

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

COMPLAINT NO. CC00600000023176

Santosh Sakahram Kale
Preeti Santosh Kale

..Complainants

Verses

Kamran Live Stock & Real Estate Pvt.Ltd

..Respondent

MahaRERA Regn. No. P51700001164

Coram:

Hon'ble Shri Madhav Kulkarni,
Adjudicating Officer, MahaRERA

Appearance:

Complainants : _____

Respondent : _____

**ORDER
(Dated 27.03.2019)**

1. The complainants husband and wife who had booked a flat with the respondent/builder, initially filed complaint seeking directions to the respondent to hand over the possession of the flat at the earliest and to pay compensation for delay in delivery of possession. When the matter came up before Hon'ble Chairperson, MahaRERA on 13.06.2018, complainants sought 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.

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2. The complainants have alleged that agreement was executed by the respondent in their favour on 12.07.2012. Flat on 15th floor in the 21 storeyed building was agreed to be sold to the complainants. Date for delivery of possession was given as December, 2013. The complainants paid the first amount of Rs.2,00,000/- on 14.12.2010. Flat NO. 1503 was agreed to be sold for Rs.40.11 lakhs. Complainants have made total payment of Rs.29,68,140/- out of which Rs.14,14,870/- was disbursed by LIC Housing Finance Ltd., Around April, 2016, respondent vide a letter informed that they had permission to build only 15 floors. Thus the respondent wilfully mis-represented complainants that building will be of 21 floors. Complainants therefore, filed this complaint as above.
3. Vide Roznama dated 13.06.2018, Hon'ble Chairperson transferred the matter to the Adjudicating Officer. The matter came up before me on 29.08.2018 when plea of respondent was recorded. The respondent filed written explanation on 11.10.2018. On 27.11.2018, complainants filed rejoinder. On 21.12.2018 respondent sought adjournment. On 25.01.2019 both the parties filed written arguments. As I am working at Mumbai and Pune Offices in alternative weeks, this matter is being decided now.
4. The respondent alleged in his written explanation that from the agreement it is clear that building would of Gr+15 floors. The contention of complainants that building would be of 21 storeys is totally incorrect. In the schedule mention that, construction would have 21 slabs is made inadvertently. In fact, complainants have withheld the payment without any reason. The complainants insisted on making payments after completion of the 21 slabs.

22-3-19

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:

POINTS	FINDINGS
1 Has respondent committed default by causing breach of agreement?	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 fact that as per the agreement date of delivery of possession was December, 2013 is not much in dispute. Complainants have insisted that respondent made misrepresentation that building would be of 21 floors & in fact, permission was only for 15 floors. The fact that respondent did not deliver possession by December, 2013, was not much emphasized by the complainants in their complaint. That was done in their rejoinder where it was alleged that now date of delivery of possession is given as December, 2019.
7. Photo copies of the brochures of Imperial Heights is sought to be placed on record. It does show that each of three towers was to have 20 floors. Complainants have alleged that they withheld further payments as respondent had permission only to construct 15 floors. They have made payment of Rs.29,68,140/-, which is 68% of the Agreement value. There is no dispute that flat no. 1503 booked by the complainants is on 15th floor. The respondent

is relying on page no. 9 of the agreement to show that building was to have only ground+15 floors. The respondent has also denied that there was delay in handing over possession. When complainants had booked flat on 15th floor, what prejudice complainants suffered by respondent not constructing 21 floors is not understood. Page No. 9 of the agreement clearly shows that the building was to have ground+15 part upper floors. It is the contention of the respondent that inadvertently in schedule it is mentioned that construction would be of 21 slabs. No such schedule is found annexed to the agreement. But there is payment schedule to that effect. Anyway, mere change from 21 floors to 15 floors, was no way prejudicial to the complainants.

8. The important aspect was date of delivery of possession. There is no dispute that it was agreed in December, 2013. Alleged payment of Rs.40,100/- appears to have been made on 19.11.2012. Now respondent alleges that date for delivery of possession is December, 2019. Such extension is done by the respondent unilaterally with no fault on the part of complainants. Consequently, respondent has failed to deliver possession as per agreement. I therefore, answer point No.1 in the affirmative.
9. The complainants appear to have made payment of Rs.29,68,140/-. They withheld payment of Rs.10,42,860/-. As per agreement payments were to be made stage wise after completion of stages. Admittedly construction is not yet completed. 11th, 12th and 13th instalments were payable only after construction of 17th, 19th and 21st slabs respectively. Now the complainants are seeking refund of the amount paid to the respondent of Rs.29,68,140/-. The complainants will be entitled to refund of stamp duty as per rules. Except that amount they are entitled to refund of the amount alongwith interest as provided

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under Rule 18 of the Maharashtra Rules. I therefore, answer point No.2 in the affirmative and proceed to pass following Order.

O R D E R

1. The complainants are allowed to withdraw from the project.
2. Respondent to pay 29,68,140/- to the complainants, 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 complainants as costs of this complaint.
4. The complainants 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 : 27.03.2019

MP 25-3-2019
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA