

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

COMPLAINT NO: CC006000000044073

- 1) Mr. Rajeev Duniyaram Singh
- 2) Mrs. Smita Singh
- 3) Duniyaram Singh ... Complainant.

Versus

M/s. Shivshankar Builders and Developer
Through its Partners - Satish Tripathi and
Sanju Tripathi ... Respondent.
MahaRERA Regn: P52000013558

Coram:

Hon'ble Shri Madhav Kulkarni.

Appearance: Complainant: Present in person

Respondent: Present in person a/w

Adv. Jadhavani

Final Order

28th February 2019

1. Three complainants who had booked a flat with the respondent / builder initially prayed to direct the respondent to give possession of the flat and 10% interest on the amount paid as the respondent failed to deliver possession as per agreement. When the matter came up before Hon'ble Chairperson on 2.7.2018, the complainants sought to withdraw from the project and sought compensation and interest on the amount paid.
2. The complainants have alleged that they booked flat No. 1002 in 'B' Wing admeasuring 60.27 sq. mtrs. in the project Shivshankar at village Kopra, Kharghar, Taluka Panvel, Dist. Raigad. The complainants were in need of residential property in Navi Mumbai and in its absence were staying on rent. The respondent had promised to execute agreement for sale with all

essential terms. The respondent had promised to deliver possession within 2 years, i.e. by Oct. 2013 which means that booking was done in the year 2011, but specific date is not mentioned in the complaint. It is alleged that complainants had agreed to book flat No. 1105 with super built up area of 1195 sq.ft. @ Rs. 4700/- per sq.ft., i.e. total of Rs. 58,66,500/- + car parking charges of Rs. 2,50,000/-. The complainants had paid Rs. 13 lakhs in cash to one Mr. E.K. Gupta in the project of the respondent who issued payment schedule. The complainants also paid further Rs. 15 lakhs. Despite repeated requests, respondent failed to deliver allotment letter and after Sept. 2011 the site lay abandoned. The complainants have already paid 50% amount, i.e. 28,00,000/-. Allotment letter was issued in June 2012. In Oct. 2012 respondent started construction of the front phase. Date of completion was extended to Dec. 2014 in the draft agreement that was given. Agreement was executed in Dec. 2012 but instead of Pava Eternity project, name is given as Shivshankar. The complainants paid Rs. 2,87,900/- towards Stamp Duty and Rs. 30,000/- towards registration charges. Super built up area was increased to 1276 sq.ft. and additional Rs. 45,500/- were demanded. Complainants have paid a total sum of Rs. 60,12,000/-. They have hired accommodation on leave and license basis and paying Rs. 30,000/- per month from 23.09.2017. In Jan. 2013 they took housing loan from Diwan Housing Finance Ltd. (DHFL) for Rs. 34,28,188/-. The respondent has delayed the project. Complainant No. 3 and Complainant No. 1 were required to be hospitalised. The respondent has failed to comply with the terms of agreement despite receiving full amount, but demanded further amounts.

3. The matter came up before the Hon'ble Chairperson on 30.05.2018. It was adjourned to 2.7.2018 for settlement of the dispute. However, on 2.7.2018 the complainants sought withdrawal from the project and refund of the amount and the matter came to be transferred to Adjudicating Officer. The matter came up before me on 25.09.2018. It came to be adjourned for

recording plea of the respondent and written explanation by respondent to 24.10.2018. On 24.10.2018 plea of the respondent was recorded and respondent filed written explanation. On 27.11.2018 complainants appeared and Advocate for respondent appeared. The complainants filed rejoinder. The matter was adjourned to 20.12.2018 for filing written arguments. On 20.12.2018 complainants filed written notes of arguments but respondent sought adjournment which was granted on payment of Rs. 5000/-. On 24.1.2019 the respondent filed written reply but did not pay cost. As I am working at Mumbai Office as well as Pune Office in specific weeks, this matter is being decided now.

