

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000023385

Veena Agarwal ... Complainant.

Versus

Kamala Singh ... Respondent.

MahaRERA Regn No. : P51800012677

Coram: Shri Madhav Kulkarni,
Hon'ble Adjudicating
Officer.

Appearance:

Complainants: J.Chandanani,Adv.
Respondent:

ORDER

Date: 20 June 2018

1. The Complainant who had booked flat with the Respondent claims refund of money on account of default committed by the Respondent, by withdrawing from project.
2. The Complainant has alleged that she booked commercial premises No.103 admeasuring 735 sq.ft. (68.28 sq.mts) Carpet area, on Ist floor in the project Shwet Villa. Consideration agreed was Rs.1,05,00,000/-. An Agreement was executed on 24.12.2013. As per clause-18 of the agreement, the Respondent promotor promised to deliver possession on or before March 2014.
3. The Complainant has paid entire consideration of Rs.1,05,00,000/-. She has paid Rs.5,25,500/- towards stamp duty, Rs.30,000/- towards registration charges. She paid Rs.20,00,000/- for installing additional bathroom and making both the bedrooms fully furnished, providing in kitchen work top and storage units and wall to wall wardrobes in to bed rooms.

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4. The Respondent has not handed over the possession as agreed. The Complainant on 27.02.2017 issued notice to him through Consumers Guidance & Protection Society. The Respondent failed and neglected to reply the said notice. The Respondent has not replied notice satisfactorily nor handed over the possession. The Complainant therefore, seeks refund of the amount paid by her.
5. It appears that the matter came up before the Hon'ble Chair Person, MahaRERA on 13.04.2018 after due service of notice. The matter came to be transferred to the Adjudicating Officer. The notice for hearing i.e. 21.05.2018 was communicated to both parties by e-mail on 21.5.2018. Advocate for complainant appeared but Respondent failed to appear. Heard arguments for the Complainant. Since I am working as Mumbai and Pune Offices in alternate weeks, matter is being decided now.
6. Following points arise for my determination, I have noted my findings against them for the reasons stated below:

7.	<u>Points</u>	<u>Findings</u>
	7. Has the Respondent committed default in delivery of possession without sufficient reason?	Yes
	8. Is the Complainant entitled to refund Of amount?	Yes
	9. What Order?	As per final order

8. REASONS

Point 1 & 2: The Complainant has placed the agreement dated 24.12.2013 on record. Accordingly, the Respondent had undertaken redevelopment of premises of Tej Co-op. Housing Society at IIT Market Powai, Village – Tirandaz, Taluka – Kurla in Mumabi City. The reconstructed building was to have shops on ground floor and commercial units at Ist floor and residential premises on upper floors. The Complainant booked flat No.103 on the first floor of building known as Shwet Villa, admeasuring

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685 sq.ft.(62.63 sq.mt)carpet area. The consideration agreed was Rs.1,05,100,000/-.

9. As per Clause-18, the Respondent had undertaken to handover the possession on before 31.03.2014, provided the purchaser complied with the terms of agreement and paid all the dues. The payment schedule is given in Clause-33 in respect of payments to be made after completion of construction and before taking possession. The Complainant claims to have paid the total consideration of Rs.1,05,00,000/-.
10. The Complainant has placed on record the receipt which is infact annexed to the agreement. Accordingly, Rs.20,00,000/- were paid on 13.6.2013, Rs.30,00,000/- paid on 13.6.2013, Rs.10,00,000/- paid on 10.10.2013, Rs.20,00,000/- paid on 10.10.2013. Rs.50,000/- paid on 10.10.2013, Rs.20,00,000/- paid on 12.12.2013. The payments were made by cheques drawn on ICICI Bank. Thus, the Complainant paid the entire consideration amount before agreement was executed on 24.12.2013.
11. The Complainant has produced Exhibit-B in respect of payments made to the Respondent. It is clear that vide cheque dated 10.10.2013 respondent was paid Rs.20,00,000/-. These payments were made for additional work. The cheque No.50286 is found in the statement from ICICI Bank dated 20.09.2013.
12. The Respondent has failed to challenge the version of the complainant. The complaint has also proved the agreement and the payment made to the Respondent. The agreed date of delivery of possession was 31.3.2014. More than 4 years have gone by and Respondent has failed to deliver possession. No justification at all has come forth from Respondent. Even the date mentioned in RERA record i.e. 31.3.2018 has gone by. Still the Respondent has not delivered possession. Therefore, Complainant is entitled to refund of the amount paid by her under section-18 of the RERA Act. I, therefore answer point Nos.1 & 2 the affirmative and proceed to pass following order:-

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ORDER

- I) The Respondent is directed to refund amount of Rs.1,05,00,000/- + Rs.20,00,000/- together with interest 10.05% from the date of payment till final realisation.
- II) Respondent shall pay Rs.75,000/- as costs to the Complainant.
- III) Respondent shall pay these amounts within 30 days from the date of this order.

MV 20.6.2018
(M. V. Kulkarni)
Adjudating Officer, MahaRERA

Place: Mumbai.

Date: 20 June 2018