

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI

Complaint No.CC06000000079397

Mr. Dilip Gurav

R/at FNMB 194-2/10,
Surprakash Rahivasi Mandal,
Wadala Shivri Cross Road,
Dr. Ambedkar College,
Mumbai 400031.

.. Complainant

Versus

Ramesh Homes Builders And Developers

Plot No.61, Office No.211,
Raheja Arcade Premises,
Sector 11, CBD Belapur,
Navi Mumbai-400614

.. Respondent

MahaRERA P.R. No.P51700012469

Coram : Shri M.V. Kuilkarni
Hon'ble Adjudicating Officer

Appearance :

Complainant : Adv. Shubhangi Sherekar
Respondent : Absent

FINAL ORDER
(4th February, 2020)

1. The Complainant/Allottee, who had booked a flat with the Respondent/Promoter seeks compensation as the respondent did not provide flower bed though it was promised.



2. As usual, a cryptic online complaint is filed and accordingly in the registered agreement and approved plan, flower bed was shown for Flat No.504 and respondent took Rs.4,50,000/- to Rs. 5,00,000/- for the flower bed. As per approved plan of the CIDCO, there is no flower bed. There is only a loft, which was converted by respondent into balcony. This being illegal, CIDCO is demolishing it. Respondent is asking to pay GST amount in cash. The complainant therefore, seeks direction either to provide flower bed or refund extra amount paid for flower bed, together with interest.
3. The complaint came up before me on 29th August, 2019. Respondent was absent. Matter was adjourned for ex parte hearing to 25th Sept. 2019. Again on that date respondent was absent. Arguments for complainant were heard. As I am working in Mumbai and Pune Offices in the 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) | Is the complainant an allottee and Respondent promoter ? .. | In the Affirmative. |
| (2) | If yes, has the Respondent made construction against the sanctioned plan ? | In the Affirmative. |

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- 3) Is the Complainant entitled to the reliefs claimed ?...

In the event the complainant takes possession of the flat, he will be entitled to compensation of Rs.2,00,000/- for the loss of flower bed.

- (4) What order ? As per final order.

REASONS

5. **POINT Nos.1 to 3**:- Complainant has placed on record copy of the agreement, dated 19th Jan. 2018 executed by Ramesh Homes Builders And Developers in favour of complainant and his wife in respect of Flat No.504 in the building "Shankar Palace" at Plot No. 108, Sector 20, Village Ulave, Tal. Panvel, District Raigad. The price agreed was Rs. 28,95,000/-. It appears that no date for possession as such is mentioned in the agreement. The grievance of the complainant is that respondent has taken Rs.4,50,000/- to Rs. 5,00,000/- for flower bed in Flat No.504, which has been mentioned in the registered agreement as well as in the approved plan. However, respondent has converted the flower bed into balcony, which is illegal and CIDCO is demolishing it.
6. As per description of the flat in the agreement, it is having 22.994 sq. mtrs. carpet area excluding the area covered by external walls, services shafts, exclusive balcony

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appurtenant to the said flat and exclusive of open terrace area appurtenant to the flat. There is no mention of flower bed in the agreement. The floor plan does show existence of flower beds in each flat on 5th floor. The complainant claims to have paid Rs. 4,50,000/- to Rs. 5,00,000/- extra for the flower bed, just to find that instead of flower bed, a balcony was constructed, which was illegal. Some photographs have been placed on record to show the existence of balcony.

7. As per letter of the respondent, dated 30.11.2019, out of the agreed consideration of Rs. 28,95,000/-, complainant had paid Rs. 27,70,000/- and was yet to pay Rs. 1,25,000/- and GST amount of Rs. 15,000/- - Rebate of Rs. 6,250/- = Rs.8,750/-. Further interest amount of Rs. 57,915/- was also payable. Total amount payable was Rs.3,85,565/-. The complainant has alleged that he is not ready to take possession as the illegal balcony is being demolished by CIDCO. There is no evidence about CIDCO undertaking demolition of balcony. However, there is no challenge that respondent has converted the flower bed into a balcony. The complainant therefore, is claiming back Rs. 4,50,000/- to Rs. 5,00,000/- paid towards flower bed. I am therefore, of the opinion that in the event the complainant takes possession of the flat, he will be entitled to compensation in respect of flower bed which has been lost.
8. The complainant is not certain as to what amount was paid for the flower bed. The agreement is also silent about the amount which was to be paid for the flower bed. It appears that occupancy certificate is already received. Now it is alleged that CIDCO is demolishing the balcony, which has

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been illegally constructed. However, there is no evidence to substantiate the contention. Any way, in my opinion, the complainant will be entitled to Rs. 2,00,000/- for the loss of flower bed. I therefore, answer Point Nos.1 and 2 in the affirmative and proceed to pass following order.

ORDER

- (1) Respondent to pay Rs. 2,00,000/- to the complainant for loss of flower bed. *if complainant takes possession of flat by making balance payment*
- (2) The Respondent to pay Rs. 20,000/- to the complainant as costs of this complaint.
- (3) Respondents to pay above said amounts within 30 days from the date of this order.

Mumbai (Camp at Pune)
Date :- 04.02.2020

M.V. Kulkarni
5.2.2020
(M.V. Kulkarni)
Adjudicating Officer,
MahaRERA