4. The respondent has alleged that complainants withdraw from the project in Jan. 2015 after accepting Rs. 10,57,500/-. The complainants have accepted that they have migrated to Baruch in Gujarat. They have cooked up this story by twisting the facts. The respondent is ready to pay the balance amount provided amount of the Financial institution is refunded and no objection is obtained from Financial institution. The respondent is entitled to forfeit 20% of the consideration amount as per clause No. 3 of the agreement. The complainants are trying to extort amount from respondent. The complaint therefore deserves to be dismissed with compensation to 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 failed to deliver possession Of the flat to the complainants as per agreement without there being circumstances beyond his Control?	Affirmative

2. Are the complainants entitled to the reliefs claimed? Affirmative

3. What order? As per final order

Reasons.

6. Point no. 1 & 2 - As stated earlier the complainants have not cared to give the date of booking of the flat. As per enclosure 'A' Flat No. 1105 in Pava, etc. having area of 1195 sq.ft. was booked but the name of the person booking is missing. Then there is a receipt dated 23.7.2011 for Rs. 3,00,000/- issued by respondent in respect of flat No. 1105. There is also a receipt dated 20.6.2011 for Rs. 10,00,000/- issued by respondent in respect of Flat No. 1105. Then an account statement of complainant No. 3 is at page No. 19 and accordingly total receipts were Rs. 15,00,000/-. The statement is not signed by anybody. Then a loan account of TATA Capital Housing Finance in the name of complainant No. 1 is placed on record but such case is not pleaded by complainants.

7. Copy of the agreement dated 17.12.2012 is placed on record which is in favour of 3 complainants. The flat agreed to be sold was No. 1002 and the price agreed was Rs. 47,62,000/-. As per clause 15, the date for delivery of possession was Dec. 2014. Payment of Rs. 15,00,000/- is acknowledged in the agreement.

8. It is the contention of the respondent that the complainants have cancelled the agreement in the year 2015 after accepting amount. While the complainants have admitted having received amounts they are denying cancellation of the booking. There are demand notices even of the year 2015 issued by the respondent. However, there is no document obtained from the complainants about cancellation of their booking. The complainants have sought to produce C.D. containing conversation with the respondent.

All that can be made out is that amount was paid. Nothing more can be made out from the C.D. The DHFL Housing loan appears to have been obtained on 10.11.2013. However, the respondent has failed to prove that the complainants cancelled the booking after accepting amount. There is even a letter dated 4.1.2017 issued by respondent to TATA Capital Housing Finance Ltd. confirming the allotment to the complainants. It is also confirmed that there are no outstanding dues. The respondent is not disputing that possession of the flat is not delivered to the complainants. Consequently, I answer Point No. 1 in the affirmative.

9. Agreement is showing that the price of flat was Rs. 47,62,000/-. Complainants claim that in all they have paid Rs. 60,12,000/- + stamp duty of Rs. 3,17,900/- and taxes to the extent of Rs. 2,30,000/-. These complainants claim to have in all paid Rs. 65,59,900/- but it comes to Rs. 53,09,000/-. This is inclusive of DHFL loan of Rs. 34,28,188/-. The respondent's claim that respondent paid Rs., 10,57,200/- in cash. It is the contention of the complainants in their rejoinder that respondent paid Rs. 10,47,200/- but the amount was borrowed by the complainants. Going by the conversation on the C.D. it appears that respondent paid amount to the complainants. Therefore, complainants will be entitled to Rs. 42,51,500/- except the stamp duty which can be refunded to the complainants as per Rules subject to the claim if the Financer. I, therefore, answer Point No.2 in the affirmative and proceed to pass following order.

ORDER

- 1) The complainants are allowed to withdraw from the project.
- 2) The respondent to pay Rs. 42,51,500/- to the complainant except stamp duty which can be refunded as per rules and subject to the charge of the Financer together with interest @ 10.70% p.a. from the date of receipt of payments till final realisation.

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29.2.19

- 3) The respondent to pay Rs. 20,000/- to the complainant as costs of this complainant + Rs. 5000/- costs imposed on 20.12.2018.
- 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: 28.02.2018

MJ
28-2-2018
(Madhav Kulkarni)
Adjudicating Officer,
MahaRERA