

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

COMPLAINT NO. CC006000000056901

Nehal Nikhilkumar Thakkar
Nikhilkumar Thakkar

..Complainants

Verses

Viva Winner Venture Realtors LLP

..Respondent

MahaRERA Regn. No. P99000008341

Coram:

Hon'ble Shri Madhav Kulkarni,
Adjudicating Officer, MahaRERA.

Appearance:

Complainant: In Person
Respondent : Absent.

**ORDER
(Dated 26.09.2019)**

1. Two complainants who had booked a flat with the respondent/promoter, seek withdrawal from the project and refund of their amount with interest and compensation as respondent failed to deliver possession as per agreement.
2. Complainants have alleged that they booked a flat in the project of the respondent on 12.06.2011. Agreement was entered into on 20.04.2013. Date for delivery of possession was given ^{as} 31.05.2015. Respondent has collected 77% of the total flat cost. Project is 80% ready. Respondent extended floors from 7 to 13 and from 13 to 15 floors respectively. Respondent was to buy-back the flat from the complainants. Complainants therefore, repaid entire loan amount. Respondent then refused to buy-back the flat. Complainants

demand interest @12% p.a. as per agreement for delay. Complainants issued notice to return entire amount with interest and compensation. Respondent offered to pay interest from 01.06.2015 @9% p.a. As usual this is vague complaint. No. of the flat that was booked, name of the project, price that was agreed, exact amount that was paid are all missing in the online complaint for the reasons best known to the complainants. These are the basic ingredients of a complaint and though complainants are literate, they have failed to give them only because filing of online complaint is permitted. From the copy of the agreement it can be made out that its dated 13.04.2013. Flat No. A2-104 was agreed to be sold for Rs.26,23,180/-. As per clause 13, date for delivery of possession was May, 2015.

3. The complaint came up before me on 23.05.2019. The matter was adjourned to 20.06.2019 for filing written explanation by respondent. On 20.06.2019, matter was adjourned to 18.07.2019 for settlement / final hearing. On 18.07.2019, respondent was absent. Arguments for complainants were heard. As I am working at Mumbai and Pune Offices in alternative weeks, and due to huge pendency in this office, this matter is being decided now.
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 of the flat to the complainants as per agreement, without there being circumstances beyond his control?	Affirmative
2 Are the complainants entitled to the reliefs claimed?	Affirmative
3 What Order?	As per final Order.

REASONS

5. **Point Nos. 1 & 2** - Complainants have alleged that they booked flat on 12.06.2019. Quotation dated 05.06.2011 is placed on record. Receipt dated 12.06.2011 for Rs.1,00,000/- is placed on record. Project appears to be at Village Bolinj, within the limit of Vasai-Virar Municipal Corporation. Agreement came to be executed on 20.04.2013. As per clause 13, date for delivery of possession was May, 2015. The contentions of the complainants that respondent has not delivered possession till today is not challenged by the respondent. I therefore, answer point no. 1 in affirmative.
6. Complainants claimed that they have paid 77% of the flat cost. It is also alleged project is 80% ready and respondent extended the floors from 7 to 13 and from 13 to 15 floors. Respondent agreed to buy-back the flat but then refused. Complainants are said to have repaid the entire loan. Complainants demanded refund of the amount with interest @12% p.a. but the respondent agreed for interest @9% p.a. As per agreement, price was agreed at Rs.26,23,180/-. Complainants have not given exact amount paid to the respondent but are said to have paid 77% of the flat cost which will then come to Rs.20,19,925/- Following receipts have been placed on record by the complainants.

Rs.1,00,000/- dated 12.06.2011

Rs.2.95 lakhs dated 19.05.2012

Rs.12,158/- dated 28.07.2012

Rs.1,33,689/- dated 29.01.2013

Rs.28,800/- dated 05.03.2013

Rs.1,72,500/- dated 05.03.2013

Rs.26,232/- dated 12.03.2013

Rs.5,320/- dated 07.06.2013

Rs.1,300/- dated 11.06.2013

Rs.9,44,344/- dated 17.06.2013

26.9.19

Rs.40,528/- dated 24.06.2013

Rs.3,67,245/- dated 01.07.2013

Rs.1,83,625/- dated 20.09.2013

Rs.5,675/- dated 09.10.2013

Rs.5,675/ dated 12.11.2013

Rs.1,14,148/- as interest paid to the Bank as on 20.03.2014

Thus complainants paid Rs.24,36,239/-. They are entitled to refund of this amount together with interest as per Rule 18 of the Maharashtra Rules. I therefore, answer point no. 2 in the affirmative and proceed to pass following order.

ORDER

1. The complainants are allowed to withdraw from the project.
2. Respondent to pay rs.24,36,239/- to the complainants, except stamp duty amount, which can be refunded as per rules, together with interest @10.40% p.a. from the date of payments till final realisation.
3. The respondent to pay Rs.20,000/- to the complainants as costs of this complaint.
4. The complainants to execute cancellation deed at the cost of the respondent.
5. Charge of the above amount is kept on the flat booked by the complainants.
6. The respondent to pay above amounts within 30 days from the date of this Order.

Mumbai

Date : 26.09.2019

26.9.2019
(Madhav Kulkarni)
Adjudicating Officer
MaharERA