

**BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
PUNE**

Complaint No. CC0050000000 ¹¹⁰⁸³10925

Abhilekh Kumar

.. Complainant

Versus

Kul Developers Pvt Ltd

.. Respondent

Now known as ASHDAN Developers
Pvt Ltd.

Coram : Shri M.V. Kulkarni

Hon'ble Adjudicating Officer

Appearance :

Complainant : Complainant in person

Respondent : In person

FINAL ORDER

16-08-2018

1. The complainant who had booked a flat with the respondent/developer seeks refund of the money paid with interest and penalty as respondents failed to deliver possession as per agreement. Since I am working at Mumbai & Pune offices in alternate weeks as per availability of dais and due to non availability of stenographer, this judgement is being delivered now.

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2. As usual all the necessary details are lacking in the complaint. They are required to be fished out from the documents annexed to the complaint. The complainant had booked a flat No.102 in tower-V project KUL NATION at Manjri Khd, District Pune of respondent on 31-12-2013. It is alleged that complainant was promised possession on or before expiry of five years from the date of agreement. The area of the flat is 720.11 sq.ft. The price agreed is shown as Rs.44,19,562/- Total amount paid Rs.15,24,937 plus government charges Rs.1,62,600/- plus Rs.32,120/- Since possession is not delivered, complainant seeks refund of total amount paid alongwith interest.
3. On 3rd April 2018 complainant was present but respondent was absent. On 17-4-2018 representative of the respondent was present and his plea was recorded. The respondent filed written explanation on 29-5-2018. The matter was fixed for arguments on 13-6-2018. On 13-6-2018 the complainant was present and his arguments were heard. The respondent was absent. Matter was reserved for judgement. On 11-7-2018 an authority was sought to be filed which was actually held on 25-7-2018. On the same day a prayer was made by filing an application to fix a date for arguments. However none from the respondent side appeared before me nor anybody advanced arguments till today. In the say it is alleged that respondent is willing and ready to perform its promise. The agreement between parties was executed on 20-1-2014. The project has been taken over by Solitaire Metropolis Pvt Ltd under name Ashadan Developers Pvt Ltd on 21-5-2018. This change has been informed to all customers. Under clause-7.1.1 damages in case of delay

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have been quantified. Clause 10.2 provides for rescission/cancellation by mutual consent where purchaser is entitled to refund by deducting 5% of the amount if there is delay beyond three years from agreed date of possession. No cause of action arose for filing of the complaint. The complaint therefore deserves to be dismissed.

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

POINTS

FINDINGS

- | | |
|--|---------------------|
| 1. Have the respondents failed to deliver possession of flat to the complainant as per agreement without circumstances beyond their control? | No |
| 2. Is the complainant entitled to the reliefs claimed? | No |
| 3. What order? | As per final order. |

REASONS

5. Point Nos.1 & 2: The complainant was directed to give necessary details of his complaint and thereafter he has given those details in his hand-writing. The complainant annexed copy of agreement to his complaint which is not the complete agreement. Later on complete agreement came to be produced. The date mentioned is 31-12-2013.

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The price agreed was Rs.44,19,562/- As per clause-4.1.2 possession was to be delivered on or before expiry of five years from the date of execution of agreement. Index-II shows that the agreement was registered on 22-1-2014.

6. The complainant claims to have paid Rs.15,24,937/- towards cost of the flat plus government charges Rs.1,62,600/- plus Rs.32,120/- The grievance of the complainant is that currently no construction is happening on the site. The respondent is relying on the clause in the agreement regarding delivery of possession as well as clause-7.1.1. and 7.1.2 which provide for damages if there is delay in delivering possession upto three years from the date agreed @ Rs.3/- per sq.ft on the carpet ^{area} and at the rate of Rs.6/- per sq.ft. due to delay beyond three years.
7. Even from the receipt about registration of agreement it becomes clear that date of registration is 20-1-2014. Consequently date for delivery of possession comes to 19-1-2019. That date is yet to come. It is true that only five months are left in the arrival of said date. Though complainant has alleged that no construction activity is going on, no substantial evidence is adduced by the complainant. He further alleges that the RERA site is showing July, 2021 as the date of completion of project. No doubt this date is not binding on complainant as he has not given consent for such extension of period for completion. The complainant submitted that ^{it} is a 21 floor building. How much construction has been done is neither pleaded nor proved. Perhaps the respondent may be able to complete the construction of flat booked in January 2019. In any event since the date for delivery of possession has not arrived, this complaint is premature.

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As such no breach of contract has been caused by the respondent on this date. Consequently complainant is not entitled to the reliefs claimed. I therefore answer point No.1 and 2 in the negative to proceed to pass following order:

ORDER

1. The complaint stands dismissed.
2. No order as to cost.

Pune
Date :- 16.08.2018

Wd 16-8-2018
(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA