

BEFORE THE ADJUCATING OFFICER WITH
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC0060000000022947

Sandeep Shivraj Jadhav

... Complainant

Versus

Rahul Excellence

... Respondent.

MahaRERA Regn No. : P51700012698

Coram: Shri Madhav Kulkarni,
Hon'ble Adjudicating
Officer.

Appearance:

Complainant: Sandeep Jadhav

Respondent: Advocate present.

ORDER

(Date: 1st August, 2018)

1. The Complainant who had booked a flat with the builder / Respondent, seeks withdrawal from the project and refund of the money paid to the Respondent.
2. As usual, the proforma of complaint lacks the necessary details as to the name of the project and the number of the flat, the price that was agreed, the amount that was paid and the agreed date for delivery of possession. These details are required to be fished out from the documents that are annexed to the complaint. The Agreement of Sale is dated 5th May 2017 and is in respect of Flat No. 104 in Building No. 2 from Rahul Excellence at Village Ambarnath

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in Dist. Thane having carpet area of 675 sq.ft. The price agreed was Rs.28 Lakhs. The date for delivery of possession is given as 31st of December, 2017. The grievance of the Complainant appears to be that the Respondent has not delivered possession as per Agreement. The Complainant claims to have paid Rs.20 Lakhs by cheque and Rs.4.60 Lakhs by way of Bank Loan. Present complaint is filed for refund of the amount paid as Complainant is no more interested in the Project.

3. The Respondent has resisted the complaint by filing written reply on 12.6.2018. The name of the Respondent given in the complaint is 'Rahul Excellence'. The name of the Builder appears to be 'Bagaria Realty'. The reply is signed by Smt. Saroj Shrivankumar Bagaria. She claims to be sole Proprietor of the firm. She has alleged that initially the project was being handled by her late husband Shrivankumar who died on 1st of December, 2016. Since then, her son looks after the project. It is admitted that the Complainant booked Flat No. 104 for a price of Rs.28 Lakhs vide Agreement dated 4th of May, 2017. It is alleged that as per RERA record, date of completion of project is December, 2018. Now the decision related to completion of the project is in the hands of the son. The Complainant used to call the son and the staff at midnight causing irritation. On the other hand, no rude replies were given to him. The project is almost complete. The Respondent is ready to provide alternate accommodation to the Complainant in a Building immediate next to the project. As per clause 58 of the Agreement, the Complainant wants to withdraw from the project, Promoter is entitled to forfeit 20% of the value of the Agreement as paid by Complainant. The Respondent is ready to pay Rs.26,05,500/- by deducting Rs.5,60,000/-. Under clause 58 of the Agreement the Respondent is entitled to with hold the refund till the flat is sold to another prospective purchaser.

1.3.2018

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

<u>Points</u>	<u>Findings</u>
1. Has the Respondent committed Default in handing over the Possession of the flat as per Agreement ?	Yes
2. Is the Complainant entitled for? Refund of money?	Yes
3. What Order?	As per Final Order

REASONS

5. Point 1 & 2: The Complainant has placed the Agreement dated 4th May, 2017 on record. Present complaint has been filed on 26th of January, 2018 i.e within eight months since execution of Agreement. As per clause 6 of the Agreement date of delivery of possession was 31st of December, 2017. It means that the project must have been in advanced stage when the Complainant booked the flat.
6. The Complainant appears to have paid Rs.5 Lakhs on 11th of February, 2017 and Rs. 5 Lakhs on 15th of February 2017 and Rs. 10 Lakhs on 3rd of March, 2017 which is clear from the receipts produced. On 27th of May, 2017, he appears to have paid Rs. 4,60,000/- vide cheque which appears to be a Bank Loan amount. On 3rd of March, 2017, he appears to have paid Rs.10 Lakhs by RTGS. As stated earlier, the Agreement shows the date of delivery of possession as 31st of December, 2017. On the other hand, the Complainant submitted that the possession was to be delivered in May, 2017 which is not in conformity with the terms of the Agreement.

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7. Anyway, the Respondent has not delivered possession even on 31st of December, 2017 and has committed breach of terms of Agreement. Satisfactory reasons for not complying with the terms of Agreement are not forthcoming. It appears that Shri Shravankumar Bagaria had died on 1st of December, 2016. The present transactions were effected thereafter. Maybe that the Complainant was not an expert in the business. However, he was required to fix the date of delivery of possession by taking into consideration all the factors. I repeat that the project must have been in advanced stage when the flat was booked by the Complainant. Therefore, it was incumbent upon the Respondent to comply with the terms of Agreement. On the failure of the Respondent to deliver possession as per terms of the Agreement, the Complainant has approached this office.
8. Clause 58 of the Agreement provides that for any reason whatsoever, if the Purchaser terminates the Agreement, he shall be entitled to refund of same price by forfeiting 20% of the value of the Agreement. In my opinion, this term is binding on the Complainant. Therefore the Complainant is entitled to be paid Rs.20,45,500/- by deducting Rs.5,50,000/- from the total payment of Rs.26,05,500/- I, therefore answer on point Nos.1 & 2 in the affirmative and proceed to pass following order:-

ORDER

1. The Respondent shall pay the Complainant Rs. 20,45,500/- together with interest @ the State Bank of India highest Marginal Cost of Lending Rate plus two percent per annum prevailing as on date, which is refundable minus stamp duty which can be recovered back, from the date of payment till actual realisation.
2. The Respondent shall pay costs of Rs.25,000/- to the Complainant.

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3. The Respondent shall pay the above amount within 30 days from the date of issue of this order.


(M. V. Kulkarni)
Adjudicating Officer, MahaRERA
Mumbai.

Place: Mumbai

Date: 1st August, 2018.