

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

COMPLAINT NO: CC006000000056608

- 1) Suresh Khandewale
- 2) Baban Shewale

... Complainants.

Versus

Sanjay Mahendra Gupta
MahaRERA Regn: P52000006841

... Respondent.

Coram:

Hon'ble Shri Madhav Kulkarni.

Appearance:

Complainant: In Person

Respondent: Adv. Om

Bhanushali

Final Order

20th August 2019

1. Two complainants who had booked separate flats with the respondent/ promoter seek withdrawal from the project and refund of the amount paid with interest as the respondent failed to deliver possession as per agreement.
2. The Complainant Mr. Suresh Kandewale has alleged that along with his wife Smt. Sujata he booked Flat No. 203 in "C" Wing and Shri Baban Shewale along with his wife Smt. Manisha Shewale booked flat No. 202 in "C" Wing in the project of the respondent. As usual online complaint lacks all the necessary details as to location of the project, price that was agreed, date of booking/agreement. A vague statement is made that 80% of the money has been paid without giving the exact amount paid by complainants. These are the basic pleading which most of the complainants

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avoid to make. The complainants have alleged that as per agreement the date for possession was December 2017. The project is stalled and there is no work in progress. Complainants have lost all hopes with the respondent as respondent is not responding. Therefore, complainants have filed this complaint. Since Shewales have booked separate flat in the same project but their relationship with Mr. Suresh Kandewale is not made clear, in my opinion Shewales are required to pay separate court fee as they do not come within the definition of person under Real Estate (Regulation & Development) Act, 2016 along with complaint Mr. Suresh Kandewale. As per the say of the Respondent ~~that~~ the project is at Neral, Taluka Karjat, Dist. Raigad. Complainant Mr. Suresh was to pay Rs. 15,45,000/- for Flat No. 203 in the Project "Sai Exotica" vide interest free EMI scheme of 36 monthly instalments of Rs. 17,167/-. Agreed date for possession was 24 months from the date of agreement or till 2017. Agreements were executed on 07th Nov. 2015.

3. The Complaint came up before me on 26.02.2019. Plea of the respondent was recorded. The matter was adjourned for written explanation by respondent to 27.03.2019. On 27.03.2019 the respondent filed written explanation. The matter was adjourned for final hearing to 26.04.2019. On that day as complainant was absent, the matter was adjourned to 21.06.2019. On that day the arguments for both the parties were heard. As I am working at Mumbai and Pune Offices in alternative weeks and due to heavy pendency in this office, this matter is being decided now.

4. In his say, respondent Mr. Sanjay Gupta has alleged that along Smt. Archana Gupta, he is carrying on Real Estate business and has undertaken project "Sai Exotica" at Village Neral, Tal. Karjat, Dist. Raigad. One Shri Gajanan Dabre and Shri Ashok Dabre are the owners of the land and have executed Power of Attorney for the development. Respondent

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applied for N.A. permission and got it on 26.02.2015 from Collector, Raigad. Respondent got sanctioned building plan from Gram panchayat, Neral on 09.10.2015. Respondent agreed to sell flat No. 203 to complainant Mr. Suresh Kandewale, in the project "Sai Exotica" for a consideration of Rs. 15,45,000/- vide interest free EMI scheme of Rs. 17,167/-per month for 36 months. Likewise, respondent agreed to sell flat No. 202 to Mr. Baban on similar terms. Agreements were executed and registered on 07.11.2015. Date of possession was 24 months from the date of agreement or till 2017. A joint owner of the property filed suit No. 39 of 2018 in the District court at Karjat. The allottees are delaying the payment. There was scarcity of cement and sand. Respondent will complete the project before time mentioned in MahaRERA record. The complaint therefore deserves to be dismissed.

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 possession as per agreement without there being circumstances beyond his control?	Affirmative
2. Are the complainants entitled to the reliefs claimed?	Affirmative
3. What order?	As per final order

Reasons.

6. Point no. 1, 2

Copy of agreement for sale in favour of Mr. Suresh Kandewale and Smt. Sujata dated 07.11.2015 is placed on record. The price of Flat No. 203 in C Wing was agreed at Rs. 15,45,000/-. 20% was to be paid

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as booking amount, 20% at the time of registration, 20% at the time of possession and 40% EMI of 36 months. As per clause 9 promoter shall give possession of the flat to the purchasers within a period of 24 months from the date of agreement or till 2017. Usual circumstances under which promoter was entitled for extension are also mentioned. Similar terms are found in agreement in respect of Flat No. 202 in favour of Shri Baban Shewale.

7. It was submitted on behalf of the respondent that the project was stayed by Karjat Court since 2017. Agreements are dated 07.11.2015 and possession was expected in Nov. or Dec. 2017. In his say the respondent averred that a Co-owner filed a Suit No. 39 of 2018 in the District Court at Karjat. Thus, a suit was filed after the date for delivery of possession expired in Dec. 2017. No copy of stay order issued by the Court is placed on record. This ground for delay is therefore not tenable. Likewise, there is a vague plea that there was shortage of cement and sand. This is also not substantiated by adducing sufficient evidence. I therefore hold that the respondent failed to deliver possession as per agreement without there being circumstance beyond his control. I therefore answer point No.1 in the affirmative.
8. As stated earlier the complainants did not give the exact amount paid by them to the respondent and averred that they paid 80% of the consideration amount. The receipts issued by the respondent have been placed on record. The statement showing the amounts paid by cheque are placed on record. Accordingly, complainant Mr. Suresh Kandewale paid Rs. 12,37,012/- and complainant Shri Baban Shewale paid Rs. 12,36,012/-. The respondent has not denied these payments. The complainants therefore ^{are} entitled to refund of these

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amounts together with interest as provided under Rule 18 of Maharashtra Real Estate (Regulation & Development) (Registration of Real Estate Projects) (Registration of Real Estate Agents) (Rate of Interest and disclosures on website) Rules, 2017 I therefore answer point No. 2 in the affirmative and proceed to pass following.

ORDER

- 1) The complainants are allowed to withdraw from the project.
- 2) Complainant Mr. Baban Shewale to pay deficit Court fee as per Rules.
- 3) Respondent to pay Rs.12,37,012/- to the complainant Mr. Suresh Kandewale and Rs. 12,36,012/- to Mr. Baban Shewale together with interest @ 10.75% p.a. from the date of payments till actual realisation.
- 4) The respondent to pay Rs. 20,000/- to the complainants as costs of this complaint.
- 5) The complainants to execute cancellation Deeds at the cost of the respondent.
- 6) The respondent to pay the above amounts within 30 days from the date of this order.

Mumbai.
Date: 20.08.2019

rk 20-8-2019
(Madhav Kulkarni)
Adjudicating Officer,
MahaRERA