

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

COMPLAINT NO. CC006000000057863

Shrikant Joshi
Aarti Joshi

..Complainants

Versus

Aaryadeep Builders and Developers

..Respondent

MahaRERA Regn. No. P51700006499

Coram:

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

Appearance:

Complainant: Adv. Sarthak Shah
Respondent : Absent

**ORDER
(Date 14.01.2020)**

1. The complainants / allottees who had booked a flat with the respondent/promoter, seek withdrawal from the project and refund of amount paid with interest and compensation as respondent violated consent terms.
2. As per online complaint, earlier they had filed complaint no. CR21467. Matter was referred to Conciliation Forum and was disposed of in terms of settlement on 29.12.2018. However, respondent has violated consent terms. The cheque dated 15.01.2019 has bounced back due to stop payment advice. Therefore, complainants have filed this fresh complaint.
3. Complainants have filed application for non-compliance of Memorandum of Consent Terms. Complainants had booked flat in the project of the respondent Shree Sai Vishram at Eksar in Dahisar,

Tal.Borivali in Mumbai. Complainants are entitled to refund of Rs.43.68 lakhs. It appears that complainants booked flat no. 1504, which is clear from the copy of the affidavit filed by the complainants. What was date of agreement and consideration that was agreed and date for delivery of possession is not made clear by the complainants for the reasons best known to them.

4. Complaint came up before me on 16.07.2019. Plea of the respondent was recorded. Matter was adjourned to 20.08.2019 for written explanation by respondent. Respondent filed written explanation on that day. Matter was adjourned to 16.09.2019 for final hearing. Arguments were heard on that day. 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.
5. In his written explanation, respondent has alleged that complainants claim that they booked flat in the year 2013 with Saaga Infra Projects Pvt. Ltd. In the year 2014, complainants filed suit against Saaga Infra Projects Pvt. Ltd. in City Civil Court, Dindoshi. Saaga Infra Projects Pvt. Ltd. abandoned the project and respondent entered into an agreement with Sai Vishram CHS Ltd. for redevelopment. Complainants approached respondent for refund of money paid to Saaga Infra Projects Pvt. Ltd., but did not produce valid documents and continued with their suit till 2018. In December, 2018, Conciliation Forum insisted on withdrawal of the suit. Complainants were to produce original allotment letter and to withdraw their suit. Complainants withdrew suit on 28.12.2018. Consent Terms were signed by the parties. Complainants were to produce original authenticated allotment letter. Therefore, respondent issued post dated cheques. Complainants produced unsigned copy of allotment letter in violation of agreement reached earlier. Therefore, respondent instructed not to deposit cheques. Before the Conciliation Forum complainants admitted that they did not have any bonafide allotment letter signed

and sealed by Saaga Infra Projects P. Ltd. Complainants have misguided MahaRERA authority. Therefore, complaint deserves to be dismissed.

6. Following points arise for my determination. I have noted my findings against them for the reasons stated below:

	POINTS	FINDINGS
1	Are Complainants allottees, and respondent promoter?	Affirmative ✓ Negative ✓
2	If yes, has the respondent failed to deliver possession of the flat to the complainants as per agreement, without there being circumstances beyond his control?	Negative
3	Are the complainants entitled to the reliefs claimed?	Negative
4	What Order?	As per final Order.

REASONS

8. **Point Nos. 1 & 3** – Respondent has alleged that complainants claimed to have booked flat with Saaga Infra Projects which abandoned the project. Thereafter, respondent entered into agreement with Sai Vishram CHS Ltd. for redevelopment of their property. Respondent is alleging that complainants are misleading. It appears that land is belonging to Sai Vishram CHS Ltd. and its building was to be redeveloped. In their submissions filed on 16.09.2019, complainants admitted that the land of Sai Vishram CHS was to be redeveloped. Complainants are silent about previous developer Saaga Infra Projects in this complaint. Copies of pleadings in previous complaint are not placed on record by the parties. Complainants have repeated story starting from Conciliation Forum. Respondent is not

disputing that matter was resolved in Conciliation Forum. With the affidavit dated 20.08.2019, complainants have placed on record copy of allotment letter dated 20.03.2013 issued by Saaga Infra Projects. Accordingly, flat no. 1504 was allotted for Rs.95.20 lakhs. There is receipt for Rs.38.08 lakhs. There is no dispute that matter was settled before Conciliation Forum. It appears that by writing letter, respondent asked complainants to produce authenticated allotment letter. On their failure, respondent asked them not to deposit post dated cheques. The Memorandum of Consent Terms before the Conciliation Forum dated 29.12.2018 is placed on record by both the parties. As per condition no. 2(3), complainants were to submit original allotment letter dated 20.03.2013 alongwith original receipts to show that they had paid Rs.38.08 lakhs.

9. As stated earlier, the copy of allotment letter is seen to be issued by Saaga Infra Project on 20.03.2013. There is a receipt of Rs.38.08 lakhs issued by Saaga Infra Project. Grievance of the respondent is that they are not authenticated document. Complainants have chose not to join Saaga Infra Project or Sai Vishram CHS Ltd., as party to this proceeding, for the reasons best known to them.
10. I am on point that there is no dispute that property is belonging to Sai Vishram CHS. By allotment letter and receipts placed on record by complainants, it becomes clear that complainants booked flat no. 1504 in the project of Saaga Infra Project. It appears that Saaga Infra Project abandoned the project and then Sai Vishram CHS handed it over to the respondent. Whether there was privity of contract between Saaga Infra Project and respondent is not clear. Whether Sai Vishram CHS was a party to the agreement with complainants and Saaga Infra Project is not known. To add to it, complainants have failed to produce authenticated allotment letter issued by Saaga Infra Project as well as receipts issued by Saaga Infra Project. I therefore, hold that complainants have failed to prove that they are allottees of

the project of which respondent is the promoter. Consequently, complainants are not entitled to the reliefs claimed. I therefore, answer point no. ¹⁷²3 in the negative and proceed to pass following Order:

ORDER

1. Complaint stands dismissed.
2. No Order as to costs.

Mumbai

Date : 14.01.2020

rf signed on 16.1.2020
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA