

**BEFORE THE
MAHARSHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI**

COMPLAINT NO. CC006000000055852

Chitralekha Mhatre

..Complainant

Vs.

Bhoomi & Arkade Associates

..Respondent.

MahaRERA Regn. No. P99000007415

CORAM: Hon'ble Shri Madhav Kulkarni.

Appearance :

Complainant : Present in person

Respondent : Absent

ORDER

(Dated 18th March, 2019)

1. The complainant who had booked a flat with the respondent/builder, seeks withdrawal from the project and refund of the amount paid, with compensation as the respondent failed to deliver the possession of the flat as per agreement.
2. The complainant has alleged that she had booked flat No. K-501 in the project of the respondent known as Acropolis-1, at Vasai-Virar, Dist. Palghar admeasuring 368.58 sq. ft. for a consideration of Rs.26.22 lakhs. Respondent executed Agreement on 08.11.2014. Respondent promised to deliver possession in the year 2015. In fact, early date of possession was given as 31.12.2014. The complainant has paid more than 80% of the amount.
3. Building stood far from completion even in December, 2015. The respondent has not handed over possession till today. The exact

18.3.19

amount of payment by the complainant to the respondent is missing in the complaint.

4. The complaint came up before the Hon'ble Chairperson on 15.10.2018 and it came to be transferred to Adjudicating Officer. The complaint came up for hearing before me on 20.12.2018. The respondent's representative was present. The matter was adjourned for recording plea and filing ~~plea~~ written explanations to 24.01.2019. Though the plea could be recorded, the respondent failed to submit written explanation. Arguments in the matter were heard on 22.02.2019. As I am working at Mumbai and Pune Offices in alternative weeks, this matter is being decided now.
5. 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 the possession of the flat to the complainant as per the agreement, without there being circumstances beyond his control?	Affirmative
2 Is the complainant is entitled to the reliefs as claimed ?	Affirmative
3 What Order?	As per final Order.

REASONS

6. **Point Nos. 1 & 2** - In the first instance, the complainant did not place copy of the agreement on record. Later on copy of the agreement was placed on record. Vide Agreement dated 08.11.2014 flat No. 501 in K wing in the project Acropolis-1 was agreed to be sold to the complainant for a total consideration of Rs.26.22 lakhs by the respondent.
7. As per clause no. 8 of the agreement, early date for possession was December, 2014 and late date for possession was

31.12.2015. The respondent has failed to handover the possession as per agreement without there being circumstances beyond the control. I therefore, answer point no. 1 in affirmative.

8. As per the letter dated 01.06.2017, the respondent received payment from the complainant of Rs.24,64,680/- and amount of Rs.72,925/- towards Service Tax and Rs.26,220/- towards VAT and Rs.1,83,700/- as stamp duty and registration charges. Out of it, the complainant will be entitled for refund of stamp duty as per the rules and that amount needs to be deducted. Therefore, the complainant is entitled to recover the balance amount together with interest as per the 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. Respondent to pay Rs.27,47,525/- to the complainant except stamp duty, which can be refundable as per rules together with interest @10.70% p.a. from the date of payments till final realisation.
3. The respondent to pay Rs.20,000/- to the complainant at costs of this complaint.
4. The complainant to execute cancellation deed at the cost of the respondent.
5. The respondent to pay above amounts within 30 days from the date of this Order.

Mumbai

Date : 18.03.2019

18-3-2019
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA