

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

COMPLAINT NO. CC006000000079219

Pramod Krishna Sail

..Complainant

Verses

Shree Tirupati Greenfield Developers(STG)

..Respondent

MahaRERA Regn. No. P51700004654

Coram:

Hon'ble Shri Madhav Kulkarni.
Adjudicating Officer, MahaRERA.

Appearance:

Complainant: Present
Respondent : Present

**ORDER
(Dated 06.12.2019)**

1. The complainant/allottee who had booked a flat with the respondent/promoter, seeks withdrawal from the project and refund of his amount with interest and compensation as respondent failed to deliver possession as per agreement.
2. Complainant has alleged that he booked flat no. 1004 in B wing in the project of the respondent Marigold Siddheshwar Garden at Dhokali, Kolshet Road, Thane on 27.06.2011. Complainant has paid Rs.9,05,738/-. Complainant used to visit sales office of the respondent to enquire when the project will be completed. However, false promises were given on behalf of respondent. No written reply was given by the respondent. After getting fed up, complainant decided to exit from the project in the year 2017 and asked for the refund of the money. Respondent gave false promises. Complainant by letter dated 05.02.2019

informed the respondent that complainant was withdrawing from the project and respondent should pay Rs.2.00 lakhs as compensation towards mental agony. As usual the price that was agreed to be paid and date by which possession was to be delivered are missing in the online complaint for the reasons best known to the complainant.

3. Complaint came up before me on 24.07.2019. Respondent was absent. Matter was adjourned for ex-parte hearing to 23.08.2019. On 23.08.2019 representative of respondent appeared and filed affidavit in reply, after arguments for complainant were heard. As I am working at Mumbai and Pune Offices in alternative weeks, and due to huge pendency in this office, this matter is being decided now.

4. Respondent has alleged that TMC had sanctioned original plan on 29.09.2003 for the construction of building Riveara and Harmony. Plan was amended on 02.05.2008. OC for the new buildings were issued on 02.05.2008, for the Siddheshwar Garden Project. Takshila and Nalanda buildings were constructed as per amended plans dated 02.05.2008. Marigold Wing B, was started as per amended plan. However, members of the society of Takshila Nalanda CHS Ltd. raised dispute and filed civil Suit no. 1562 of 2012 in the Thane Court. On 07.01.2013, court refused to grant any injunction. On 14.02.2014 TMC sought clarification in respect of amended plan. TMC issued stop work order dated 14.11.2014. Respondent approached Hon'ble Bombay High Court. After Hon'ble High Court passed Orders, TMC allowed continuation of construction. In the PIL No. 36/2016, Hon'ble Bombay High Court directed TMC not to issue any Occupation Certificate or Commencement Certificate in Ghodbunder Road area. Due to poor monsoon in the season in the year 2017, there was shortage of water and project came

to standstill. There was no inflow of cash. Respondent has suffered heavy losses. There were difficulties faced after demonetization. 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 of the flat to the complainant as per agreement, without there being circumstances beyond his control?	Affirmative
2 Is the complainant entitled to the reliefs claimed?	Affirmative
3 What Order?	As per final Order.

REASONS

6. **Point Nos. 1 & 2** – The complainant has claimed that he booked flat on 27.06.2011. Complainant is silent whether any agreement was executed or not. Booking form dated 27.06.2011 is placed on record. Accordingly, flat no. 1004 in B wing in the building Marigold was booked and price agreed was Rs.58,82,330/-. It appears that on that day, Rs.100,100/- were paid by the complainant and its receipt is placed on record. Then there is a receipt for Rs.2.60 lakhs dated 02.07.2011, for Rs.5.22 lakhs dated 02.07.2011 and for Rs.22,738/- dated 01.10.2011 which is in fact copy of cheque with endorsement that amount is received against service tax. It is clear that all the payments were made by the complainant in June and July, 2011. But no agreement was executed in his favour by the respondent.
7. Booking was done by the complainant on 27.06.2011. Respondent alleges that OC in respect of Takshila and Nalanda

buildings was received in the year 2009 and thereafter, old plan came to be modified. TMC called for clarification from the respondent on 14.02.2014 and issued stop work notice on 14.11.2014. Then there is Order dated 12.01.2016 withdrawing this stop work notice, in view of the directions given by the Hon'ble Bombay High Court. Also there is order of 5th Jt. Civil Judge, Sr Division, Thane^w whereby temporary injunction in respect of carrying out construction was rejected.

8. It must be remembered that booking was done by the complainant on 27.06.2011. Respondent neither executed a registered agreement in favour of the complainant nor carried out construction of the building Marigold. Respondent accepted money from the complainant by promising to deliver possession of flat no. 1004 in the said building to the complainant. Now it is well settled that builder must deliver possession within 2/3 years since accepting booking from an allottee. The issue about dispute raised by Nalanda Takshila Society arose only in the year 2014. Had the respondent been completing construction by that time, the issue would not have arisen^w at all. No interim injunction was granted by the Civil Court against the respondent. No doubt TMC appears to have issued stop work notice. Further, problems like direction by Hon'ble Bombay High Court and effect of demonetization are pleaded by the respondent. However, had the respondent been completing the construction within 2/3 years since accepting the booking, these problems would not have been faced. Since the respondent has accepted money from the complainant, I am of the opinion that respondent has failed to deliver possession as per the agreement without there being circumstances beyond his control. I therefore, answer point no. 1 in the affirmative.

^w
A.O.

9. From the receipts placed on record, it is clear that complainant has paid Rs.9,05,738/- to the respondent. Complainant will be entitled to refund of this amount together with interest as provided under Rule 18 of Maharashtra Rules. Complainant is claiming Rs.2 lakhs as compensation towards mental agony. Booking was done before 8 years. In my opinion a compensation of Rs.50,000/- will be appropriate. I therefore, answer point no. 2 in affirmative and proceed to pass following order:

ORDER

1. The complainant is allowed to withdraw from the project.
2. Respondent to pay Rs.9,05,738/- to the complainant, together with interest @10.35% p.a. from the date of payments till final realisation.
3. Respondent to pay Rs.50,000/- to the complainant towards mental agony suffered.
4. The respondent to pay Rs.20,000/- to the complainant as costs of this complaint.
5. Charge of the above amount is kept on the flat booked by complainant.
6. The respondent to pay above amounts within 30 days from the date of this Order.

Mumbai

Date : 06.12.2019

signed on 19.12.2019
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA