

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

COMPLAINT NO: CC006000000012194

Zaheed Shaikh & Others ... Complainant.

Versus

Paresh Bhanushali & Others
(Damji Hari Constructions) ... Respondent.
MahaRERA Regn: P51700010871

Coram:

Hon'ble Shri Madhav Kulkarni.

Appearance:

Complainant: In person

Respondent: Absent

Order below application for rectification of final order received on 12.12.2018.

Grievances is made that in para 2 lines 5 & 6 of the final order dated 22nd November 2018, it is observed that all the necessary details of the transaction are missing in the complaint. It is expected of a complainant while drafting his complaint to give all the details of his transactions. That is missing in the present complaint. Name of complainant and respondent are the basic things. Merely producing the copy of the agreement is not sufficient and therefore it has been observed that even the name of the complainant is not mentioned in the complaint which is a fact. The date of second agreement in para 3 of the order is mentioned as 21st June 2016. The date appears to be 18th June 2016. This clerical mistake needs to be corrected. The observation in Para 9 that actual interest amount paid to India Bulls is not made clear is sought to be

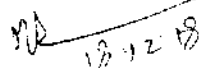
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corrected. However, no such documents clearly showing the interest amount paid is placed on record and in its absence such correction cannot be made. In the operative order respondent has been directed to refund amount with interest except the stamp duty which can be refunded. It is for the complainants to show which amount of stamp duty is refundable with a due diligence and which amount is non-refundable. Thereafter, the complainant will be entitled to receive non-refundable amount. There is no ambiguity in the order. Hence, I pass following order.

ORDER

Date of Agreement in para 3 line 1[✓] of the final order be corrected to 18.06.2016.

Mumbai.
Date: 18.12.2018


(Madhav Kulkarni)
Adjudicating Officer
MahaRERA

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Coram:

Hon'ble Shri Madhav Kulkarni.

Appearance:

Complainant: In person

Respondent: Absent

Final Order

22nd November, 2018

1. The complainant who had booked a flat with respondent / builder seeks withdrawal from the project and seeks refund of the amount paid to the respondent with interest and compensation.
2. The complainant alleged that he booked flats in the project of the respondent Pentagon Heights. All the necessary details of the transaction are missing in the complaint. However, it is mentioned that proposed date of completion was 31.12.2017. Now the revised date for completion is 30.11.2018. Even the name of the complainant is not mentioned in the complaint. A copy of the agreement dated 18th June 2016 is placed on record. It is executed by M/s. Damji Hari Constructions. In the complaint respondents are three partners and one authorized signatory who is shown as 4 respondents, apart from Damji Hari Constructions. Zaheed Shamsuddin Shaikh, Azra Anjum Zaheed Shaikh; Danish Shamsuddin Shaikh; Farzana Shamsuddin Shaikh are the four persons in whose favour agreement was executed. Flat No. 1207 on 12th Floor admeasuring 417.50 sq.ft. in Penta 3 building in Pentagon Heights at Bhiwandi

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was booked. The consideration mentioned is Rs. 20,66,625/-. Clause 13 shows the date of delivery of possession as June 2017. Prayer clause is missing in the complaint.

3. Another agreement dated 21.06.2016 is also placed on record. It is between the same parties but in respect of Flat No. 1208. The agreed consideration was Rs. 18,66,625/-. The agreed date for delivery of possession was June 2017. This is also a subject matter of dispute.

4. The complaint came up before Hon'ble Chairperson on 23.02.2018 and was adjourned to 01.03.2018 for settlement. The order dated 1.3.2018 shows that the respondent explained the delay in completion of the project. The respondent was ready to deliver possession on or before 31.05.2018 and was ready to provide temporary alternate accommodation. The complainant therefore agreed to continue in the project on the undertaking given by the respondent. The respondent was accordingly directed to deliver possession by the end of May, 2018 with Occupation Certificate, failing which respondent was directed to pay interest on the entire amount paid by the complainant from 1.6.2018 as provided under Maharashtra Rules.

5. The complainant approached MahaRERA Authority on 6th July 2018. Roznama shows that the respondent had failed to complete the project with Occupation Certificate. The complainants[✓] wanted to withdraw from the project with compensation and interest on the total amount paid. The matter therefore came to be transferred to Adjudicating Officer.

6. On 10th October 2018 complainant No.1 appeared before me but respondent failed to appear Arguments of complainants[✓] were heard.

7. Following points arise for my determination. I have noted my findings against them for the reasons stated below.

✓
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Points	Findings
1. Has the respondent failed to deliver possession of the flat to the complainant as per agreement without there being circumstances beyond his control?	Affirmative
2. Is the complainant entitled to the reliefs claimed?	Affirmative
3. What order?	As per final order

Reasons.

