**BEFORE THE**
**MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY**
**MUMBAI.**
COMPLAINT NO: CC006000000012036

Aniruddha Jagdish Keer ... Complainant.

Versus

Mateshwari Realtors .... Respondent
MahaRERA Regn: 51700010188

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

**Appearance:**
Complainant: Present a/w Adv. Naik
Respondent: C.A. Kirit Gada

**Final Order**
21st November 2019

1. The complainant/allottee who had booked a flat with the respondent/ promoter seeks withdrawal from the project and refund of his amount with interest under Section 18 of Real Estate (Regulation & Development) Act, 2016 (RERA for the sake of brevity) as the respondent failed to deliver possession as per agreement.

2. The complainant has alleged that he booked flat No. C-804 vide agreement registered in November 2015. The name of the project and its location are missing in the complaint for the reasons best known to the complainant. In the first instance the complainant did not produce the whole of the agreement. Now, it is placed on record. Accordingly, the name of the project is Mateshwari Altura and is at Khidkali, Taluka, Dist. Thane. The agreed price was Rs. 34,57,000/-. Complainant till this date paid Rs. 27,65,600/-, i.e. 80%. Proposed date for completion was 31.12.2016. It was revised to 31.12.2018 and then to 31.03.2019. Against

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the first demand complainant paid Rs. 20,73,600/- on 12.12.2015. Second demand letter was issued on April, 2016 and complainant refused to pay it. As date for delivery of possession was slipped by respondent. Complainant has alleged that he has incurred huge monetary loss as there is urgency to have stable residence. Despite writing letters, sending email and telephone calls and personal visits, respondent has not completed construction work. As per MahaRERA website date for delivery of possession is given as 31.12.2022. There was pending legal matter which were kept hidden by the respondent and it was informed that Title of the land is clear. Thus, the respondent has cheated the complainant. If the respondent delivers possession by March 2019; he should pay Rs. 22,000/- per month to the complainant from January 2019 till possession is delivered. Respondent should also pay Rs. 8,08,460/- to compensate monetary loss occurred till December 2018. Therefore, total refund + loss comes to Rs. 45,82,828/-. The complainant has alleged that as the respondent failed to deliver possession, complainant is forced to reside in rental property and the loss suffered on that account is Rs. 8,08,460/-.

3. The complaint came up before me on 24.07.2019. Respondent filed written explanation. Final arguments were heard on 22.08.2019. As I am working at Mumbai and Pune Offices in alternative weeks and due to huge pendency in this office, this matter is being decided now.

4. The respondent has alleged that he has received Rs. 27,70,100/- from the complainant and Rs. 5,48,620/- are due since April, 2017. Vide letter dated 12.10.2018 respondent had agreed to pay Rs. 3,50,000/- as compensation for delay in handing over possession. At the time of this settlement complainant was aware that revised date for completion of project was 31.12.2022. There was suit No. 604/13 in the Court of Civil

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Judge Sr. Division, Thane. It is still pending. There was a case pending before SDO, Thane No. 148/2015. It was decided in favour of respondent. Again there was appeal No. 141/2017 before Additional Collector, Thane. It was decided in favour of respondent. A mutual understanding was registered with Landowners on 26.06.2018 and accordingly decision of the case will not affect the respondent. Possession is delayed due to above reasons which were beyond the control of the respondent. Respondent will complete the project within next 6 to 8 months. If complainant claims refund it will create financial problem for the respondent and therefore a period of 12 months may be given to refund the said amount. Demand for compensation of Rs. 8,08,460/- is not justified. Respondent is entitled to claim interest on the due amount of Rs. 5,48,620/- since April, 2017.

5. Following points arise for my determination; I have noted my findings against them for the reasons stated below.

| **Points** | **Findings** |
|---|---|
| 1. Has the respondent failed to deliver possession as per agreement without there being circumstances beyond his control? | Affirmative |
| 2. Is the complainant entitled to the reliefs claimed? | Affirmative |
| **3.** What order? | As per final order |

**Reasons.**

6. Point no. 1 & 2

The complainant has placed on record copy of the agreement dated 05.11.2015. As per clause No. 10 date for delivery of possession was on or before Dec. 2016. The initial portion of the agreement reads that Late Keshava Sowmya and others owned the

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land at Village Khidkali, Survey No. 144, Hissa No. 2B, 36R and Survey No. 145, Hiss No. 2D, 29R. Agreement for development was executed on 26.05.2008 in favour of respondents. The agreement is silent about any litigation that was pending in respect of land.

