

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

COMPLAINT NO: CC006000000001197

Richbond Finvest Services Pvt. Ltd.

.... Complainant

Versus

M/s. Niraj Kakad Constructions & 6 others

MahaRERA Registration No. P51800010010

..... Respondents

Coram: Hon'ble Dr. Vijay Satbir Singh, Member 1

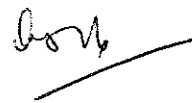
Mr. Manoj Tiwari representative i/b Mr. Ramesh Prabhu appeared for the complainant.

Adv Subhash Upadhyay appeared in person for the respondents

Order

(12th February, 2018)

1. The complainant is an investor in the residential project known as "Devi Kakad Solitair" at Chembur, Mumbai promoted by the respondent bearing MahaRERA project registration No. P51800010010. According to him, he had booked two flats bearing Nos. 501 and 502 in the project and paid Rs. 75 lacs each towards the consideration value. The respondent had agreed to pay him interest @ 24% per annum for his investment and offered him the ownership of these flats in case he failed to repay the loan by 31-3-2016. However, he did not fulfil his commitment, the complainant, therefore, wants the money back along with interest and compensation or registration of the agreement for sale. There is no formal agreement or contract between the parties.

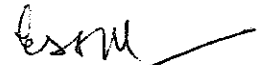


2. The respondent in his reply dated 6-12-2017 filed before this Authority disputed the claim of the complainant and stated that the complainant had made payment of Rs. 10 lacs only for each flat and the remaining amount had not been paid. However, during the hearing, the complainant had showed the receipts of entire amount of Rs. 75 Lacs for each flat duly signed by the respondent, which also revealed that a large amount of money i.e. Rs. 65 Lacs for each flat was paid in cash and the remaining amount of Rs. 10 Lacs was given through cheques. Finally, the respondent conceded that he had received the entire money as explained by the complainant. He also expressed his willingness to pay back the money later.
3. The facts of this case made it very clear that the complainant had given a total amount of Rs. 1.5 crores to the respondent as investment in his project. A letter dated 28-3-2015 issued by the respondent to the complainant also shows that this money was given as investment only carrying an interest @ 24% per annum to be credited / paid in advance for every 4 months. It is pertinent to note that both the complainant and the respondent, choose not to register the agreement for sale as per the provision of MoFA Act. The provisions of this Act stipulate that the promoter must register an agreement for sale with the allottee if the amount is paid equal to or more than 20% of total consideration. In the present case, the flats were offered as surety by the promoter for the complainant's investment which was to be repaid by 31-03-2016.
4. The documents on record in this case also show that the status of the complainant in the project that of an investor and not a genuine homebuyer. The said flats in the project were offered for the purpose of security by the respondent in the event of non- payment of the complainant's loan. The so called letter of allotment/reservation confirms



this in these words in the closing paragraph, *"This allotment letter is mainly issued for the purpose of securing your monetary investment with us"*. The complainant, therefore, is not entitled to any relief under the provisions of Real Estate (Regulation and Development) Act, 2016 and the Rules and Regulations made there under.

5. This Authority has also noticed that there is a huge amount of cash money i.e. Rs. 1.30 crores paid by the complainant to the respondent as an investment. This is issue and requires detailed investigations. It is, therefore, directed that the matter may be brought to the notice of Income Tax Department to verify the source of funding and evasion of taxes, if any, and take appropriate action in this matter.
6. With above directives, the complaint stands disposed of.



(Dr. Vijay Satbir Singh)
Member-1/MahaRERA