8. Point no. 1, 2 As stated earlier both the agreements show that date of delivery of possession was June 2017. There is no dispute that the respondent failed to deliver possession on that date. Before the Hon'ble Chairperson on 1.3.2018, the respondent undertook to deliver possession on or before 31.05.2018. Even that promise is broken by the respondent and he has failed to deliver possession, as agreed before Hon'ble Chairperson. Now the complainants desire to withdraw from the Project. There is absolutely no justification coming from the respondent for not delivering possession in terms of the agreement. Consequently, complainants are entitled to withdraw from the project and claim refund of the amount paid with interest.
9. The complainants claim that they have paid in respect of two flats Rs. 20,04,626/- and Rs.18,10,626/- which comes to 97% of the value of each flat. As per agreement the price of Flat 1207 was Rs. 20,66,625/- and the price of Flat No. 1208 was Rs. 18,66,625/-. It appears that the complainants sought loan from India Bulls Housing Finance Ltd. A statement issued by India Bulls Housing Finance Ltd. shows that in respect of Flat, i.e. 1207, the amount disbursed is Rs. 18,80,764/-. In respect of 2nd flat, i.e. 1208 the amount disbursed was Rs.16,82,271/-. As per chart given by the complainants, total amount paid is shown as Rs. 40,19,958/-

22.11.18

including Service Tax and VAT. In Annexure A in respect of Flat No. 1207 the amount paid is shown as Rs.26,88,825/- including Stamp Duty and Registration Charges and the Bank interest. In respect of Flat No. 1208 total amount paid is shown as Rs. 24,27,186/-. These amounts also include insurance premium. The actual interest amount paid to India Bulls is not made clear. The repayments schedule has been placed on record. Whether those interest amounts have been paid is not known in the absence of corresponding receipts from India Bulls. Consequently, the compensation on this account would be Rs. 2 lakhs, i.e. Rs. 1 lakh in respect of each flat which would be just and proper in my opinion. I therefore answer point No.1 & 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 ^{to complainant} Rs. 24,20,297/- in respect of Flat No. 1207 and Rs.21,97,655/- in respect flat No. 1208 except Stamp Duty which can be refunded together with interest at the State Bank of India's highest marginal cost of lending rate which is presently 8.70% plus 2% equal to 10.70% from the date of payments till actual realisation.
- 3) The respondent to pay Rs. 20,000/- as cost of this complaint to the complainant.
- 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: 22.11.2018

(Madhav Kulkarni)
Member & Adjudicating Officer
MahaRERA

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COMPLAINT NO: CC006000000012194

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& 3 others

Versus

Damji Hari Constructions ... Respondent
MahaRERA Regn.No. P51700010871

Coram:
Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainants were themselves present.
Respondent was represented by Mr.Dhamal Bhanushali

Order

01st March 2018

1. The Complainants have purchased apartments bearing No. 1207 and 1208 in the Respondent's project 'Pentagon Heights' located at Bhiwandi, Dist.Thane through registered agreements for sale executed on 18th June 2016 with possession date on or before June 2017. The Respondent, through discussion with the Complainants, had thereafter extended the date of possession from June 2017 to October 2017 and then to March 2018. However, since there is no possibility of completion of the said project till March 2018, the Complainants want to withdraw from the Project and have approached this Authority to direct the Respondent to refund the money under section 18 of the Real Estate (Regulation and Development) Act, 2016.
2. The Respondent explained how the delay in completion of the project and handing over possession of the said apartments has been due to mitigating circumstances beyond his control and which are already mentioned in the said agreement and also explained to the Complainants from time to time.



3. The Respondent further stated that the date of possession put on the MahaRERA website is 30th November 2018. However, he is ready to handover possession, with OC, to the Complainants on or before 31st May 2018. He further committed that, if the Complainants want, to relieve the burden of rent which they are paying at present, the Respondent is ready to immediately provide temporary alternate accommodation in another wing of the project which has been completed with OC, till the date of handing over the possession of Complainant's apartments.
4. The Complainants agreed to reconsider their prayer and continue in the project.
5. In view of the above facts and as agreed by the parties, the Respondent shall handover possession of the purchased apartments to the Complainants on or before the period ending May 2018, with OC, failing which the Respondent shall be liable to pay interest to the Complainants from 1st June 2018 till the actual date of possession, on the entire amount paid by the Complainants to the Respondent. The said interest shall be at the rate as prescribed under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules, 2017.
6. Consequently, the matter is hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA