

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

COMPLAINT NO: CC006000000055884

M/s. Ketki Developers through its
Partner Mr. Deepak Vallabhaji Dedhia ... Complainant.

Versus

Stone House Developers through its
Partner Mr. Abdul Rahim Zaheer Ahmed Qureshi ... Respondent
MahaRERA Regn: P50500013486

Coram:

Hon'ble Shri Madhav Kulkarni.

Appearance:

Complainant: Adv. Bhide

Respondent: Absent

Final Order

19th September 2019

1. The complainant/allottee who had booked a Shop with the respondent/ promoter seeks compensation as respondent failed to deliver possession as per agreement.
2. Complainant has alleged that it is also a developer and complaint is filed by Partner Mr. Deepak Vallabhaji Dedhia. Respondent M/s. Stone House Developers vide agreement dated 19.06.2010 and 19.12.2011 acquired Rights for Development in land bearing Survey No. 91 at Village Temghar, Taluka Bhiwandi, Dist. Thane and started construction of building having Gr+12 floors known as "Krishnaiwani Complex". Vide agreement dated 29.01.2015 respondent agreed to sell shop No.4 on ground floor having area of 21 sq. mtrs to the complainant for a consideration of Rs. 13,20,000/-. Out of the consideration Rs. 1,00,000/- were to be paid at the time of booking and Rs. 12,20,000/- at the time of possession. Complainant paid Rs. 1,00,000/- vide cheque dated 24.01.2015. Respondent had assured delivery of possession before 2016 and therefore vide RTGS dated 20.02.2015 complainant paid Rs. 12,20,000/- to the respondent. The

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respondent has failed to complete the construction and hand over possession. In RERA Declaration respondent gave date for possession as 31.03.2018. Complainant has therefore filed this complaint.

2. The complaint came up before Hon'ble Member on 29.10.2018 and came to be adjourned to 29.11.2018 and thereafter to 21.12.2018 and thereafter to 25.02.2019. On that day arguments for complainant were heard. As I am working at Mumbai and Pune Offices in alternative weeks and due to heavy pendency in this office, this matter is being decided now.

3. 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.

4. Point no. 1, 2

As per definition of allottee under Section 2 (d) of Real Estate (Regulation and Development) Act, 2016 he is a person to whom plot, apartment or building has been allotted U/s 2 (i) Building includes any structure intended to be used for any residential/commercial U/s 2 (zg) Person also includes a firm. Therefore, complainant comes within the definition of allottee. The complainant has placed on record copy of agreement dated 29.01.2019. The consideration amount was shown as Rs. 13,20,000/- Shop admeasuring 226 sq.ft.,

i.e. 21 sq. mtrs was agreed to be sold. The number of shop is mentioned as 4. As per clause 12, the respondent was to hand over possession on or before the year 2016 after having obtained Occupation Certificate. Despite accepting full consideration amount from the complainant, respondent has not delivered possession nor any justification has been given. I therefore hold that the respondent failed to deliver possession as per agreement without there being circumstances beyond his control. I therefore answer Point No.1 in the affirmative.

5. Under the agreement complainant had paid Rs. 1,00,000/- vide cheque dated 24.01.2015. Complainant claimed that he paid the balance amount also to the respondent by RTGS. Statement of account with HDFC is placed on record. There is entry dated 20.02.015 showing payment of Rs. 12,20,000/- to Stone House Developers, Thane. It means that the complainant had paid the entire consideration of Rs. 13,20,000/- to the respondent with a hope to get possession of the shop by the end of the year 2016. The complainant is entitled to claim interest from the date of default, i.e. from 01.01.2017. I therefore answer point No.2 in the affirmative and proceed to pass following order.

ORDER

- 1) The Respondent to pay interest @ 10.75% p.a. from 01.01.2017 till he delivers possession of the shop to the complainant.
- 2) The respondent to pay Rs. 20,000/- to the complainant as costs of this complaint.
- 3) The respondent to pay the above amounts within 30 days from the date of this order.

Mumbai.
Date: 19.09.2019

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19-9-2019
(Madhav Kulkarni)
Adjudicating Officer,
MahaRERA