

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY

CORUM : Shri M.V. KULKARNI, ADJUDICATING OFFICER, PUNE

AT : PUNE

Complaint No. CC005000000011479

Mr. Abhinav Anil Borkar,
R/at Flat No.201, E Bldg.,
Ashok Nagar, Handewadi Road,
Hadapssar, Pune-411 028.

.. Complainant

Versus

Suraj Raman Bhujbal,
Bhujbal Bungalow, Survey No. 160/1,
Kothrud, Pune-411 038.

.. Respondent

Appearances :-

Complainant : In person.
Respondent : Exparte.

JUDGMENT

(Delivered on 04.10.2018)

1. The Complainant, who had booked a Flat with the Respondent/Builder, seeks withdrawal from the project and refund of the amount paid together with interest and compensation.
2. The Complainant has alleged that along with his wife, he booked Flat No. 304 on 3rd floor in 'B' Building in the project "Forest Mist" at Hadapsar in Pune, admeasuring 600 sq. Ft. carpet + 222 sq. Ft. terrace. The price was agreed at Rs. 33,66,200/-. The Respondent executed a registered agreement on 04.06.2014. The Respondent agreed to hand

h
h-10-16

over possession within 18 months since the date of agreement. The Complainant has paid Rs. 37,34,260/-. The Respondent has failed and neglected to complete the construction and hand over possession of the flat. The Complainant therefore, seeks withdrawal from the project and refund of his amount, with interest @ 24% p.a. as per clause 6 of the agreement, or as applicable under law, along with losses incurred towards house rent for delayed period and cost of proceeding.

3. The Complainant appeared before the Hon'ble Member, MahaRERA, Mumbai on 0.07.2018. On 06.09.2018 the Complainant appeared before me in person. However, the Respondent failed to appear. The complaint has proceeded exparte against the Respondent. Arguments for Complainant were heard.
4. Following Points arise for my determination. I have recorded 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 terms of Agreement without there being reasons beyond his control ? | .. In the Affirmative. |
| 2) Is the Complainant entitled to reliefs claimed ? | .. In the Affirmative. |
| 3) What order ? | .. As per final order. |

h-10-11B

REASONS

5. **POINT Nos.1 and 2** :- The Complainant has placed booking proforma, dated 02.07.2012 on record. Flat No. 304B, admeasuring 1068 sq. Ft. was booked. The agreement cost was Rs. 33,64,200/-. Rs. 80,000/- were club house development charges, Rs.2,03,210/- were the stamp duty and registration charges. Maintenance for 18 months of Rs. 30,000/- were also to be paid. Copy of registered agreement, dated 04.06.2014 is placed on record. Payment of Rs. 28,66,360/- is acknowledged in the agreement. Under clause 6, Unit Purchaser was to pay the developer interest at the then prevailing lending bank rate or 24% p.a. whichever is more on all the amounts which became due and payable from the date the amount becomes payable. Under clause 9, possession was to be handed over to the Unit Purchaser within 18 months from the date of execution of agreement and upon payment of full and final consideration of price and other dues. If the Purchaser asks for cancellation of agreement after it's execution, developer shall be liable to refund the amount with simple interest @ 9% p.a.

6. It is clear that the Respondent was required to deliver possession of the flat on or before 03.12.2015. Since the Respondent has not delivered possession till today, he has committed breach of the term of agreement. The Respondent has not offered any justification and has not pleaded any circumstances beyond his control. Consequently, he is liable to refund the amount to the Complainant with interest under Rule 18 of the MahaRERA Rules with interest^{i.e.} at the State Bank

h-10-18

of India's Highest Marginal Cost of Lending Rate, which is at present $8.65\% + 2\% = 10.65\%$ p.a.

7. The Complainant claims that he has paid Rs. 37,34,260/- to the Respondent. He has placed the receipts on record. There is receipt, dated 02.06.2012 for Rs. 12,00,000/-. Another receipt, dated 02.06.2012 for Rs. 6,27,410/-. There is receipt, dated 20.06.2014 for Rs. 5,00,000/-. Again receipt, dated 02.06.2012 for Rs. 12,00,000/- for the cheque No. 012814, dated 30.08.2012, which differs from the earlier cheque No. 012812, dated 02.06.2012. Then there is receipt, dated 05.01.2013 for Rs. 1,29,850/- and one receipt, dated 04.06.2014 for Rs. 77,000/-. Thus the Complainant appears to have paid Rs. 37,34,260/- inclusive of stamp duty amount. The Complainant can seek refund of the stamp duty as per rules and therefore, he will not be entitled to that amount.
8. The Complainant has given his address as Flat No. 301, E Bldg., Ashok Nagar, Handewadi Road, Hadapsar, Pune. Whether it is his ownership flat or hired one, is not known. He has claimed losses towards house rent, but has not mentioned how much house rent he is paying and whether he has not having accommodation for himself. In my opinion, compensation of Rs. 50,000/- will be just and proper. I therefore, answer Point Nos.1 and 2 in the affirmative and proceed to pass following order.

ORDER


- (1) The Complainant is allowed to withdraw from the project. The Respondent shall refund an amount of Rs. 37,34,260/- excluding the stamp duty amount, which is

✓
12.10.2018

refundable, together with interest @ 10.65% p.a. from the date of payment till realisation.

- (2) The Respondent shall pay Rs. 50,000/- to the Complainant as compensation.
- (3) The Respondent shall pay Rs. 25,000/- to the Complainant as costs of this Complaint.
- (4) The Respondent shall pay above amounts within 30 days from the date of this order.
- (5) The Complainant shall execute cancellation deed at the cost of the Respondents.

Pune
Dated :- 04/10/2018


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