

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

COMPLAINT NO: CC006000000023668

Hitesh Ramesh Kulkarni ... Complainant.

Versus

Sunil Mohan Joshi ... Respondent.
MahaRERA Regn: P51800015339

Coram:
Hon'ble Shri Madhav Kulkarni.

Appearance:
Complainant: In Person
Respondent: In Person

Final Order
25th January 2019

1. The complainants who had booked a flat with respondent / builder seeks withdrawal from the project and seeks refund of the amount that was paid.
2. As usual the proforma complaint lacks all the necessary details. Details came to be supplied by filing application on 22.6.2018. Accordingly, complainant booked 1 BHK flat having 625 sq.ft. area with the respondent and paid Rs. 11,75,000/-. Thereafter, the complainant came to know that respondent had made incorrect and false representation. The behaviour of the respondent caused mental tension to complainant for no fault of the complainant. The complainant therefore wants to withdraw from the project.
3. The matter came up before Hon'ble Chairperson on 23.05.2018 and came to be adjourned to 12.6.2018. Hon'ble Chairperson thereafter transferred this matter to Adjudicating Officer. Plea of the respondent was recorded on 29th Aug. 2018. The respondent filed written explanation on 23.10.2018. Both parties expressed the

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desire to settle the matter amicably. However, the matter was not settled on 19.11.2018 or 17.12.2018. After my sitting at Pune this matter is taken up for orders now.

4. The respondent has alleged that complainant with 10 persons had done group booking with huge discounts over the prevailing market rate in the year 2013. Complainant paid Rs.11,75,000/- and allotment letter was issued to him. The project is sanctioned by Slum Rehabilitation Authority. The SRA granted CC for work up to plinth level on 26th Oct. 2017. The sanction plan area of the flat is 32.51 sq.mtr. equal to 350 sq.ft. The complainant intended to purchase 625 sq.ft. flat, therefore prolonged negotiations and thereafter was offered two flats with total area of 700 sq.ft. The complainant did not come forward for registration of Agreement for Sale. The respondent sent demand notice dated 5.3.18. The respondent has not violated provisions of Real Estate (Regulation & Development) Act, 2016. Respondent is ready to refund amount to complainant with interest. The respondent has given date of completion as Dec. 2021. The delay has occurred due to circumstances beyond control of the respondent.

5. On the basis of 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 respondent made false representation to the complainant causing loss to him?	Affirmative
2. Is the complainant entitled to the reliefs claimed?	Affirmative
3. What order?	As per final order

Reasons.

6. Point no. 1, 2

The grievances of the complainant seem to be that the respondent is doing business in the style of M/s. Matoshri Developers. Respondent started

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project Vaibhav Chowk at C.T.S. No. 60-1 to 70 at Bhandup village. Complainant visited respondent office through his agents Mr. Sachin Surve & Janardan Ghatkar in Feb. 2013. The respondent explained that he had obtained all required permissions & Bhoomi Pooja will be done on 25.4.2013 & possession will be given in Dec. 2014. The price was Rs. 6000 per sq.ft. In the brochure area of the 1 BHK flat was shown as 625 sq.ft and total cost Rs. 37,50,000/- excluding other charges. Complainant paid 30% that is Rs.11,25,000/- to respondent. The respondent promised to pay interest at the rate of 3% for month on the amount due if not paid by Dec. 2014. The builder however failed to commence work at the project.

7. The allotment letter dated 9th June 2013 is placed by complainant on record. It does show area of the flat as 625 sq.ft., price Rs. 37,50,000/-. Payment of Rs. 11,25,000/-, balance amount Rs. 26,25,000/-, date of possession Dec. 2014. Now the stand of the responded is that complainant was offered 2 flats each admeasuring 350 sq.ft. It was the complainant who did not come forward for registration of the agreement. The SRA granted CC for construction up to plinth level on 26th Oct. 2017. A letter of the Architect dated June 4, 2018 shows that plan was sanctioned on 03.08.2016, SRA permission was dated 26.10.2017. Plinth completion was done when the certificate dated 4th June 2018 was given.

8. The stand of the respondent is contrary to allotment letter dated 9th June 2013. Clearly the respondent has mislead the complainant by making incorrect and false statement in the allotment letter dated 9th June 2013 & induced complainant to make payment of Rs.11,25,000/- on that day. The respondent has given the date of completion of the project as Dec. 2014 & made representation that all necessary permissions were already obtained. That was not the case. SRA permission was obtained on 26.10.2017. Plan was sanctioned on 03.08.2016. By June, 2018 construction only up to plinth level was done. complainant is therefore entitled to withdraw from the project under section 12 as well as under Sec. 18 of the RERA. The complainant is

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therefore entitled to claim refund of the amounts paid by him and interest thereon as compensation. I therefore answer point No. 1 & 2 in the affirmative and proceed to pass following.

ORDER

- 1) The complainant is allowed to withdraw from the project
- 2) Respondent to pay Rs.11,75,000/- to the complainant together with interest @ 10.70% p.a. from the date of payment till actual realisation.
- 3) The respondent to pay Rs. 20,000/- to the complainant as costs of this complaint.
- 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: 25.01.2019

MD 25.1.2019
(Madhav Kulkarni)
Adjudicating Officer,
MahaRERA