

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

COMPLAINT NO: CC006000000023426

Sachin Sharad Ajgaonkar ... Complainant.

Versus

Neptune Group ... Respondent.  
MahaRERA Regn: P51700009783

**Coram:**  
Hon'ble Shri Madhav Kulkarni.

**Appearance:**  
Complainant: In person  
Respondent: Manisha Chandwani,  
Authorized Representative

**Final Order**  
20<sup>th</sup> November 2018

1. The complainant who had booked a flat with respondent / builder seeks withdrawal from the project and refund of the amount with interest and compensation.
2. The complainant has alleged that he booked a flat with the Respondent/Builder. The details of the transaction are missing in the complaint. They are required to be fished out from the documents placed on record. The agreement is dated 5<sup>th</sup> November 2011. The complainant booked Flat No. 003 in Building B-3 in Sector - II in Neptune Swarajya Complex at Ambivali having carpet area of 233 sq.ft.. The consideration agreed was Rs. 5,00,850/-. Clause 5 in respect of date of delivery of possession is kept blank. The complainant has alleged that respondent is giving false commitment in respect of delivery of possession. Therefore, the complainant wants refund of the money that was paid. The exact amount that was paid is not mentioned anywhere.

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3. The complainant on 29<sup>th</sup> August 2018 filed an application. He alleged that on 31<sup>st</sup> August 2009; he booked a flat by paying Rs. 11,000/- and then on 2<sup>nd</sup> September 2009 Rs. 39,084/-. The respondent promised delivery of possession within 2 years. On 5<sup>th</sup> November 2011, the respondent demanded Stamp Duty and Registration charges. Middleman took Rs. 3000/- at that time. The Developer promised delivery of possession within 6 months. False promises were given on 16-17 occasions. The complainant has paid 90% of the amount and the last instalment was paid in 2015. The builder/Promoter has repaid the money in respect of Section II-C and II-D with 18% interest. The complainant had borrowed money with interest in order to pay to the respondent/builder. He is also staying in rental premises. The complainant therefore prayed for refund of money paid by him.

4. The respondent has resisted the complainant by filing say on 29<sup>th</sup> August 2018. It is denied that the respondent has committed any wrong. It is alleged that there is no deficiency in service on the part of the respondent and no cause of action arose for filing of this complaint. The respondent undertook the project Neptune Swarajya which is an affordable housing project in Kalyan Taluka having more than 50 building and more than 1500 flats on 129 acres of land. The respondent developed huge infrastructure such as Road from Ambivali Station, Sewerage line, Internal water connection, Electricity Sub-station, Reservation of Garden, etc. There is lack of these amenities and the proposal for Road from Ambivali Station to Project is pending for more than 25 years. The respondent constructed the road and developed pipeline at his own cost. On 31<sup>st</sup> August 2009 the complainant showed interest in purchasing the flat for consideration of Rs. 5,00,850/- and deposit of Rs. 11,000/-. The respondent applied to the Collector, Thane for N.A. permission. After permission was received commencement certificate was issued by KDMC on 13<sup>th</sup> June 2012 and the respondent commenced the construction work. The amounts deposited by complainant were appropriated towards part of

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consideration. The registered agreement was executed on 5<sup>th</sup> Nov. 2011. The construction was prolonged due to non-availability of sand, delay in sanction, recession in Real Estate Market and increased cost of administration charges and obstruction in construction of infrastructure. The environmental clearance was received but sewerage line was not inserted by KDMC which is evident from letter dated 29<sup>th</sup> Oct. 2015. The respondent has completed the project to the extent of 90%. The complainant has purchased the premises for investment purpose. The respondent never gave false promises. The complaint therefore deserves to be dismissed.

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

| Points                                                                                                                                              | Findings           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 7. Has the respondent failed to deliver possession of the flat to the complainant as per agreement without there being reasons beyond his control ? | Affirmative        |
| 8. Is the complainant entitled to the reliefs claimed?                                                                                              | Affirmative        |
| 9. What order?                                                                                                                                      | As per final order |

#### Reasons.

5. Point no. 1, 2 The complainant has submitted in person that he booked flat in the year 2009. The respondent promised to deliver possession orally within 2 years. The complainant has so far paid Rs.,4,15,000/- The respondent has submitted in person that he has applied for occupation certificate. Delay has occurred on account of dumping ground issue. The complainant did not take any loan which shows that he has taken the flat for investment purpose.

