

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAL.**

COMPLAINT NO: CC006000000044463.

Avinash Tukaram Telang

... Complainant.

Versus

Nirvana Lifestyle Venture
Disha Direct Marketing Services Pvt. Ltd.
(Dreamgirl)

... Respondents.

MahaRERA Regn: P99000014632.

Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

Appearance:

Complainant: Adv. Mahendra Bavkar.

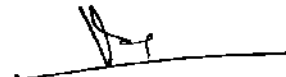
Respondents: Adv. Treror Pareira .

FINAL ORDER

11th October 2018.

The Complainant contends that he booked flat no. 207, building no. 5 of the respondents' registered project 'Dreamgirl' in Woollywood, Phase-II situated at village Gates Budruk, Taluka Wada, District Palghar. Though the respondents executed registered agreement for its sale on 7th April 2015 by accepting Rs. 3,23,012/- towards its part consideration, they sold the same flat to Mrs. Sunita More and Mr. Sunil More and thus, indulged in unfair practice and fraudulent act.

2. The respondents have filed the reply wherein they admit that they agreed to sell the flat to the complainant by executing the agreement for sale on 07.04.2015. They also admit that the complainant paid Rs. 3,10,320/- towards consideration and Rs. 12,692/- towards service tax and VAT.



According to them, the total value of the flat was Rs. 15,51,600/-. The complainant could not get the loan amount and he did not pay anything for almost two years. Hence, they were left with no other option but to resale the flat and accordingly they sold it to Mr. & Mrs. More. They show their willingness to refund the complainant's amount by deducting the part of it as per Clause 9 (3) of the agreement. Clause 9(3) provides that upon termination of the agreement 20% of the total consideration and the full amount of VAT/service tax will stand ex-facto forfeited. They further contend that the complaint is not maintainable because the occupancy certificate of the flat is received on 13.05.2017 itself.

2. Following point arises for determination and finding thereon as under:

POINT	FINDING
1. Whether the respondents have indulged into unfair practice and fraudulent act?	Affirmative.

REASONS

3. The respondents have produced the occupation certificate issued by the Grampanchayat, Gates Budruk. It is not the Competent Authority under MRTP Act for issuance of occupancy certificate. Therefore, there is no force in the submission of the respondents that since the occupation certificate of the flat in question is issued, this authority has no jurisdiction.

4. The respondents have not denied the fact that they agreed to sell the flat no. 207 to the complainant and received from him Rs. 3,23,012/-. According to them, the complainant could not arrange for loan amount for two years and therefore, they re-sold the flat to Mr. & Mrs. More. However, it appears that they have not given an opportunity to the complainant before reselling the flat to Mr. & Mrs. More. The agreement for sale



executed in favour of the complainant still subsists and without its cancellation the respondents were not entitled to resell the flat that too without informing the complainant and without satisfying his claim. This amounts to unfair practice and fraudulent act within the meaning of Section 7 (1) (c)& (d) of Real Estate (Regulation and Development) Act, 2016 (RERA).


5. Though Section 7 lays down that on the proof of promoter's indulgence in unfair practice and fraudulent act, the Authority may revoke the registration. Sub Section (3) thereof empowers the Authority to permit the registration of the project to remain in force subject to such terms and conditions as it deems fit. After taking into consideration, the facts of the case, I am of the opinion that to meet ends of justice, it is necessary to direct the respondents to refund the complainant's entire amount with prescribed rate of interest from the date of payment till the amount is refunded. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 8.55%. It is necessary to saddle the cost of Rs. 25,000/-. Hence, the order.

ORDER

The respondents shall pay the complainant Rs. 3,23,012/- with simple interest at the rate of 10.55% per annum from the date of payment till its refund together with Rs. 25,000/- towards the cost of the complaint.

Mumbai.

Date: 11.10.2018.


11.10.18
(B. D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.