

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY

CORUM : Shri M.V. KULKARNI, ADJUDICATING OFFICER, PUNE
AT : PUNE

Complaint No. CC005000000011498

Seema Pritesh Dugad,
R/at Flat No.37, Aditya Residency,
Mitra Mandal Chowk, Parvati,
Pune-411 009.

.. Complainant

Versus

Samarth Landmark,
S. No.25/20, Laxmichandra,
Near Padamji Park, Thergaon,
Pune-411 033.

.. Respondent

Appearances :-

Complainant : In person.
Respondent : Mr. Palve Gurunath.

JUDGMENT

(Delivered on 05.12.2018)

1. The Complainant, who had booked a Flat with the Respondent/Builder, seeks withdrawal from the project and refund of the amount paid.
2. The Complainant has alleged that she booked flat No. 504 with the Respondent. As usual, the other necessary details regarding the transaction are missing in the complaint and are required to be fished out from the documents on record. The complainant seeks refund of amount of Rs. 62,61,974/- by admitting that Rs. 8,00,000/- were repaid by the Respondent, but alleging that he failed to pay Rs. 2,00,000/-, as agreed in

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the conciliation proceedings. The purchase agreement is dated 12th July, 2013. The project is at Thergaon within limits of Pimpri-Chinchwad Municipal Corporation by name Shantai Park. Flat N. 504, admeasuring 419 sq. Ft. + 63 sq ft. terrace was agreed to be sold to complainant for a consideration of Rs. 30,00,000/- inclusive of price of flat of Rs. 28,20,700/-. As per clause 7, the developer agreed to deliver possession of the flat to the purchaser at the time of conveyance. Under clause 14, developer was to execute conveyance within a period of two years from the completion of project. The complainant has alleged that there is delay in handing over possession.

3. On 13.06.2018 when the matter came up before the Hon'ble Member, MahaRERA, Mumbai, the Respondent was absent and the matter came to be transferred to Adjudicating Officer. On 27.07.2018 written explanation was filed by Respondent. On 10.08.2018 Respondent's representative Gurunath Pallav appeared. Arguments were heard on 10.08.2018, but the parties wanted to settle the matter among themselves. It appears that earlier matter was referred to Conciliation Forum, where a compensation of Rs. 10,00,000/- was agreed by Respondent to be paid to the complainant. The Respondent has in written explanation alleged that he paid first instalment of Rs. 8,00,059/- on 21.04.2018 via NEFT and second instalment of Rs. 2,00,025/- on 19.05.2018 via NEFT. Rs. 25,025/- were also paid as cost of the complaint. Possession was agreed to be delivered on or before 31.01.2019. It was therefore, prayed to close the complaint.

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

POINTS

FINDINGS

- | | |
|--|------------------------|
| 1) Has the Respondents failed to deliver possession of the flat to the Complainant as per terms of Agreement without there being reasons beyond it's control ? | .. In the Negative. |
| 2) Is the Complainant entitled to reliefs claimed ? | .. In the Negative. |
| 3) What order ? | .. As per final order. |

REASONS

5. **POINT Nos.1 and 2** :- As stated earlier in the complaint, the complainant did not mention what was the date fixed for delivery of possession of the flat. A settlement arrived at in conciliation proceedings is admitted. It is also admitted that possession was promised by Jan., 2019 and de-mortgage of flat for six months was agreed. The cheque for settled amount for Rs. 10,00,000/- dated 20.04.2018 is said to have been dishonoured. However, admittedly Rs. 8,00,000/- were paid, but the balance amount of Rs. 2,00,000/- were allegedly not paid. The grievance is about the charge of Seva Vikas Co-op. Bank Ltd., Bhosari. At the argument stage the complainant submitted that the date of possession was 2015. Payment of Rs. 10,00,000/- is admitted. The grievance is about lien of the bank created by Respondent. On behalf of Respondent on the

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other hand, it is submitted that date for delivery of possession was agreed as 31st Jan. 2019.

6. The Conciliation Report dated 23.03.2018 is placed on record. Conciliators were Mr. Amar Manjrekar from CREDAI, Pune and Mr. Sanjeev Kulkarni. Accordingly, promoter offered Rs.10,00,000/- as settlement amount payable on 20.04.2018 and possession of flat by Jan. 2019 and de-mortgage of property within six months i.e. by 20.10.2018. It appears that the cheque for Rs. 10,00,000/-, dated 20.04.2018 issued by the Respondent bounced back. Consequently, the complaint, dated 05.05.2018 came to be filed. Now admittedly Rs. 10,00,000/- have been received by the complainant. Now the only grievance that is left is that mortgage has not been redeemed by the Respondent.
7. The complainant has alleged that charge of Seva Vikas Co-op. Bank, Bhosari, Branch Pimpri is kept on the flat in question. The charge was required to be removed before 20th October, 2018. That dispute is not within the purview of the Adjudicating Officer. The complainant was required to pursue proper remedy in that respect.
8. As stated earlier, the agreement shows that the flat was agreed to be sold to the complainant for Rs.28,20,700/-. The complainant was required to deposit Rs. 30,00,000/-. No receipt in respect of any payment is placed on record. The complainant is claiming Rs. 62,61,974/- and the basis for the same is not understood. Under clause 11 of the agreement, the developer was to give possession of the flat within 15 days after completion of the construction. Under clause 7


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possession was to be given at the time of conveyance. Under clause 14 developer was to execute conveyance within 2 years from completion of the project. No doubt, five and half years have gone by and it is quite a long period for completion of a project and delivery of possession since execution of agreement. However, conciliation report shows that parties agreed that possession will be delivered by Jan. 2019. That date has not yet arrived. Consequently, breach of term of agreement as to delivery of possession has not occurred. This complaint is premature. Therefore, complainant is not entitled to the reliefs claimed, ^{therefore} As there is no breach of term of agreement to deliver possession, I answer Point No.1 and 2 in the negative and proceed to pass following order.

ORDER

- 1) The complaint is dismissed.
- 2) No order as to costs.

Pune
Dated :- 05/12/2018


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