7. Respondent has placed on record copy of temporary injunction petition in Civil Suit No. 604 of 2013 in the Court of Civil Judge Sr. Divn. Thane. The application is dated 30.10.2013. Notice was directed to be issued to defendants by order dated 12.11.2013. By order dated 05.10.2018 petition came to be rejected. Late Keshav Somaiya is the defendant No.1. The grievances of the complainant, that he was not informed about the pending suit appears genuine. It appears that heirs of Keshav Somaiya vide RTI appeal No. 148/2015 challenged mutation entry Nos. 1241 and 1316. Said mutation entries were directed to be rejected. Present respondent was also a respondent in that appeal. How the pendency of civil suit or the challenge to the mutations could affect the progress of the project is not understood.

8. It appears that vide letter dated 12.11.2018, i.e. 3 years after agreement, respondent informed that litigation was pending in respect of land. Complainant has conceded that respondent informed about the litigation in 2017, whereas the agreement is dated 05.11.2015 and date for delivery of possession mentioned was Dec. 2016. The respondent in letter dated 12.10.2018 has informed that respondent will be paying Rs. 3,50,000/- as compensation for delay in possession from January 2017 to Dec. 2018 extendable up to March 2019 if required. This amount was agreed to be deducted from the last payment or was agreed to be refunded if last instalment was already paid. It is clear that a settlement was

proposed by the respondent and it was received by the complainant.

9. Respondent concedes that possession is still not delivered. Respondent contends that possession will be delivered within 6 to 8 months. This settlement is made on 24.07.2019 which means that respondent intends to deliver possession in Jan or March 2020. It appears that respondent has unilaterally extended the date for delivery of possession to 31.12.2020 in the MahaRERA record. Consequently, I hold that respondent has failed to deliver possession as per agreement without there being circumstances beyond his control. I therefore answer point No.1 in the affirmative.

10. Complainant claims to have paid Rs. 27,65,600/- from out of the agreed price of Rs. 34,57,000/-. Respondent admits having received Rs. 27,70,100/-. Complainant is claiming Rs. 8,08,460/- towards monetary loss suffered till Dec. 2018 and rent of Rs. 22,000/- p.m. from January 2019. How the complainant has arrived at the claim amounts is not understood. It appears that complainant paid Rs. 1,00,000/- on 22.08.2015 and Rs. 5,92,000/- on 17.10.2015, then loan amount of Rs. 20,73,600/- was disbursed on 12.12.2015. Then Rs. 1,55,565/- were paid on 17.10.2015 as Sales Tax; Rs. 2,37,500/- were paid as Stamp Duty. Thus, total amount comes to Rs. 31,58,665/-. Complainant will be entitled to refund of stamp duty as per Rules. He will be entitled to refund of balance amount together interest as provided under Rule 18 of The Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017.

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11. Complainant has placed on record copies of some Leave and Licence agreements. In the Bank document his address is different. In the complaint his address is different. As per complaint he is resident of Dombivali. Whether he is having his own house at Dombivali is not made clear. Complainant is also claiming Rs. 5,00,000/- towards mental agony. In my opinion a compensation of Rs. 1.00 lakh will be sufficient to cover all the aspects. I therefore answer Point No. 2 in the affirmative and proceed to pass following order.

## ORDER

1) Complaint is allowed to withdraw from the project
2) Respondent to pay Rs. 31,58,665/- except stamp duty which can be refunded as per rules together with interest @ 10.35% p.a. from the date of payments till final realisation.
3) Respondent to pay Rs. 1.00 lakh to the complainant as compensation.
4) Respondent to pay Rs. 20,000/- as costs of this complaint.
5) Complainant to execute cancellation deed at the cost of respondent.
6) Charge of the above amounts is kept on the flat booked by the complainant.
7) Respondent to pay above amounts within 30 days from the date of this order.

Signed on 22.11.2019

Mumbai.
Date: 21.11.2019

(Madhav Kulkarni)
Adjudicating Officer,
MahaRERA

# BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

**Complaint No. CC006000000012036**

**Aniruddha Jagdish Keer**

..Complainant/s

Vs

**M/s. Mateshwari Realtors** ..Respondent/s

**MahaRERA Project Registration No. P51700010188**

Coram: Shri A. L. Alaspurkar,
Hon'ble, Adjudicating Officer,
MahaRERA.

Appearance:
Complainant/s: Adv. Avinash Pawar
Respondent/s : CA Ashwin Shah

## O R D E R
**(05.04.2022)**

The non execution application dated 21.01.2020 is filed as to the non compliance of the final order dated 24.11.2019. The Respondent and Complainant has filed the consent term dated 24.03.2022 which is signed by both the parties. Withdrawal petition dated 24.03.2022 is also signed and uploaded by the Complainant.

In view of the above the application for execution dated 21.01.2020 hereby stands disposed of with no order as to costs.

5-4-2022

Date : 05.04.2022
Place : Mumbai

(Ashok Alaspurkar)
Adjudicating Officer, MahaRERA