

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

COMPLAINT NO. CC006000000044177

Naresh Thakur

..Complainant

Verses

Poonam Lifestyle

..Respondent

MahaRERA Regn. No.P9900005516

Coram:

Hon'ble Shri Madhav Kulkarni,

Appearance:

Complainant : Present In person

Respondent : Absent

**ORDER
(Dated 19th March, 2019)**

1. The complainant who had booked a flat with the respondent/builder, seeks withdrawal from the project and refund of the amount paid, with compensation as the respondent failed to deliver the possession of the flat as per agreement.
2. In his complaint, the complainant has alleged that as per registered agreement dated 23.04.2013, the respondent was supposed to give possession of the flat booked being flat no. D-101, Jasmin, building No.10 at Poonam Park, Palghar by April, 2014. However, possession has not been delivered. The complainant has already made 80% payment of the price. The respondent/builder has delayed the possession even after 4 years. The respondent/builder has defaulted in payment of

project loan of Bank of Baroda. The complainant seeks refund of the amount. The exact amount paid to the respondent is not given in the complaint.

3. The complaint came up before Hon'ble Member on 11.06.2018 and came to be adjourned to 26.06.2018. The complaint came to be transferred to Adjudicating Officer. The complaint came up before me on 25.09.2018. The matter was adjourned for recording of plea of the respondent and for filing written explanation by the respondent to 24.10.2018. The respondent filed written explanation only on 19.11.2018. Arguments were heard on 17.12.2018. As I am working at Mumbai and Pune Offices in alternative weeks, this matter is being decided now.
4. The respondent has alleged that no cause of action arose for filing of this complaint and it's a false complaint. Delay has been caused due to unavailability of sand and shifting of power to provide environmental clearance. The respondent has taken steps for completing the project. The respondent had to file a complaint with the police due to harassment by local contractors and suppliers. 90% of the work is completed. Rs.2,04,835/- i.e. balance amount of Rs.1,28,135/- plus Rs.76,700/- towards society formation are due from the complainant. The complaint therefore deserves to be dismissed.
5. On the rival contentions of the parties, following points arise for my determination. I have noted my findings against them for the reasons stated below:

12-3-19

POINTS

FINDINGS

- | | |
|--|---------------------|
| 1 Has the respondent failed to deliver the possession of the flat to the complainant as per agreement, without there being circumstances beyond his control? | Affirmative |
| 2 Is the complainant is entitled to the reliefs claimed? | Affirmative |
| 3 What Order? | As per final Order. |

REASONS

6. Point Nos. 1 & 2 – The complainant has placed on record the Agreement dated 23.04.2013. As per the clause 9, date for delivery of possession was April, 2014. One year since execution of the agreement was reasonable period for delivery of possession. It is the contention of the respondent that due to unavailability of sand and due to shifting of power to provide environmental clearance, the project got delayed. These are vague allegations not supported by any evidence. When the shortage of sand occurred and what was its effect on the construction industry is not explained. Likewise, when did shifting of power to provide environment clearance, occurred and what was its effect on the project at hand is not made clear. Only the vague allegations are not sufficient. The respondent is a professional builder and is required to anticipate such contingencies and should be prepared to tackle them. The respondent alleged that he suffered harassment at the hands of local contractors and suppliers and he had to file complaint with the police. The copy of the complaint dated 24.04.2017 shows that it is a vague complaint and nobody has been named in the complaint and it is just to create evidence to justify delay and therefore, cannot relied upon. I therefore, answer point No.1 in the affirmative.

7. As per agreement cost of the flat was Rs.12,81,350/-. The complainant has alleged that he has made 80% payment to the respondent but did not give exact amount that was paid. Some receipts have been placed on record. Total comes to Rs.11,54,488/-. It appears to be inclusive of stamp duty amount. The complainant will be entitled for refund of stamp duty as per the rules. Therefore, the complainant is entitled to recover the balance amount together with interest as per the Rule 18 of Maharashtra Rules. 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.11,54,488/- to the complainant, except stamp duty amount if included, which can be refunded as per rules, together with interest @10.70% p.a. from the date of payments till final realisation.
3. The respondent to pay Rs.20,000/- to the complainant at costs of this complaint.
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 : 19.03.2019

19.3.2019
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA