

BEFORE THE ADJUCATING OFFICER WITH
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC0060000000023156

Prashant Palankar

... Complainant

Versus

Neptune Developers Ltd.

... Respondent.

MahaRERA Regn No. :

Coram: Shri Madhav Kulkarni,
Hon'ble Adjudating Officer.

Appearance:

Complainants: Prashant Palankar
with Adv. Mr. Kale

Respondent: Representative -
Ms.Manisha K. Chandvani

ORDER

(Date: 18th July, 2018)

1. The Complainant who had booked a flat with the builder / Respondent, seeks monetary compensation till he receives possession of the flat, as possession has not yet been delivered by the Respondent. However, on the first date of hearing, he sought withdrawal from the Project and refund of money with interest.

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2. The Complainant has alleged that he booked Flat no. 107 in Sector 2 in the Project 'Swarajya', Ambivali undertaken by the Respondent. The flat was booked in the year 2012. Since possession has not yet been delivered the Complainant is entitled to receive compensation from the Respondent till he receives possession of the flat. The Complainant therefore filed this complaint in this office.
3. Hon'ble Chairperson, MahaRERA by his Order dated 9th of April 2018 transferred this file to Adjudicating Officer. The file came before me on 11th of June, 2018. The matter was adjourned to 19th of June, 2018 for filing of Written Statement of Defence by Respondent as well as for recording plea of the Respondent. Accordingly, the Respondent filed his Written Statement of defence on 19th of June 2018. Plea of the representative of the Respondent also came to be recorded on that day. Arguments for both parties were heard on 4th of July, 2018. As I am working with MahaRERA Office at Mumbai and Pune in alternative weeks and as per availability of dais, this matter is being decided now.
4. In this Written Statement of Defence, the Respondent has denied all the allegations made in the complaint. It is alleged that the Complainant is guilty of deliberate suppression of material facts and misrepresentation of material facts. The Complainant has failed to prove any deficiency in service on the part of the Respondent. No cause of action arose for filing of the complaint. The allegations made in the complaint are vague.
5. The Respondent acquired agricultural land at Village Ambivali, Taluka Kalyan, Dist. Thane for construction of residential complex known as 'Neptune Swarajya' which is a project of affordable housing consisting of more than 50 Buildings and more than 1500 flats, More than 129 acres of land is acquired by the Respondent and because of the huge size of the complex, the Respondent developed huge infrastructure like road from Ambivali Station to the complex, sewerage line, internal water connection, sub

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station of electricity, reservation of garden and other amenities. However, basic amenities like electricity, water, sewerage line are lacking even after lot of efforts by the Respondent. Likewise work of road from Ambivali Station to the Project is pending for more than 25 years and was made by the Respondent with his own funds and he also laid pipeline at his own cost from Ambivali Station to Balyani Bridge. Though the Project is within the limits of Kalyan-Dombivali Municipal Corporation, it didn't have facility of sewerage line or water connection. Same is developed by Respondent at his own cost by spending huge amounts.

6. The Complainant approached the Respondent around October, 2012 and booked Flat No. 107 adm. 315 sq.ft. built up and 233 sq.ft. carpet area on 1st floor in Building No. B/6 in Sector 2. Total consideration agreed was Rs.11,34,000/-. The Complainant paid Rs.11,000/- to the Respondent. Agreement was entered into on 7th of March, 2013. The Respondent applied and received Commencement Certificate from KDMC on 13th of July, 2012 and then commenced with the construction of the Building as per sanctioned plan. The work prolonged due to non-availability of sand, delay in getting sanctions, recession in real estate market and increased cost of administration charges. The Project received Environment Clearance. Despite all the problems, construction is 90% completed, Occupation Certificate from KDMC is not forthcoming due to red tapism. PIL No. 182 of 209 was filed in the High Court by Kaustabh Gokhale and Ors. in respect of the Project 'Neptune Swarajya'. Vide his letter dated 25th of October, 2015 the Respondent has explained all these circumstances to the Complainant. The Complainant has not paid part of the consideration amount. The Respondent is not liable to pay interest on the amount paid by the Complainant. Consequently, the complaint deserves to be dismissed.
7. On the basis of the rival contentions of the parties, following points arise for my determination, I have noted my findings against them for the reasons stated below:

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<u>Points</u>	<u>Findings</u>
1. Has the Respondent committed Default in handing over the Possession of the flat as per Agreement ?	Yes
2. Is the Complainant entitled for? Refund of money and compensation?	Yes
3. What Order?	As per Final Order

REASONS

8. Point 1 & 2: In his complaint, the Complainant has only claimed compensation alleging that he is getting frustrated and suffering financial loss. Obviously, it means that he has not received possession of the flat that was booked. That is also not disputed by the Respondent. The Complainant has placed on record receipts issued by the Respondent in respect of payments made by him. Xerox copy of the cheque is also placed on record. Neither the price that was agreed nor the figure of the amount paid by him is mentioned in the complaint. The letter from the Respondent dated 21st of November, 2012 shows that the Agreement value was Rs.11,34,000/-. The amount payable by the Complainant on that day was Rs.6,43,322/-. A letter from Indiabulls Homeloans dated 7th Of May, 2013 shows that loan amount was Rs.9,23,327/- and disbursed amount was Rs.5,26,427/-. Insurance amount was Rs.23,327/- Pre EMI interest was Rs. 879/- Copy of Agreement is also placed on record. Para 5 in respect of date of possession has been kept blank.
9. Even the Respondent is admitting that Complainant approached him in October, 2012 and paid him Rs.11,000/- for booking a flat. There is a receipt dated 13.10.2012 for Rs.1,13,400/- which was the booking amount. Agreement

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was executed only on 7th of March, 2013. However, booking must have been done after making all the preliminary enquiries including the time required for completion of the Project. Generally a promise to deliver possession of the flat booked within two to three years is given by the Builders. If the construction is on the verge of completion, the time could be a few months since booking. No doubt in the present case the Agreement dated 7th of March, 2013 is silent about date of delivery of possession. However, the period beyond three years can be considered as delay in handing over possession. The complainant has vaguely claimed monetary compensation. Before the Hon'ble Chairperson, he expressed desire to withdraw from the Project. The Respondent on his part pleads that since it is a big Project, he required much time and money for development of infrastructure. He was well aware of the size of the Project and the hurdles that he will be facing. The Respondent claims that now construction is 90% completed and Occupation Certificate is not forthcoming due to red tapism. The Complainant on the other hand contends that he is staying in a rented house since six years. The Complainant has relied on the letter from the Respondent dated 26.12.2016 where it was alleged that possession has been delayed beyond December, 2016. Even now Respondent is not in a position to deliver possession. Though Respondent alleges that Complainant is in arrears of payment of instalments, no notice appears to have been served on the Complainant and no interest has been claimed from him. Since the Complainant wants to withdraw from the Project, he is entitled to get back his amount with interest from the Respondent. I, therefore answer on point Nos.1 & 2 the affirmative and proceed to pass following order:-

ORDER

1. The Respondent shall pay Rs.7,34,706/- to the Complainant with interest @ the State Bank of India highest Marginal Cost of Lending Rate plus two percent per annum prevailing as on date, which is refundable from the date of payment till actual realisation.


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2. The Respondent shall pay cost of Rs.25,000/- to the Complainant.
3. The Respondent shall pay above amount within 30 days from the date of issue of this order.

MV 18-7-2018
(M. V. Kulkarni)
Adjudicating Officer, MahaRERA
Mumbai.

Place: Mumbai

Date: 18th July, 2018.