

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI

Complaint No.CC006000000023817

Piyush Fatania

.. Complainant

Versus

Sumit Jain – Poonam Park
(Poonam Developers)

.. Respondent

MahaRERA Regn No.P99000005516

Coram : Shri M.V. Kulkarni
Hon'ble Adjudicating Officer

FINAL ORDER

01-02-2019

1. The Complainant who had booked a flat with the respondent /builder seeks to withdraw from the project and seeks refund of the amount paid with interest.
2. The complainant has alleged that he booked flat No. 302 D Wing Iris building Vevoor, Poonam Park, Phalghar in the year 2012. Price was agreed at Rs.14,79,280/-. Possession was promised in October, 2013. Complainant paid Rs.10,50,000/-. Incharge of the project Rajesh Menon is now changed. Possession is not delivered and respondent is not paying attention. Complainant sought loan of Rs.9,00,000/- from SBI. He is paying heavy interest on the loan.

1.2.19

3. As usual, the proforma complaint lacks necessary details. The matter came up before Hon'ble Member and was adjourned to 26-6-2018. On that day matter came to be transferred to Adjudicating Officer. On 24-10-2018, the respondent was absent though his Advocate was present. On 19-11-2018 plea of the respondent was recorded and written statement was filed by respondent. On 17-12-2018 arguments for the parties were heard.

4. Respondent has alleged that complaint is not in accordance with the law. No cause of action arose for filing of the complaint. The complaint is false. The complainant has suppressed facts. The proposed date for completion of project is 21-12-2022. As per clause-9 of agreement of sale dated 9-8-2012 respondent is entitled for reasonable extension of time for giving possession. There was unavailability of sand. Power to provide environmental certificate shifted from one authority to other. Therefore respondent was required to make fresh application for environmental certificate. There is harassment by local contractors and suppliers and police complaint came to be filed. 80% of the work is completed. Complainant is to pay Rs.76,700/- towards society formation. The complaint therefore deserves to be dismissed.

5. On the basis of rival contentions of the parties following points arise for my determination. I have noted my findings against them of the reasons stated below:

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POINTS**FINDINGS**

- | | |
|--|--------------------|
| 1. Has the respondent committed default in handing over possession of the flat to complainant as per agreement without there being circumstances beyond his control? | Yes |
| 2. Is the complainant entitled to reliefs sought? | Yes |
| 3. What order? | As per final order |

REASONS

6. POINT Nos. 1 & 2 :- The complainant has placed on record agreement dated 9-8-2012. Flat No.D-302 in Type 'B' building known as Iris in the complex Poonam Park at Vevoor in Phalghar Taluka was agreed to be sold to complainant for Rs.14,19,980/-. As per clause -9 the date delivery of possession was October, 2013 i.e., in a period of one year since agreement. Usual circumstances under which respondent was entitled to extension of time are mentioned.

7. It is the contention of the respondent that there was unavailability of sand. The agreement is of August 2012. The building was expected to be completed by October, 2013. When the scarcity for sand arose is not made clear. Whether all the construction activities had stopped is not known. Infact that was a boom period for construction industry. Many of the builders completed their projects. Only a vague allegation that construction could not be completed due to scarcity of sand cannot be accepted.

1-2-19

8. The respondent alleges that there was change in the authority for giving environmental certificate. When was the change effected is not known. When did respondent apply for environment certificate is not known. Respondent was required to show that he had diligently applied for environment clearance. In its absence mere vague allegations is of no use.

9. Respondent alleges that there was harassment by local contractors and suppliers. Copy of police complaint dated 24-4-2017 is placed on record. It is a vague complaint, not mentioning name of anybody. It appears to have been given to strengthen the defence of the respondent. On the other hand date of delivery was October, 2013. Such defence is after thought. I therefore hold that respondent failed to deliver possession without circumstances beyond his control and answer point No.1 in the affirmative.

10. Complainant has produced receipt dated 4-9-2013 for Rs.1,48,000/-, dated 24-7-2013 for Rs.1,47,928/- dated 26-6-2013 for Rs.1,47,784/-, 9-6-2016 for Rs.1,47,856/-, dated 11-3-2013 for Rs.1,47,784/-, dated 4-3-2013 for Rs.1,48,000/-, dated 15-7-2012 for Rs.1,48,000/-(SBI Cheque), dated 1-5-2012 for Rs.2,74,856/-(SBI Cheque), dated 1-5-2012 for Rs.21,000/-(SBI cheque). Total comes to Rs.13,31,208. Complainant will be entitled to refund of this amount with interest as per Maharashtra Rules except the stamp duty which can be refunded as per rules. I therefore answer point No.2 in the affirmative and proceed to pass following order.

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ORDER

1. The complainant is allowed to withdraw from the project.
2. The respondent to pay Rs.13,31,208/- to the complainant except the stamp duty which can be refunded as per rules together with interest @ 10.70% from the date of payments till final realisation.
3. The respondent shall pay costs of Rs.20000/- to the complainant.
4. The complainant to execute cancellation deed at the cost of the respondent.
5. The respondent to pay above amounts within 30 days from the date of this order.

Mumbai
Date : 01.02.2019
(Camp at Pune)

M.V. Kulkarni
1.2.2019
(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA