

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

COMPLAINT NO: CC006000000023438

Shailesh Kishorbhai Kakrecha ... Complainant.

Versus

- 1) M/s. Petersa Realtors
  - 2) Mrs. Santana R. D'Souza
  - 3) Mr. Robert Mathew D'Souza
  - 4) Mr. Victor Lobo ... Respondent.
- MahaRERA Regn: P518300032873

**Coram:**

Hon'ble Shri Madhav Kulkarni.

**Appearance:**

Complainant: In person with Advocate

Respondent: Adv. V.V. Kaney

**Final Order**

10<sup>th</sup> October, 2018

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 interest and compensation.
2. In fact, the initial prayer was for award of compensation till the possession was delivered. When the matter came up before Hon'ble Chairperson on 20<sup>th</sup> April, 2018 the complainant expressed that he did not want to continue in the project and wanted to withdraw with compensation and interest.
3. The complainant alleged that respondent No.1 is a partnership firm and respondent No. 2 to 4 are its partners and known to the complainant. The complainant booked flat No. A-201, 2<sup>nd</sup> floor

admeasuring 498 sq.ft. in the project of the respondent named Gavdevi Krupa at Village Eksar, Taluka Borivali, Mumbai for a consideration of Rs.57,54,000/-. The complainant issued <sup>to</sup> cheques for Rs. 15 lakhs dated 14.7.2014 and the amount has been paid to the respondent. The respondent issued letter of allotment to the complainant dated 15<sup>th</sup> July, 2014. In the last paragraph of that letter the respondents promised to hand over possession of the flat in May 2016. At the instance of the respondents on 22.7.2014, the complainant paid Rs.1,77,000/- as Service Tax. On 23<sup>rd</sup> July 2014, the complainant paid Rs.32,8000/- + Rs. 2,87,000/- + Rs. 20,000/- towards stamp duty, registration charges and broker fee. The complainant kept pursuing with the matter. Clause 7 of the agreement also shows that date of delivery of possession was 31.05.2016. The respondents failed to deliver possession as per agreement. The complainant issued notice through Advocate on 02.07.2016. The respondents vide reply alleged cheating and mis-appropriation and the story of one estate broker Shri Bipin Sen. The respondents are therefore liable to pay Rs. 98 lakh including interest @ 21% p.a.

4. The respondents have resisted complainant by filing written explanation on 1<sup>st</sup> August 2018. The respondents are seeking declaration that the agreement is null and void; <sup>in civil court</sup> By hatching conspiracy with Mr. Bipin Sen, complainant has committed offence of cheating and criminal breach of trust. The respondents have already filed a complaint with MHB Police Station in that respect. In fact, Estate Broker, Mr. Bipin Sen had approached the respondent No. 3 for purchasing flat No. A-201 in the proposed construction. Mr. Bipin Sen represented that complainant was his close friend and requested to

give concessional price and assured to make instant payment, by way of consideration in lieu of the said flat Mr. Bipin Sen was aware of dispute between partners and arbitrator appointed by Hon'ble High Court Mr. Shailesh Shah. Not knowing the ill intention of complainant and Mr. Bipin Sen the respondent executed agreement on 14<sup>th</sup> July 2014. The complainant paid Rs.15 lakhs by RTGS in Bank account of the respondent in Bank of India, Borivali (West) Branch. The complainant immediately induced respondents to return Rs. 15 lakhs as a friendly loan for one month. Respondent No.3 transferred Rs. 15 lakhs to the complainant. The complainant also induced respondent No.2 to transfer Rs. 15 lakhs in the account of Mr. Bipin Sen after Mr. Bipin Sen undertook to return the amount within one month. Mr. Bipin Sen on 14.7.14 itself within 30 minutes transferred Rs 15 lakhs in the bank account of his concern M/s. Diamond Infra. The respondent No.2 asked Mr. Bipin Sen to return amount of Rs. 15 lakhs after one month. But he told that the amount was taken by complainant on 14.7.14 itself through RTGS transfer. Same amount was transferred by complainant in the account of the respondent. Thus, fraud was played by Mr. Bipin Sen. The complainant had paid only Rs. 15 lakhs to the respondent but fraudulently obtained 2 receipts. The complainant did not pay Rs. 30 lakhs as alleged. The respondents do not admit letter of allotment dated 15<sup>th</sup> July 2014. The same was obtained by fraud. Even the agreement of sale dated 23<sup>rd</sup> July 2014 is tampered and gaps are filled with pen without counter signature of respondents. The respondents did not agree to deliver possession on 31.5.2016. There was dispute between erstwhile partners of the respondent no. 1 and arbitrator came to be appointed. As per MahaRERA website date of

delivery of possession is 31.12.2020. The complaint therefore deserves to be dismissed.

