

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

COMPLAINT NO. CC006000000100595

Bharatbhushan Sudam Surve

..Complainant

Versus

Karm Infrastructure Pvt Ltd

..Respondent

MahaRERA Regn. No. P51700008284

Coram:

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

Appearance:

Complainant: in person,

Respondent : Adv. S. Rahul

**ORDER
(Dated 10.09.2020)**

1. The complainant an allottee who had booked a flat with the respondent / promoter seeks withdrawal from the project and refund of the amount paid with interest.
2. As per online complaint, project Karm Garden, Ambarnath was started by the respondent in the year 2013 and possession was promised by December, 2014. As per advertisement, there was to be a garden and cricket ground. Respondent has not delivered possession as per agreement. Complainant has paid Rs.8,63,735/-. Other necessary details like no. of the flat, date of agreement are missing. Copy of agreement, dated 8.7.2013, shows that respondent agreed to sell flat no. 201 in building no. 2 in E wing known as Parijat in project no. 1 Karm Gardens at Village Chikloli, Tal. Ambarnath for a consideration of

Rs.35,32,800/-. As per clause no. 7, possession was to be delivered on or before 31.12.2014.

3. The complaint came up before Hon'ble Member on 03.10.2019 and came to be transferred to Adjudicating Officer. The matter came up before me on 19.11.2019. Respondent continued to be absent. Matter was adjourned to 06.12.2019. Complainant appeared in person. One Advocate S. Rahul appeared for the Respondent. However no written explanation was filed. Arguments were heard. As I am working at Mumbai and Pune Offices in alternative weeks and due to huge pendency in this office and due to lockdown conditions due to Corona Pandemic, 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 allottee and respondent promoter?	Affirmative
2 If yes, has the respondent failed to deliver possession as per agreement, without there being circumstances beyond his control?	Affirmative
3 Is the complainant entitled to the reliefs claimed?	Affirmative
4 What Order?	As per order

REASONS

5. **Point Nos. 1 to 3** - Vide agreement dated 8.7.2013, complainant booked flat no. 201 in the project of the respondent. Respondent has not denied this fact. I therefore, answer point no. 1 in the affirmative.
6. As per clause no. 7 in the agreement, possession was to be delivered on or before December, 2014. Therefore, possession

was expected to be delivered within a period of about 1.5 years. since execution of the agreement. Usual circumstances under which time was to be extended are also mentioned. Complainant claims that he booked the flat in the year 2012. First payment receipt for Rs.1/- is dated 19.04.2013. There is no receipt of 2012. Anyway period till 31.12.2014, was sufficient period to complete the construction and deliver possession. Now 6 more years have gone by and respondent has still not delivered possession. Absolutely no justification for the delay has been given by the respondent, as no defence has been put forth by the respondent. I therefore, answer point no. 2 in the affirmative.

7. The complainant has given some details of his complaint again claiming that he booked a flat in the year 2012. It is asserted that complainant has paid Rs.8,63,800/-. Complainant is entitled for refund of the amount paid to the respondent alongwith interest as respondent has failed to deliver possession as per agreement. Complainant has produced receipt dated 19.04.2013 for Rs.70,656/-. Then there is receipt dated 11.05.2013 for Rs.2,82,624/-. There is receipt dated 14.08.2013 for Rs.1,76,440/-. There is receipt dated 1.02.2015 for Rs.35,328/-. Then there is receipt dated 29.03.2015 for Rs.11,522/-. Again receipt dated 29.03.2015 for Rs.4,853/-. Again receipt dated 29.03.2015 for three cheques of Rs.1.50 lakhs, Rs.1.50 lakhs, 72,880/-. Also there is receipt without date for Rs.22,195/-. However, complainant has claimed that he has paid Rs.8,63,735/-. Therefore, he is entitle to refund of this amount together with interest as per Rule 18 of Maharashtra Rules.
8. It is further alleged that respondent paid pre-EMI to LIC Housing Corporation but stopped making payment since the year 2018. Then complainant is paying rent and has suffered huge financial

loss. It is claimed that for the 5 years total rent paid was Rs.6,01,150/- Which means Rs.1.50 lakhs per year i.e. Rs.10,000/- per month. Where the complainant resides is not made clear. On the letter of LIC Housing Finance address given is Midrand Gauting. On the letter of the respondent, the address given is Ambarnath (East). Whether complainant owns the house is not known. One leave and licence agreement dated 01.10.2018 and another dated 9.8.2019 are placed on record. Flat no. 206 in Motiram Gardens in Ambarnath is said to be taken by Complainant on Licence fee of Rs.11,500/- and 12,000/- per month. Why those premises were required to be taken is not made clear. Anyway, complainant has lost income which he would have fetched from the flat, had he been receiving possession as per agreement. The loss is quantified at Rs.50,000/- . I therefore answer point nos. 3 in affirmative and proceed to pass following order:

ORDER

- 1) Complainant is allowed to withdraw from the project.
- 2) Respondent to pay Rs.8,63,735/- to the complainant together with interest @10.40 p.a. from the date of payments till final realization.
- 3) Respondent to pay Rs.50,000/- to the complainant towards financial loss suffered.
- 4) Respondent to pay Rs.20,000/- to the complainant as costs of this complaint.
- 5) Complainant to execute Cancellation Deed at the cost of the respondent.
- 6) Charge of above amount is kept on the flat booked by complainant.

h
A.O

- 7) Respondent to pay above amounts within 30 days from the date of this Order.

Mumbai

Date : 10.09.2020.

10/9/2020 Signed on 10.9.2020
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA