BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.

COMPLAINT NO: CC006000000023409

Harish Awtaney ... Complainant.

Versus

Anil Thakurdas Kursija ... Respondent.
MahaRERA Regn: P51700008216

Coram:
Hon'ble Shri Madhav Kulkarni.

Appearance:
Complainant: In person
Respondent: Representative Shri Sunil Dongare

Final Order
10th October, 2018

1. The complainant who had booked a flat with respondent / builder seeks withdrawal from the project and refund of the amount paid to the respondent as the respondent failed to deliver the possession of the flat as per agreement.

2. The complainant has alleged that he had booked Flat No. 2503 in Building No.3 in the project of Respondent Trinity Oasis. The complainant paid Rs. 20 lakhs to the respondent on 15th April 2014. The respondent had agreed to deliver the possession on 31.12.2014. The respondent has not delivered possession of the flat and therefore complainant filed this complaint to recover interest @ 24% p.a. on the amount paid to the respondent. When the matter came up before Hon'ble Chairperson on 21st May 2018, the complainant expressed desire to withdraw from the project and claimed compensation and interest.

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3. The respondent has resisted the complaint by filing his say. The respondent has alleged that complainant wanted to make investment and invested Rs.20 lakhs on 19th April, 2014 for a period of one year. As a security the respondent has executed agreement for sale on 23rd April 2014. At the time of agreement, no plinth was completed. Construction of 24 storeys cannot be completed within 9 months, i.e. by31st December 2014. The complainant cannot file the present complaint. He did not pay Service Tax or VAT amount. The stamp duty, registration fee was paid by the respondent. The respondent had issued cheque for Rs. 20 lakhs drawn on AXIS Bank in favour of the complainant, but was returned by the Bank. The complainant has repaid the amount of Rs.20 lakhs by RTGS on 1st June 2015. The complainant has filed false complaint and therefore it deserves to be dismissed.

4. On the basis of rival contentions of parties following points arise for my determination. I have noted my findings against them for the reasons stated below.

Points	**Findings**
1. Has the respondent proved that the complainant Was a money lender and did not intend to Purchase a flat?	Negative
2. Has the respondent failed to deliver possession of the flat to the complainant as per ~~programme~~ agreement?	Affirmative
3. Is the complainant entitled to the reliefs claimed?	Affirmative
4. What order?	As per final order

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Reasons.

5. Point no. 1, 2 & 3 The main thrust of the defence is that the complainant never intended to purchase flat but it was a money lending transaction and the respondent has repaid the money taken from the complainant. There is no dispute that the construction has not been completed and consequently possession of the flat is not given. The complainant on his part has placed the agreement dated 23rd April 2014 on record. As per clause 11 date of delivery of possession is 31.12.14. No doubt the period for delivering possession is very short, i.e. about 9 months. However, such delivering of possession if construction is at advanced stage in such very short period is not impossible. We do not know what was the stage of construction when agreement was executed.

6. The respondent has alleged that he has repaid the amount taken from the complainant. However, letter was taken from him under pressure. On the other hand, it is submitted on behalf of the complainant that nephew of complainant Shri Amit Awtaney had paid Rs. 20 lakhs to the respondent. That transaction has got nothing to do with the agreement in question. There is a letter of the respondent dated 1st June 2015 addressed to Shri Amit Awtaney informing that his loan of Rs. 20 lakhs has been repaid by sending this amount through RTGS in the account of complainant Shri Harish Awtaney. The version of the respondent that this letter was obtained under pressure cannot be believed. No prosecution appears to have been filed in that respect. Consequently, respondent fails to prove that it was a loan transaction and he has repaid the loan amount to the complainant. On the other hand, the complainant has proved that respondent failed to deliver possession of the flat as per the agreement. The complainant is therefore entitled to refund of his amount. I therefore

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answer to Point No.1 in the negative and nos. 2 & 3 in the affirmative and proceed to pass following Order.

ORDER

1) The complainant is entitled to withdraw from the project.
2) The respondent to pay Rs. 20 lakhs to the complainant together with interest at the State Bank of India's highest marginal cost of lending rate which is at present 8.65% plus 2% from the date of receipt of those amounts till realisation.
3) The respondent to pay Rs. 25,000/- as cost of this complainant.
4) The complainant to execute cancellation Deed at the cost of the respondent.
5) The respondent to pay the above amounts within 30 days from the date of this order.

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Mumbai.
Date: 10.10.2018

(Madhav Kulkarni)
Member & Adjudicating Officer
MahaRERA