

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

COMPLAINT NO: CC006000000000055313

Sachin Waghmare ... Complainant.

Versus

Nirmal Lifestyla (Kalyan) Pvt. Ltd. ... Respondent.  
MahaRERA Regn: P51800007641

**Coram:**

Hon'ble Shri Madhav Kulkarni.

**Appearance:**

Complainant: In person

Respondent: Representative

Ms. Vaishali Mohite a/w

Adv. Tushar Kadam

**Final Order**

24<sup>th</sup> April 2019

1. The complainant who had booked a flat with respondent/ builder filed this online complaint without giving the necessary details. On 12<sup>th</sup> Nov. 2018 before the Hon'ble Member, the complainant asserted that he was seeking refund of the amount paid with interest.
2. All that is there in the complaint is that complainant booked a Flat on 1<sup>st</sup> May 2011. Possession was promised in June, 2013. The complainant was cheated when in the Agreement date of possession was given as June, 2016. The complainant has paid Rs. 10,45,000/- from personal loan + Rs. 20,00,000/- i.e. about 90% of the price. The Respondent has diverted the fund to the other project. From the Agreement dated 14.03.2013 it can be made out that complainant booked flat No. 1504 in A wing in the project of the Respondent "Glory" at Vadvli, Taluka Kalyan, Dist. Thane. The price agreed was Rs. 30,40,275/-. As per Clause No.15 possession was promised in June,

2016 with a grace period of 6 months. As the Respondent failed to deliver possession as per Agreement, the complainant filed this complaint.

3. The complaint came up before Hon'ble Member-I on 8<sup>th</sup> Oct. 2018 and came to be adjourned to 12<sup>th</sup> November, 2018 when the matter came to be transferred to Adjudicating Officer. The matter came up before me on 18.12.2018. It was adjourned to 22.01.2019 for Plea of Respondent and written explanation. Plea was recorded on 22.01.2019 and written explanation was filed by the respondent. Arguments were heard on 22.02.2019. As I am working at Pune and Mumbai offices in alternate weeks, this matter is being decided now.

4. The Respondent has alleged that it is a Private Limited Company. All the allegations made by the Complainant are denied. The claim for interest is not tenable and the complaint is filed out of excessive greed to earn profits. Respondent has solicited my attention to clause No. 15 and Clause No. 26 of the Agreement as well as Section 8 of MOFA. It is alleged that Hon'ble High Court at Bombay vide order dated 13.04.2015 in PIL No. 182 of 2009 restrained Kalyan Dombivli Municipal Corporation and the State Govt. from approving any proposal/project. The order was modified on 25.04.2016 allowing processing of proposals for construction of building in accordance with the law. The matter was transferred to National Green Tribunal, Pune. From April 2016 to May 2017 there was scarcity of supply of raw materials and there was replacement of Additional Director of Town Planning. The Respondent is therefore entitled for extension of time for delivering possession. The date for delivery of possession has been revised to 31.12.2018. If the complainant wants to withdraw, entire principal

amount, may be refunded with interest @ 9% p.a. till 30.04.2017 and thereafter @ 10.10% p.a.

5. On the basis of rival contentions of parties following points arise for my determination. I have noted my findings against them for the reasons stated below.

Points	Findings
1. Has the respondents 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 entitled to the reliefs claimed?	Affirmative
3. What order?	As per final order

#### Reasons.

##### 6. Point no. 1, 2

As stated earlier the agreement is dated 14.03.2013. The complainant alleged that he booked flat in May 2011 and possession was promised in June 2013. It appears that the complainant had paid Rs. 45,000/- on 19<sup>th</sup> May 2011 while booking the flat. However, there is no document to show that possession was promised in June 2013. As per Agreement dated 14.03.2013, as per Clause 15 date for delivery of possession was June, 2016 with a grace period of 6 months, i.e. latest y 31.12.2016. There is no dispute that possession has not been delivered till today.

*h  
7-11-19*



7. As per defence put forth by Respondent there was order of Hon'ble High Court prohibiting KDMC from approving any proposal/project. This order was passed on 30.04.2015. In the case at hand booking was done in the year 2011 and Agreement was executed in the year 2013. There is a clear mention in the Agreement that Promoters have got prepared and got sanctioned revised layout from KDMC. How the order of Hon'ble High Court affected the work of the respondent is not made clear. The defence appears to be taken just for the sake of defence. The reason behind the litigation must have been illegal sanction of projects by KDMC. The respondent cannot undertake any illegal activity and must suffer the consequences if he undertakes such an activity. Again vague defence has been raised about non-availability of steel, cement and other building materials. There is nothing on record to substantiate such a defence. Consequently, it will have to be held that the respondent failed to deliver possession to the complainant as per agreement without there being circumstances beyond his control. I, therefore, answer Point No.1 in the affirmative.

8. The Complainant claims to have been paid Rs. 25,54,472/-. As per Agreement the price of flat is Rs. 30,40,275/- including the price of three Car parking. The complainant claimed that Rs. 39,813.00 were paid on 05.07.2011 by cheque which was not deposited by the Respondent. Again Rs. 1 lakh were paid on 23.01.2013. These two figures are missing from the statements filed by complainant himself. Therefore, Complainant will be entitled to Rs. 25,54,475/- except the Stamp Duty, if included which is

refundable as per Rules together with interest as provided under Rule 18 of Maharashtra Rules. 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) The respondent to refund Rs. 25,54,472/- to the complainant except Stamp Duty amount if included which can be refunded as per Rules, together with interest at the State Bank of India's highest marginal cost of lending rate which is at present 8.75% p.a. plus 2% i.e. 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: 24.04.2019

  
(Madhav Kulkarni)  
Adjudicating Officer  
MahaRERA