

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

COMPLAINT NO: CC00600000056585

Vijaya Patil ... Complainant.

Versus

M/s. Kamran Livestock and Real Estate  
Private Limited ... Respondent.  
MahaRERA Regn: P51700001164

**Coram:**

Hon'ble Shri Madhav Kulkarni.

**Appearance:** Complainant: Present  
a/w representative Mr. Abdul Gafur  
Respondent: Adv. Chintan Shah

**Final Order**

27<sup>th</sup> February 2019

1. The complainant who had booked a flat with the respondent / builder seeks withdrawal from the project and refund of the amount paid to the respondent with compensation.
2. The complainant has alleged that vide Agreement dated 9.9.2011 respondent agreed to sell Flat No. 301 in S-2 Wing in the project known as "Imperial Heights" at Chendni in Thane. The price of 648.32 sq.ft. carpet area was fixed at Rs. 38,16,000/- . Rs. 42,930/- were to be paid to the respondent towards maintenance. That was a redevelopment project. The respondent initially took Rs. 5,72,400/- , i.e. more than 10% from the complainant. As per clause 12 of the agreement date for delivery of possession was Dec. 2012. The respondent failed to deliver possession as per agreement. If the complainant purchases a new flat today she will have to pay the price @ Rs. 18,750/- per

sq.ft., i.e. a total of Rs. 1,21,54,312.50 i.e. she will be required to pay Rs. 12,864/- per sq.ft. more price which comes to Rs. 83,40,001/-. In fact, Rs. 38,16,000/- price is exclusive of black money of Rs. 17,17,200/-. The total amount therefore payable was Rs. 62,81,200/-. How much total amount was paid by the complainant to the respondent is not mentioned in the complaint. But she prays for withdrawal from the project.

3. The complaint came up before the Hon'ble Chairperson on 19<sup>th</sup> Nov. 2018 and the came to be transferred to Adjudicating Officer. The complaint came up before me on 18.12.2018. The respondent filed written explanation on that day. On 22.1.2019 plea of the respondent was recorded and arguments for both sides were heard. As I am working at Mumbai and Pune Offices in alternative weeks, this matter is being decided now.

4. The respondent has alleged that agreement was registered on 9.9.2011 and RERA came into force on 26.03.2016. Rs. 5,72,400/- were accepted being 10% as booking amount and 5% on execution of agreement as per Rules and Regulations prevailing at that time. The carpet area uploaded on RERA website is as per definition under RERA. The alleged difference is not deliberate. The document dated 26.3.2009 is not IOD but commencement certificate which was to remain valid for a period of one year. Entire building consists of Ground + 20 storeys. It is humanly impossible to complete this construction within a period of one year. Therefore, plinth certificate as well as part occupation was also obtained. Earlier Development under Slum Redevelopment Scheme used to be carried in the Corporation of Thane. After 2014 Development is carried under Slum Rehabilitation Authority scheme which was established in Thane after permission from State Govt. Therefore, no permission was cancelled and Development was carried out by respondent legally and validly. The LOI is very well present on the website.

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The respondent has not taken any new permission but has taken further Commencement Certificate.

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.

<b>Points</b>	<b>Findings</b>
1. Has the respondent failed to deliver possession Of the flat to the complainant as per agreement without there being circumstances beyond his Control?	Affirmative
2. Has the respondent mislead the complainant?	Negative
3. Is the complainant entitled to the reliefs claimed?	Affirmative
4. What order?	As per final order

#### **Reasons.**

6. Point no. 1 - There is no dispute that agreement was executed on 9.9.2011. It appears that the scheme was to come up at CTS No. 9,11,12 & 13 P Tika No.2 at Chendni, Thane admeasuring 8232.78 sq.mtrs. for OM Shree Swami Samarth Co-op. Housing Society Ltd. The land was said to be belonging to Thane Municipal Corporation which was handed over to the society to the extent of 6575 sq.mtrs., as the members were in possession of huts of 399 slum dwellers. The developers also entered into individual agreement with slum dwellers along with the society. Flat No. 301 on 3<sup>rd</sup> floor having carpet area of 60.23 sq. mtrs. was agreed to be delivered on or before Dec. 2012. Other charges amounting to Rs. 1,79,450/- were payable by purchaser as per clause 17. It appears that the complainant has paid Rs.

