already paid Rs.19,34,435/-. The complainant spent Rs.82,100/- for stamp duty, Rs.20,520/- towards registration charges, Rs.2,040/- for scanning and Rs.10,000/- as miscellaneous charges. The complainant therefore, seeks to withdraw from the project and refund of Rs.20,49,095/- from the respondents with interest and rent at Rs.20,000/- per month since June, 2014 and Rs.10 lakhs as compensation.

4. The complaint came before the Hon'ble Member and came to be transferred to Adjudicating Officer. On 19.12.2018, when the complaint came up before me both the complainant and respondents were absent. Matter was adjourned for ex-parte hearing to 23.01.2019. On 23.01.2019 arguments for complainant were heard. The respondent continued to be absent. As I am working at Mumbai and Pune Offices in alternative weeks, this matter is being decided now.

20.3.19

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
2. Is the complainant is entitled to the reliefs claimed?	Affirmative
3. What Order?	As per final Order.

REASONS

6. Reasons for Point No.1 and 2. – Allottee as defined under section 2(d) of the Real Estate (Regulations and Development) Act, 2016, (RERA Act, 2016 for the sake of brevity), in relation to real estate project is the person to whom plot, apartment, or building, as the case may be, has been allotted. In the case at hand, the complainant had booked gala i.e. shop in the building being constructed by the respondent. In my opinion, the complainant is very much an allottee.
7. The complainant has placed copy of the agreement dated 15.10.2013 on record. The complainant has submitted that he made payment to the respondent from 11.05.2012 to 25.09.2013, which means that booking was done on 11.05.2012. The agreement does show that complainant booked shop no. 18 in building nos. 40, 41 and 44 by name Saraswati in Shree Mahaalaxmi Residency and the price was agreed at Rs.19,34,435/-. As per the clause No.11, date

for delivery of possession was June, 2014 which could be extended due to the conditions mentioned in the agreement which are usual circumstances or force majeure. The complainant claims to have made payment to the respondent towards purchase of shop and Rs.4,12,261/- are said to have been paid on 11.05.2012. Total amount paid is claimed to be Rs.20,37,055/-. There is no challenge to this version by respondent. It is further contended by the complainant that Rectification Deed was executed on 30.01.2015, obviously because there were errors in the earlier agreement. Copy of each of receipt is not placed on record. It is alleged in rectification document that the approved plan of building nos. 40, 41, and 44 has been slightly modified and there was new approved plan dated 01.04.2014. Earlier shop no. 18 is re-numbered as shop nos. 5 and 6. Consequently, new shop nos. 5 and 6 are agreed to be sold to the complainant. It must be remembered that Rectification Deed was executed after the agreed date of delivery of possession i.e. June, 2014 had already gone by. There is no mention of status of the building in the Rectification Deed.

8. The complainant claims to have issued notices demanding possession on 02.05.2014 and again on 26.12.2017. Copies of notices are placed on record. In the notice dated 26.12.2017, it is alleged that in the month of November, the complainant visited the site just to find that no any development was done. Even though Rectification Deed was executed on 30.01.2015, there was no change in the date of delivery of possession. Consequently, respondent

was duty bound to deliver possession atleast at the time of execution of Rectification Deed. There is no challenge to the version of the complainant that respondent has still not delivered possession. I therefore, answer point No.1 in the affirmative.

9. The price of the shop that was agreed was Rs.19,34,435/-. The complainant claims to have paid Rs.19,34,435/- out of agreed consideration of Rs.20.52 lakhs. The complainant has not placed on record, each payment receipt but common receipt is placed on record showing that Rs.20,37,055/- were received by the respondent. This amount is inclusive of stamp duty and registration charges which come to Rs.1,02,620/-. In the event of cancellation of agreement, complainant will be entitled to refund of stamp duty as per rules. Except that amount he is entitled to refund of the amount alongwith interest as provided under Rule 18 of the Maharashtra Rules. The complainant has claimed rent of Rs.20,000/- per month as well as compensation of Rs 10 lakhs. It must be remembered that shop is at village Talwade, Tal. Karjat, Dist. Raigad and that must be newly developing area, where immediate business prospects may not be that good. Considering all the circumstances the compensation of Rs.1.50 lakhs will be just and proper in my opinion. I therefore, answer point no. 2 in affirmative and proceed to pass following Order.

ORDER

1. The complainant is allowed to withdraw from the project.
2. Respondent to pay Rs.20,32,055/- to the complainant, except stamp duty amount which can be refunded as per rules.

together with interest @10.70% p.a. from the date of payments till final realisation.

3. The respondent to pay compensation of Rs.1.50 lakhs to the complainant.
4. The respondent to pay Rs.20,000/- to the complainant as costs of this complaint.
5. The complainant to execute cancellation deed at the cost of the respondent.
6. The respondent to pay above amounts within 30 days from the date of this Order.

Mumbai
Date : 20.03.2019

20-3-2019
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA