

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

COMPLAINT NO: CC006000000055405

KHADIJA MUFFADDAL DOHADWALA ... Complainant.

Versus

GOLDSTAR REALTORS ... Respondent.
MahaRERA Regn: P99000006550

Coram:
Hon'ble Shri Madhav Kulkarni.

Appearance:
Complainant: Present in person
Respondent: Absent

Final Order
26th February, 2019

1. The complainant, wife with husband had booked a flat with the respondent / builder seeks withdrawal from the project and refund of the amount with interest.
2. The complainant has alleged that he booked flat No. 301 in Bldg. No. 2 in the project "Colours Discovery" at village Kambalgaon in Palghar District undertaken by the respondent on 30th Oct. 2014. Agreement for sale was registered on 20.11.014. Till this date complainant has paid Rs. 7,53,980/- inclusive of Service Tax and VAT. The respondent had promised to deliver possession of the flat by 31.03.2017 orally. However, no date was mentioned in the agreement. There is hardly any progress in the work at site. Hence, complainant has filed this complaint.
3. The matter came up before the Hon'ble Member on 10.10.2018. The complainant was present and respondent was absent. The matter came to be transferred to Adjudicating Officer. On 19.12.2018 complainant appeared before me but respondent failed to appear. The

matter was adjourned to 23.01.2019 for Exparte hearing. On 23.01.2019 arguments for complainant were partly heard. Further arguments were heard on 24.01.2019. As I am working at Mumbai and Pune Offices in alternative weeks, this matter is being decided now.

4. 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 entitled to the reliefs claimed?	Affirmative
3. What order?	As per final order

Reasons.

5. Point no. 1 & 2 The complainant has placed on record copy of the agreement dated 20.11.2014. Accordingly, Flat No. 301 in building No.2 in the project "Colours Discovery" was agreed to be sold to the complainant for a consideration of Rs. 14,52,000/-. Clause No. 13 which was supposed to give date for possession has been kept blank. The complainant has alleged that orally the respondent promised to deliver possession by 31.03.2017. This version of complainant has remained un-challenged. Consequently, it will have to be held that the respondent failed to deliver possession of the flat to the complainant as per agreement without there being circumstances beyond his control. I therefore answer point No.1 in the affirmative.

6. The complainant claims that he has paid Rs. 7,53,980/-. Complainant has placed on record following receipts.

Sr. No.	Date	Amount (In Rupees)
1	30.10.2014	51,000/-

Handwritten signature and date 20.2.19

2	10.11.2014	3,84,600/-
3	10.11.2014	13,460/-
4	10.11.2014	14,520/-
5	19.01.2017	5,200/-
6	19.01.2017	1,40,000/-
7	05.05.2017	1,45,000/-
Total:		7,53,780/-

The total comes to Rs. 7,53,780/-. If stamp duty amount is included in it complainant will not be entitled to the stamp duty amount which can be refunded as per Rules. Complainant will be entitled to refund of rest of the amount. 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 repay Rs. 7,53,780/- to the complainant except stamp duty which can be refunded as per rules, if included in it, together with interest @ 10.70% p.a. from the date of payments till final realisation as provided under Rule 18 of Maharashtra Rules.
- 3) The respondent to pay Rs. 20,000/- to the 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: 26.02.2019


(Madhav Kulkarni)
Adjudicating Officer,
MahaRERA