

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

COMPLAINT NO: CC006000000044235

Suresh Varlani

... Complainant.

Versus

Anil Kursija

... Respondent.

MahaRERA Regn: P51700008216

**Coram:**

Hon'ble Shri Madhav Kulkarni.

**Appearance:**

Complainant: In person

Respondent: Representative Shri Sunil  
Dongare

**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 as the respondent failed to deliver the possession of the flat as per agreement.
2. The complainant has alleged that he had booked Flat No. 1704 in Building No.3 in the project of Respondent Trinity Oasis. The complainant paid Rs. 22.5 lakhs to the respondent. The respondent had agreed to deliver the possession on 31.03.2015. The respondent has not delivered possession of the flat and therefore complainant filed this complaint to recover interest @24% p.a. on the amount paid to the respondent.
3. The respondent has resisted the complaint by filing his say. The respondent has alleged that complainant wanted to make investment and invested amount for a period of five years. As a security the respondent has executed agreement for sale on 29<sup>th</sup> September 2014. At the time of agreement, no plinth was completed. Construction of 29 storeys cannot be completed

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within 6 months, i.e. by 31<sup>st</sup> March 2015. The complainant cannot file the present complaint. He did not pay Service Tax or VAT amount. No cause of action arose to file this complaint. The complainant has filed false complaint and therefore it deserves to be dismissed.

4. 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 respondent proved that the complainant Was a money lender and did not intend to Purchase a flat?	Negative
2. Has the respondent 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.

5. Point no. 1, 2 & 3 The main thrust of the defence is that the complainant never intended to purchase flat but it was a money lending transaction. There is no dispute that the construction has not been completed and consequently possession of the flat is not given. The complainant on his part has placed the agreement dated 29<sup>th</sup> September 2014 on record. As per clause 11 date of delivery of possession is 31.03.2015. No doubt the period for delivering possession is very short, i.e. about 6 months. However, such delivering of possession if construction is at advanced stage in such very short period is not

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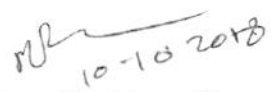
impossible. We do not know what was the stage of construction when agreement was executed.

6. There is nothing on record to show that complainant made investment with the respondent. Consequently, respondent fails to prove that it was a loan transaction. On the other hand, the complainant has proved that respondent failed to deliver possession of the flat as per agreement. The complainant is therefore entitled to refund of his amount. I therefore answer to Point No.1 in the negative and nos. 2 & 3 in the affirmative and proceed to pass following Order.

### ORDER

- 1) The complainant is entitled to withdraw from the project
- 2) The respondent to pay Rs. 22.5 lakhs to the complainant together with interest at the State Bank of India's highest marginal cost of lending rate which is at present 8.65% plus 2% from the date of receipt of those amounts till realisation.
- 3) The respondent to pay Rs. 25,000/- as cost 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