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6. The complainant has placed copy of agreement dated 05<sup>th</sup> Nov. 2011 on record. There is no dispute that complainant had booked the flat on 31.08.2009 by paying Rs. 11,000/- to the respondent. However, agreement was executed after 2 years, i.e. on 5<sup>th</sup> Nov. 2011. Flat No.3 in Bldg. No. B-3 in Sector - II having carpet area of 233 sq.ft. was agreed to be sold to the complainant for a consideration of Rs. 5,00,850/-. Clause 5 shows that space meant for writing date of delivery of possession has not been filled and only a line has been drawn. It is the contention of the complainant that possession was orally promised within 2 years and respondent went on giving false promises.
7. It is true that booking was done by the complainant in the year 2009, i.e. before about 9 years and agreement was executed before about 7 years. Considerable period has gone by. Clause 5 provides for reasonable extension of time for delivery of possession under certain circumstances. The respondent has alleged that he undertook the affordable housing scheme which was a large scheme at an under developed place. There was no road connection or water connection or electricity connection from municipality and electricity board. Commencement certificate issued by KDMC dated 18<sup>th</sup> July 2011 is there on record. The respondent was directed to construct roads, sewerage line, etc.
8. There is a letter of respondent dated 6.07.2016 promising delivery of possession by Dec. 2016. There is a letter dated Dec. 2016 seeking apology for not delivering possession by 2016. This clearly shows that respondent has not kept the word. It was the responsibility of the respondent to complete the construction in all respects and deliver possession as early as possible. 7 years is too long a period and promise to deliver possession by end of Dec. 2016 has not been kept. Now, the respondent cannot plead that because of non-cooperation from govt. agencies the project was delayed. There is nothing on record to substantiate such contentions. On

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the contrary the record shows that it was the duty of the respondent to make necessary arrangements and complete the project. I am therefore of the opinion that respondent has committed breach of the agreement by not keeping his word and there is no justifiable reason for that.

9. The complainant has placed on record receipts showing payments that were made which are given below:

| Sr. No. | Date       | Amount (In Rupees) |
|---------|------------|--------------------|
| 1       | 31.08.2009 | 11,000/-           |
| 2       | 02.09.2009 | 39,084/-           |
| 3       | 12.09.2011 | 75,128/-           |
| 4       | 27.12.2011 | 1,935/-            |
| 5       | 16.04.2012 | 75,128/-           |
| 6       | 24.06.2012 | 774/-              |
| 7       | 18.07.2012 | 16,732/-           |
| 8       | 24.06.2012 | 25,043/-           |
| 9       | 18.07.2012 | 25,043/-           |
| 10      | 18.07.2012 | 774/-              |
| 11      | 18.04.2014 | 774/-              |
| 12      | 18.04.2014 | 25,043/-           |
| 13      | 22.02.2014 | 774/-              |
| 14      | 01.09.2014 | 25,043/-           |
| 15      | 01.09.2014 | 774/-              |
| 16      | 13.09.2015 | 25,043/-           |
| 17      | 22.02.2014 | 25,042/-           |
| 18      | 16.04.2012 | 11,935/-           |
| 19      | 13.09.2015 | 876/-              |
| Total   |            | 3,85,945/-         |

Many receipts are produced in Duplicate and Triplicate.

10. Thus, the complainant has paid Rs. 3,85,945/- to the respondent. The complainant is entitled for refund of this amount with interest. I therefore, answer Point No. 1 & 2 in the affirmative and proceed to pass following order.

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## ORDER

- 6) The complainant is entitled to withdraw from the project.
- 7) The respondent to pay Rs. 3,85,945/- to the complainant together with interest at the State Bank of India's highest marginal cost of lending rate plus 2% which come to 10.70% from the date of payments till actual realisation.
- 8) The respondent to pay Rs. 20,000/- as cost of this complainant.
- 9) The complainant to execute cancellation Deed at the cost of the respondent.
- 10) The respondent to pay the above amounts within 30 days from the date of this order.

Mumbai.  
Date: 20.11.2018

  
(Madhav Kulkarni)  
Member & Adjudicating Officer  
MahaRERA