BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.

COMPLAINT NO: CC006000000023752

Chander Tejwani ... Complainant.

Versus

Anil 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. 504 in Building No.3 in the project of Respondent Trinity Oasis. The complainant paid Rs. 22 lakhs + Rs. 1,54,000/- Registration charges and Stamp Duty to the respondent. The respondent had agreed to deliver the possession on 31.03.2015. The respondent has not delivered possession of the flat and therefore complainant filed this complaint to recover 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.

3. The respondent has resisted the complaint by filing his say. The respondent has alleged that one Mr. Manish Jawahar Duseja wanted to make

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investment and invested Rs.10 lakhs on 19th August, 2014 for a period of five years & complainant invested Rs. 12 lakhs. As a security the respondent has executed agreement for sale on 20th August 2014. At the time of agreement, no plinth was completed. Construction of 24 storeys cannot be completed within 6 months, i.e. by 31st March 2015. The complainant cannot file the present complaint. He did not pay Service Tax or VAT amount. Respondent will deliver possession to complainant and Manish in December 2023. 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?	Affirmative
3. Is the complainant entitled to the reliefs claimed?	Affirmative
4. What order?	As per final order

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 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 20th August 2014 on record. As per clause 11 date of delivery of possession is 31.03.2015.

No doubt the period for delivering possession is very short, i.e. about 8 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. There is nothing on record to show that complainant made investment with the respondent. Consequently, respondent fails to prove that it was a loan transaction 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 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) Subject to complainant satisfying Mr. Manish Duseja's interests, the respondent to pay Rs. 22 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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(Madhav Kulkarni)
Adjudicating Officer,
MahaRERA

Mumbai.
Date: 28.09.2018
10-10-2018