✓ 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. Have the respondents proved that the complainant Fraudulently got executed agreement from them? Negative
2. Have the respondents failed to deliver possession of the flat to the complainant as per agreement? Affirmative
3. Is the complainant entitled to the reliefs claimed? Affirmative
4. What order? As per final order

### Reasons.

✓ 6. Point no. 1 to 3 Shri I.A. Shaikh, learned counsel for complainant and Shri V. V. Kaney, learned counsel for respondents made submissions on expected lines. It was submitted by Shri Shaikh that Mr. Bipin Sen has not been made party to this proceeding. The respondents have executed agreement in favour of the complainant. Shri Kane on the other hand pointed to Clause 21 of the agreement and also complaint filed with Senior Police Inspector. It is alleged that respondents give Rs. 15 lakhs to Mr. Bipin Sen as loan and Mr. Bipin Sen transferred that amount to complainant. The complainant has paid the same amount to the respondent by playing fraud. The

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date of delivery of possession in the agreement is put by hand and it is not done by respondents.

✓p. There is no dispute that complainant had approached respondents on 14<sup>th</sup> July 2014. The complainant has placed on record 2 receipts issued by respondents on that date each for Rs. 15 lakhs. Both the receipts show that the amounts were transferred by RTGS. Both receipts No. 188 and 189 show that the amount came from Greater Bank. The letter of allotment issued by respondents on 15<sup>th</sup> July 2014 also shows that amount of Rs.30 lakhs was received and Rs.27,54,000/- was the balance payment. Rs. 1,77,000/- were paid on 22.7.14 which is clear from the receipt issued and that was the amount of service tax. Agreement for Sale dated 23.7.14 is also placed on record and it acknowledges receipt of Rs. 30 lakhs. As per clause 7 date of delivery of possession is 31.5.2016. The month December has been scored out and month May has been written. The date is in the handwriting and so are many other entries in handwriting.

✓g. The defence of the respondents is that one Mr. Bipin Sen was the man through whom the complainant approached the respondent. On 14.7.14, the said Mr. Bipin Sen sought loan of Rs. 15 lakhs from respondents. He gave that amount to the complainant and complainant has paid the same amount to the respondent. Thus, respondents have been cheated. The respondents do not dispute that they received Rs.15 lakhs from the complainant through RTGS and that was the amount of the complainant. Grievance of the respondents is that they gave hand loan to Mr. Bipin Sen of Rs. 15 lakhs who in turn gave that amount to complainant who in turn



made the second payment of Rs. 15 lakhs to the respondents. Thus a fraud was played on the respondents. There is no dispute that Rs. 15 lakh came to the account of the respondents from the complainant twice on 14.7.14. If the respondents have given loan to Mr. Bipin Sen, the respondents can very well recover the amount paid to Mr. Bipin Sen. Receipt of Rs. 30 lakhs from complainant is acknowledged by respondents number of times. Therefore, they cannot put blame on the complainant for the dispute with Mr. Bipin Sen. Moreover, Mr. Bipin Sen is not joined as a party nor he was summoned as a witness. The respondents have failed to prove that the complainant played a fraud on them. I therefore answer point no. 1 in the negative.

8. ✓ The respondents have also failed to prove that complainant got executed agreement dated 23.7.14 by playing fraud. The said story cannot be believed. Respondents do not have grudge in respect of handwritten words and figures in the agreement except date of delivery of possession. They do not have any explanation why they did not write the <sup>date of</sup> delivery of possession in the agreement. Even if it is assumed that the month was changed from December to May by complainant still the fact remains that date of delivery of possession was 2016. Admittedly respondents have not delivered possession to the complainant and they are claiming date of delivery of possession as 31<sup>st</sup> December 2020. Clearly the respondents have caused breach of terms of agreement in respect of delivery of possession of the flat.

9. ✓ The complainant claims to have paid Rs. 32,29,800/- inclusive of stamp duty. In the event of cancellation of agreement complainant will be entitled to refund of stamp duty. He will be entitled to

refund of balance amount together with interest as provided under Rule 18 of MahaRERA Rules. I therefore answer point No. 2 & 3 in affirmative and proceed to pass following order.

### ORDER

- 1) The complainant is allowed to withdraw from the project
- 2) The respondent to pay Rs. 32,29,800/- except stamp duty which is refundable to the complainant together with interest at the State Bank of India's highest MCLR as on today plus 2% from the date of receipt of those amounts till realisation.
- 3) The respondent to pay Rs. 25,000/- 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: 10.10.2018

  
(Madhav Kulkarni)  
Adjudicating Officer,  
MahaRERA