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5,72,400/-. Many hypothetical calculations have been given by complainant in her complaint.

7. There is no dispute that the respondent has not delivered possession of the flat to the complainant as per the terms of the agreement. The defence of the respondent is that it is humanly impossible to construct Gr + 20 storeys structure within one year. No doubt the agreement made a mention that the building "Imperial Height" will have Gr+ 20 upper floors having residential flats, shops, galas, car parking space, etc. The members of the housing society were occupants of the huts and the project had come up under Slum Development Scheme. Resolution of Corporation in that respect is dated 28.2.2008. CC is dated 23.06.2009 as well as 30.06.2009. According to respondent the CC was to remain in force for one year. Building G+20 structure in one year may be difficult but not totally impossible. Moreover, the agreement is of the year 2011 and the expected date for delivery of possession was Dec. 2012. This was a sufficient period for completing the construction since commencement.

8. The respondent has raised defence that since the year 2014, Development is carried out under SRA scheme. SRA was established in Thane after permission from State Govt. Thereafter SRA has sanctioned the plan. Now, under RERA act the date for completion of project is 31.12.2019. These are all subsequent developments. The original commitment was to hand over possession by 2012, i.e. well before SRA became applicable in 2014. The excuse being given by the respondent is lame excuse. The period has been extended by the respondent unilaterally without there being reasons beyond the control of the respondent on the date on which possession was promised. I therefore answer point No.1 in the affirmative.

9. Point No.2: It is the contention of the complainant that the IOD obtained by the respondent on 20.03.2009 expired after a period of one year.

When the agreement was executed on 9.9.2011 there was no IOD with the respondent and the respondent has deceived the complainant. It is the contention of the respondent that it was commencement certificate dated 26.03.2009. The respondent has obtained plinth certificate. Part occupancy certificate is also obtained on 29.4.2013 which is placed on record. Plinth certificate dated 23.5.12 also placed on record. There is substance in the contentions of the respondent. The respondent has also alleged that the area given on RERA website is as per definition of Carpet area under the Act and there is no deliberate misleading. The explanation is acceptable and therefore I answer Point No. 2 in the negative.

10. Point No. 3: As stated earlier the complainant appears to have paid Rs. 5,72,400/- out of the agreed consideration of Rs. 38, 16,000/- The complainant claims that the price agreed was Rs. 55,32,500/- out of which Rs. 17,17,200/- was to be black money. This is all hypothetical figure. It appears that complainant has paid Rs. 1,73,440/- as stamp duty and Rs. 30,000/- as registration charges. If the complainant is entitled for refund of stamp duty as per rules she cannot claim that amount. If it is not refundable she can claim that amount. Other charges of Rs. 1,80,000/-, cost of parking of Rs. 3,00,000/- and VAT of Rs. 39,000/- can be claimed by the complainant if she has actually paid that amount.

11. It is the contention of the complainant that flat in similar project is now being sold @ 18,750/- per sq.ft. Therefore, complainant is entitled to compensation to the extent of difference between the rate at which she had booked the flat and the rate that is prevalent now. There is no evidence about such a rate prevailing in that locality. Whether the Imperial Height is a slum rehabilitation scheme in the same locality is no known. The complainant has not booked a flat in that or any other scheme and has not made payment of such price. The amounts claimed by her are hypothetical

and for the lost opportunity the compensation that will be payable will be Rs. 1,50,000/-. I therefore answer point No.3 in the affirmative and proceed to pass following order.

### ORDER

- 1) The complainant is allowed to withdraw from the project.
- 2) The respondent to pay Rs. 13,11,000/- to the complainant except stamp duty if it is refundable as per rules and other charges, parking charges if paid by complainant together with interest @ 10.70% p.a. from the date of receipt of payments till final realisation.
- 3) The respondent to pay Rs. 1,50,000/- as compensation for opportunity lost.
- 4) The respondent to pay Rs. 20,000/- to the complainant as costs of this complainant.
- 5) The complainant to execute cancellation Deed at the cost of the respondent.
- 6) The respondent to pay the above amounts within 30 days from the date of this order.

Mumbai.  
Date: 27.02.2018

*ML*  
*27.2.2018*  
(Madhav Kulkarni)  
Adjudicating Officer,  
MahaRERA