

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

COMPLAINT NO: CC006000000012678

Dharamshi S Patel ... Complainant.

Versus

Premleela Developers & Ors. ... Respondent.
MahaRERA Regn: P51800012764

Coram:

Hon'ble Shri Madhav Kulkarni.

Appearance:

Complainant: In person along with
Advocate Shri Sushil M. Gaglani.
Respondent: Absent.

Final Order

28th September, 2018

1. The complainant who had booked a flat with respondent / builder seeks withdrawal from the project and refund of the amount paid to the respondent with interest and compensation.
2. The complainant has alleged that he is a senior citizen 63 years old and a businessman. He was introduced to the respondent by Mr. Velji A. Buricha in the year 2011. The respondent had undertaken the Project "Premleela Heights" at Goregaon. The complainant booked flat -1901 on 19th Floor having area of 58.65 sq.mtrs. The Price agreed for the flat was Rs. 67,52,000/-. The complainant desires to reside in that flat with his family. The complainant paid Rs.1,00,000/- on 15th August 2011 for booking the flat. The complainant was ready to pay 15% of the balance amount and get the agreement registered. But respondent avoided under one pretext or the other. In September 2014, the complainant visited the respondent and found that the construction was still in the initial stage. The respondent demanded Rs. 20 lakhs from the complainant in May,

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2015 as they did not have sufficient money to carry out the construction. The complainant paid the said amount through RTGS. However, the respondent has not handed over possession of the flat to the complainant till July 2017. The respondent promised to hand over possession in a few months along with occupation certificate. In August 2017 the respondent refused to hand over the possession. The complainant will now be required to pay around Rs.95 lakhs, i.e. Rs. 35 lakhs more to purchase a similar flat in the same locality. The respondent had mentioned 31st December 2015 as date of completion of project in the application. Now, they have revised the date to 31st December 2022. The complainant therefore seeks refund of Rs.21 lakhs along with interest @ 18% p.a. as well as compensation of Rs. 10 lakhs and Rs.35 lakhs as the difference in the cost of the flat prevailing as on today + Rs. 25,000/- as cost of litigation.

3. It appears that the complainant had initially approached the State Consumer Dispute Redressal Commission, Maharashtra in CC No. 17/1408. He sought to withdraw that complaint in order to file this complaint and such permission was granted on 21st December 2017.

4. The respondent failed to appear though notice was issued. However, one reply is received on 18th April 2018. It is alleged that one Mr. Velji Buricha filed suit No. 375/2017 in the High Court against the respondent and claimed that the complainant had made payment through Buricha. Hon'ble High Court has restricted the respondent from creating third party rights in the said property. The agreement with the complainant is not registered and therefore cannot be admitted. Respondent No.4 Shri Dilip K. Shah has also sent his reply alleging that he is retired from partnership in the year 2013. Now, respondent No.2, Mr. Shailesh Rawal and Respondent No.3 Sanjay Thatte are operating the partnership. It is alleged that complainant had made payment on behalf of Mr. Velji Buricha as a loan.

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5. On the basis of rival contentions of 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 flats booked by complainant as per terms of agreement?	Affirmative
2. Is the complainant entitled to the reliefs claimed?	Affirmative
3. What order?	As per final order

Reasons.

7. Point no. 1 & 2- Copy of Agreement dated 17th August 2011 is placed by complainant on record. It is a notarized agreement and not a registered agreement. The respondent therefore claims that the agreement is not legal and valid. However, Contract Act permits even an oral agreement. Merely because the agreement is not registered it cannot be thrown away. In my opinion it is a valid agreement. Flat No. 1901 admeasuring 58.64 sq. mtrs. was agreed to be sold to the complainant by respondent for a consideration of Rs. 61,52,000/-. Payment of Rs. 1 lakh is admitted. Under clause 10 the respondent undertook to deliver possession on or before 1st Oct. 2014. It is not denied that the respondent has not delivered possession.
8. Copy of order of Hon'ble High Court in commercial suit No. 375 of 2017 Notice of Motion No. 420/2017 is placed on record. That suit is filed by Mr. Velji Buricha against Premleela Developers. Present complainant is no shown as a party. The respondent has been directed not to create third party rights or part with possession of 23 flats because third party rights

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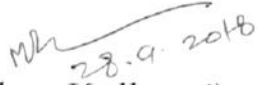
have been created in respect of 5 flats. Even in respect of 5 flats respondents are prevented from creating any further third party rights or part with possession.

9. The respondents are claiming that the complainant is only puppet and it is Mr. Buricha who has advanced the money as loan. There is nothing on record to substantiate such claim. It is clear from the agreement that the respondent has failed to deliver possession as per agreement. The complainant is seeking refund of the amount paid by him. Receipt of Rs.1 lakh is acknowledged in the agreement itself which is dated 17th August 2011. There is a Bank statement showing RTGS transfer of Rs. 20 lakhs to Premleela on 24th June 2015. The complainant will be entitled to refund of this amount. The complainant has not adduced any evidence to show that he will be required to pay Rs.35 lakhs for purchase of alternate flat. In my opinion compensation of Rs. 2 lakhs will be sufficient. I therefore answer to Point No.1 & 2 in the affirmative and proceed to pass following Order.

ORDER

- 1) Subject to the order of Hon'ble High Court, against complainant, the respondent to pay Rs. 21lakhs to the complainant together with interest at the State Bank of India's highest marginal cost of lending rate which is at present 8.65% plus 2% from the date of payment till final realisation.
- 2) The respondent to pay Rs. 2 lakhs as compensation to the complainant.
- 3) The respondent to pay Rs. 25,000/- as cost of the complaint.
- 4) The respondent to pay above amount within 30 days from the date of this order.

Mumbai.
Date:28.09.2018


(Madhav Kulkarni)
Member & Adjudicating Officer
MahaRERA