

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

COMPLAINT NO: CC006000000023726

Naeem Abdul Sattar Shaikh ... Complainant.

Versus

Niyaz Abdul Samad Pathan ... Respondent.
MahaRERA Regn: P99000012749

Coram:

Hon'ble Shri Madhav Kulkarni.

Appearance:

Complainant: No.2 Present a/w
Advocate Chirag Shah

Respondent: Representative Mr. Krishna
Singh

Final Order

22nd January 2019

1. The complainant who had booked a flat with respondent / builder seeks withdrawal from the project and seeks refund of the amount paid with compensation.
2. As usual proforma of complaint lacks necessary details. A detailed complaint came to be placed on record on 23.10.2018. Accordingly, the complainant received allotment letter from respondent on 07.02.2015. Accordingly, Flat No. 1203 on 12th floor in 'A' Wing in the building Sunshine Sapphire at Gokhivare, Vasai measuring 561 sq.ft. was agreed to be sold to the complainant for Rs. 34,57,250/- . The complainant has paid Rs. 33,48,270/-. Agreement came to be executed on 25th March 2015. Complainant sought home loan from Bank of India, Borivali to the extent of Rs. 27,85,000/- at interest @ 10.20% p.a. Amount of Rs. 25,08,270/- has been disbursed towards Service Tax, Rs. 1,05,000/- and VAT Rs. 35,000/- were also

22/1/19

paid. Respondent had agreed to deliver possession on or before 31.03.2017, however, on MahaRERA site date of completion is shown as 30th May, 2019. The complainant is burdened with liability of repaying loan with interest. Since the respondent caused breach of agreement complainant has filed this complaint.

3. The matter came up before the Hon'ble Chairperson on 13th June 2018 when it came to be adjourned to 5th July 2018. On 5th July 2018 the matter came to be transferred to Adjudicating Officer. On 30th August 2018 Plea of the Respondent was recorded. The respondent did not file written explanation on 30.08.2018 and also on 23.10.2018. The respondent filed written explanation on 19.11.2018. Thereafter, arguments were heard on 17.12.2018 when I was having sitting at Mumbai after completing my sitting at Pune.

4. The respondents have alleged that the date of delivery of possession i.e. 31.03.2017 was subject to various conditions as per clause 7 of the Agreement. The project was delayed for the consent order from Maharashtra Pollution Control Board. The consent order was received only on 22.01.2018. The respondent has informed the complainant about the said delay and informed that possession will be given before Dec. 2018. Now the date of possession is given as 31.05.2019. There was delay in getting electric supply from Mahavitaran and the supply was sanctioned on 15.06.2018. The project is 98% completed. The respondents are ready and willing to hand over possession before 31.12.2018. The respondents are ready to refund Rs. 34,47,500/- to complainant.

5. On the basis of rival contentions of the 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 the flat to the complainant as per Agreement without there being circumstances beyond control?	Affirmative
2. Is the complainant entitled to the reliefs claimed?	Affirmative
3. What order?	As per final order

22-1-19

Reasons.

5. Point no. 1, 2 & 3

Complainant has placed on record copy of the agreement dated 25.03.2015. The price of Flat No. 1203 in A wing in Building Sunshine Sapphire was Rs. 34,87,250/-. As per clause No. 6 date of delivery of possession was 31.03.2017. As per clause No. 7 respondent were entitled for extension under certain circumstances. It is the contention of the respondents that electricity connection was not sanctioned and consent order from Maharashtra Pollution Control Board was not received in time which delayed the project. Consent order of the MPCB dated 21.1.2018 is placed on record. It is issued to Reshmi Ameya Developers. When did respondents apply for consent order is not made clear. Whether the complainant was made aware about the factual position is also not made clear. A ground is also taken that electricity connection did not come early. The respondent is a professional builder and must know the time required for obtaining various permissions as well as electricity connection. He is required to give the date of possession by taking into consideration all the circumstances. Otherwise he is required to inform the flat purchasers about the status regarding obtaining various permissions. The respondent in the present case have not informed the complainant about the status in regard to the various permissions and electricity connection and there is no evidence adduced in that respect. Consequently, I hold that respondent failed to deliver possession as per agreement without there being circumstances beyond the control of the respondent. I therefore answer point No.1 in the affirmative.

6. The complainant has claimed the he has in all paid Rs. 42,12,282/- including Stamp Duty of Rs. 2,09,300/-. It is claimed that advance of Rs. 7,00,000/- was paid on 25.03.2015 and loan of Rs. 22,99,035/- was disbursed on 21.04.2015. When the price was Rs. 37,85,000/- why the complainant paid about Rs. 42 lakhs is not understood. Again complainant has given figures

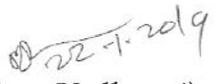
22-1-19

of interest paid to the Bank. It may be instalments comprising of principal + interest. The principal amount is from the loan component which is already paid to the respondent. The complainant cannot claim back loan amount disbursed as well as principal amount repaid to the Bank. The complainant will be entitled to claim only interest amount which he was required to pay to the Bank. The respondent has admitted having received Rs. 34,47,500 and is ready to repay that amount. The complainant can also claim refund of Stamp Duty. I therefore answer point No. 2 in the affirmative and proceed to pass following order.

ORDER

- 1) The complainant is allowed to withdraw from the project
- 2) Respondent to pay Rs. 34,47,500/- to the complainant + Bank interest paid by the complainant if not included in it except the Stamp Duty which can be refunded as per Rules together with interest @ 10.70% p.a. from the date of payments till actual realisation.
- 3) The respondent to pay Rs. 20,000/- to the complainant as costs of this complaint.
- 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: 22.01.2019


(Madhav Kulkarni)
Adjudicating Officer,
MahaRERA