

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

COMPLAINT NO: CC00600000010069

Saket Gothe

... Complainant.

Versus

Hagwood Commercial Developers Pvt. Ltd.

Represented by

Mr. Sudhanshu Chaturvedi

... Respondent.

MahaRERA Regn: P50500004915

Coram:

Hon'ble Shri Madhav Kulkarni.

Appearance:

Complainant: Present in person

Respondent: Representative Mr.

Rahul Rai a/w

Adv. Chaturvedi

Final Order

22nd February, 2019

1. The complainant who had booked a flat with respondent/builder seeks withdrawal from the project and refund of the amount paid to the respondent with compensation.
2. The complainant has alleged that he booked flat No. 1104 in Milano in the Project "Prozon Palms" at Nagpur on 29.10.2014. Agreement for sale was registered on 21.11.2015. Possession was promised in Dec. 2016. Later on the date was changed to Dec. 2017 without the consent of the complainant. Work proceeded at extreme slow speed and false promises were given. It was verbally informed that possession will be delivered in Dec. 2018. Therefore, on 16.07.2018 complainant sent email to respondent informing withdrawal. The details of the price that was fixed and the amount that was paid by complainant are missing in the complaint.

22.2.19

3. The complaint came up before Hon'ble Member on 30.08.2018 and came to be transferred to Adjudicating Officer. On 19th December, 2018 the complainant appeared in person but respondent did not appear. Adv. Pooja Gaikwad appeared for the respondent and sought time. Arguments for complainant were already heard. On 23.01.2019 plea of the respondent was recorded. Respondent also filed written explanation. Arguments for respondents were also heard. As I am working at Mumbai and Pune Offices in alternative weeks, this matter is being decided now.

4. Respondent has alleged that no road is passing through the project. As per Clause 25 (ii) of the agreement there was provision for 30 mtrs. wide D.P. Road passing through the plot. The date for delivery of possession was Dec. 2017 with an extension of 6 months. Due to the reasons beyond the control of the respondent, the respondent applied for extension from MahaRERA. The Aviation NOC granted by AAI, Nagpur was cancelled and revised NOC was applied for. Said NOC is not yet received. The NOC granted in 2012 was cancelled on some technical ground. There was adverse media publicity. Because of it the customers stopped paying the developer. The respondent has sent email dated 15.2.18 to revalidate the NOC. As the respondent's plot is about 41 acres, AAI Nagpur advised respondent to apply for revised aviation NOC building wise. Respondent has not spared any effort for getting that NOC. As per norms of Nagpur Municipal Corporation for applying for Occupation Certificate, Developer must receive all NOCs. The delay has occurred due to force majeure. The complaint therefore deserves to be dismissed.

22-2-19

5. On the basis of rival contentions of the parties 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 flats to the complainant as per agreement without there being circumstances beyond his control?	Affirmative
2. Is the complainant entitled to the reliefs claimed?	Affirmative
3. What order?	As per final order

Reasons.

Point Nos. 1 & 2

6. The complainant claims to have booked flat No. 1104 on 29.10.2014. Registered agreement was executed on 21.11.15. Copy of that agreement is placed on record. The developer is Hagwood Commercial Developers Pvt. Ltd. The respondent mentioned in the complaint is Mr. Anil Singh. The written statement is signed by authorized signatory Mr. Sudhanshu Chaturvedi. As per chart provided by the complainant he paid Rs. 8,00,000/- to respondent on 29.10.2014 and Rs. 5,58,280/- on 23.06.2015. These payments are said to have been made prior to execution of the agreement. The complainant claims to have paid in all Rs. 60,68,351/- towards price of the flat. Further amounts towards VAT; TDS; legal charges; Registration fee; Stamp Duty and Insurance premium are also said to have been paid. The price of the flat mentioned in the agreement is

22-2-19

Rs. 61,91,400/- As per clause 18 of the agreement date for delivery of possession was Dec. 2017 with a further grace period of 6 months. The expected date for delivery of possession was more than 2¹/₂ years after the execution of the agreement. Usual circumstances under which the time was to automatically extend, are mentioned in the agreement.

7. The contention of the respondent is that NOC from Airport Authority which was granted earlier in 2012 was cancelled. The flat booked by the complainant was on 11th floor. The alleged date for cancellation of previous NOC by Airport Authority is 9.8.2017. The letter dated 9.8.2017 shows that NOC was granted for a building of the height of 48 mtrs, i.e. more than 150 feet. It is mentioned that on scrutiny it was established that actual data provided by the respondent at the time of applying for NOC in 2012 is different than the location of existing structure. The expected height of the construction was 300.50 AMSL. Therefore, NOC for height of 348.50 mtrs. AMSL stood cancelled. What is clearly mentioned is that the actual data provided in 2012 by respondent was different than the location of the existing structure.

8. In his representations to Appellate Authority since 13th March 2018, the respondent contended that earlier NOC was valid up to 31.03.2017. Since the construction was not completed, in Jan. 2017, respondent approached AAI for extension of NOC. It is also informed that civil construction of 14 storeyed 4 towers got completed from July 2016 onwards and finishing work was in progress. These are the appeals to the Chairman Appellate Committee. It is clear that the AAI had cancelled NOC on the basis of ground reality after finding that the respondent had changed the location than what was given while

22-2-19

applying for NOC in 2012. Further, the NOC was valid till 31.3.2017 and had the respondent handing over possession to the Flat purchasers, question of extension of time would not have arisen. Therefore, the defence put forth by the respondent that the NOC was cancelled by AAI due to no fault of him cannot be accepted. When the respondent had accepted money from flat purchasers he was required to be careful. He was required to give correct location of the construction while applying for NOC in 2012. It appears that respondent is in possession of big land and wants to carryout construction on as large portion as possible. Obvious intention is to maximise his profit in his business. The motive is not illegal but at the same time the Flat Purchasers cannot be made to suffer especially when they have paid their hard earned money. It was due to lack of diligence on the part of the respondent that issue about NOC from AAI has cropped up. I am therefore of the view that respondent was not justified in delay in delivery of possession. I therefore answer point No.1 in the affirmative.

9. As stated earlier, the complainant neither mentioned the price of the flat that was agreed in the complaint nor mentioned the amount he had paid for reasons best known to him. Now a chart is placed on record showing that Rs. 60,68,351/- were paid towards price of the flat. Further, Rs. 7,21,898/- are claimed towards payment of VAT; TDS; Legal Charges; Registration; Stamp Duty and Insurance. Out of it complainant will be entitled to refund of Stamp Duty as per Rules. Hence, complainant will be entitled to refund of the remaining amount with interest as provided under Rule 18 of Maharashtra Rules

19/2/19

subject to complainant proving the payments. I therefore answer point No. 2 in the affirmative and proceed to pass following order.

ORDER

- 1) The complainant is allowed to withdraw from the project
- 2) Subject to complainant proving the payments of Rs. 67,90,249/- respondent shall repay the amount except the Stamp Duty which can be refunded as per Rules together with interest @ Rs. 10.70% p.a. from the date of payments till final realisation.
- 3) The respondent shall pay Rs. 20,000/- to the complainant as costs of the complaint.
- 4) The complainant to execute cancellation deed at the cost of the respondent.
- 5) The respondent to pay above amount within 30 days from the date of this order.

Mumbai.
Date:22.02.2019


(Madhav Kulkarni)
Adjudicating Officer
MahaRERA