

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

COMPLAINT NO: CC006000000057347

Dilip Kumar Ahuja ... Complainant.

Versus

THEME DEVELOPERS PVT. LTD. ... Respondents.
MahaRERA Regn: P51700010325

Coram:

Hon'ble Shri Madhav Kulkarni.

Appearance:

Complainant: Present a/w

C.A., Jain

Respondent: Adv. Bhoumick Vaidya

Final Order

25th September 2019

1. The complainant who had booked a flat with the respondent/promoter seeks withdrawal from the project and refund of the amount paid with interest and compensation.
2. The Complainant has alleged that he booked Flat No.501 in building S-01 Wing on the project of the respondent Star Living vide allotment letter dated 16.04.2015. Despite several attempts to communicate respondent has not taken steps for execution of agreement. Possession of the flat was due on or before March, 2018. Respondent has delayed possession. Therefore, the complainant is entitled to refund of Rs. 5,30,48,625/- along with interest @ 24% p.a. Further, details of the transactions as required are not given by the complainant for reasons best known to the complainant.
3. The complaint came up before me on 24.06.2019. Respondent was absent and the matter was adjourned to exparte hearing to 18.07.2019. On 18.07.2019 respondent filed reply and arguments for both parties were heard. As I am working at Mumbai and Pune Offices in alternative

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weeks and due to heavy pendency in this office, this matter is being decided now.

4. The respondent has alleged that complainant has filed false complaint. He is financial investor and invested amount to seek exemption under Income Tax Act. Vide Consent-Cum-Declaration dated 09.01.2018 complainant agreed to the changes and amendments carried out by respondent in the project and complainant accepted three flats on 5th floor. Complainant was aware that date for possession given is 31.03.2024, as per certificate issued by MahaRERA this is a Slum Rehabilitation Project previously sanctioned by Thane Municipal Corporation. I.O.D. dated 27.08.2014 was issued thereafter on 11.09.2014 Slum Rehabilitation Authority was declared as new Authority and respondent had to file fresh application for commencement certificate. The permission was delayed by 4 years due to transition. Office of SRA was set up in Thane on 15.04.2016. Complainant had long relationship with respondent being financial investor. Respondent received letter of intent on 25.05.2018. Complainant never insisted upon entering into agreement. In the event of cancellation, respondent is entitled to retain 10% of the total consideration. The complaint therefore deserves to be dismissed.

4. 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 to complainant as per agreement without there being circumstances beyond his control? | Affirmative |

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2. Is the complainant entitled to the reliefs claimed?

Affirmative

3 What order?

As per final order

Reasons.

5. Point no. 1, 2

The complainant has placed on record allotment letter dated 16.04.2015. It is the Slum Rehabilitation Project by name Star Living at Naupada, Thane (W). The letter reads that plans have been approved by VP S02/0112/13 by Thane Municipal Corporation. Flat No. 501 having carpet area of 2506 sq.ft. was agreed to be sold for consideration of Rs. 5,25,00,000/-. Payment of Rs. 2,25,00,000/- has been acknowledged. Registration of agreement was promised. Date for possession mentioned is March, 2018. There is another receipt acknowledging total payment of Rs. 5,25,00,000/-. Receipt is dated 01.12.2015. All payments appear to have been made in a span of about 7-8 months.

6. It is the contention of the respondent that complainant is an investor and not a genuine flat purchaser. There is nothing on record to show that complainant had paid the money with a view to make huge profit in a short span. Though complainant has made all the payments in a short span, he cannot be termed as promoter unless respondent proves that the payments were linked to handsome return. Respondent should not have accepted more than 20% of the price without registering agreement as provided under MOFA. Respondent himself is guilty of acting illegally.

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7. Respondent in the allotment letter informed that the permission was in place and plans were approved in 2013 itself. Now it is contented that the sanctioning Authority was changed in the year 2014 and respondent had to apply afresh for commencement certificate. The certificate came only in the year 2018. It must be remembered that allotment letter is dated 16.04.2015. Amounts were accepted from complainant between April and Nov. 2015. Why the respondent accepted these amounts and why he gave date for delivery of possession as March 2018 is not understood. It all shows only the greed on the part of the respondent and his misdeed. If being SRA project permissions were expected to be delayed, the respondent should not have given false promise and accept all the money. Now respondent must blame himself, if permissions were delayed.

8. It is the contention of the respondent that complainant executed Consent-Cum-Declaration dated 09.01.2018 and agreed to accept three flats on 5th floor for the consideration that was already paid. It is the contention of the complainant that the signature on that Consent form is forged. It is also a question why complainant would have consented to the change of allotment. The best course open for the respondent was to get expert opinion whether the signature is genuine or false. There are letters from the complainant dated 21.11.2018; 02.05.2018 demanding registration of the agreement or refund of the entire amount. Therefore, the complainant having consented to change the allotment is not plausible. Clearly, the respondent failed to deliver possession as per agreement without there being circumstances beyond his control. I therefore answer Point No.1 in the affirmative.

9. Complainant appears to have paid Rs. 5,25,00,000/- to the respondent. It is also claimed that TDS of Rs, 5, 40,625/- was paid. Complainant therefore seeks refund of Rs. 5,30,48,625/-. The

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complainant is entitled to refund of this amount together with interest as provide under Rule 18 of Maharashtra Rules. I therefore answer point No. 2 in the affirmative and proceed to pass following order.

ORDER

- 1) Complainant is allowed to withdraw from the project.
- 2) Respondent to pay Rs. 5,30,48,625/- to the complainant together with interest @ 10.75% p.a. from the date of payments till final realisation.
- 3) The respondent to pay Rs. 50,000/- to the complainant as costs of this complaint.
- 4) Charge of the above amounts is kept on Flat booked by Complainant.
- 5) The respondent to pay the above amounts to the complainant within 30 days from the date of this order.

Mumbai.
Date: 25.09.2019

Mh 25-09-2019
(Madhav Kulkarni)
Adjudicating Officer,
MahaRERA