

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
MAHARASHTRA, MUMBAI**

Complaint No.CC/19/557

MR.RAVINDRA BAJIRAO GALANDE,
Residing at:
D/8, Siddharth Society, 90 Feet Road,
Near Mahesh Hotel, Sakinaka,
Andheri East, Mumbai – 400 072.

.....Complainant(s)

Versus

1. SHRI SOMESHWAR BUILDERS AND DEVELOPERS,
Having its registered office at:
Office Number 11, Janata Market,
Behind Surya Hotel, Sector 18, New Panvel,
Raigad – 410 206.

MR.GURUNATH RAMDAS USATKAR,
Having registered office at:
Office Number 11, Janata Market,
Behind Surya Hotel, Sector 18, New Panvel,
Raigad – 410 206.

.....Opponent(s)

BEFORE:

**Justice S.P. Tavade - President
A.Z. Khwaja – Judicial Member**

**For the
Complainant(s):** Complainant along with Advocate Gadhave

**For the
Opponent(s):** Advocate for opponent.

**ORDER
(03/08/2023)**

Per Hon'ble Justice S.P. Tavade – President:

- 1) The complainant is resident of New Panvel, Raigad. In the year 2014 he was in need of residential accommodation. Hence, he decided to

purchase flat for his own use and occupation. In the month of May, 2014 the Complainant came across the building construction and development advertisement in Marathi newspaper, accordingly he visited the office of the opponent where he was given information about the project called as “Shree Krupa Sagar Sankul” in Panvel, District Raigad. Thereafter Complainant booked two flats, namely Flat Nos.201 and 202 in Shree Krupa Sagar Sankul, Property Number – 334, At Post Aadai, Taluka – Panvel, District Raigad, Maharashtra, for total consideration of Rs.22,05,000/- excluding service tax, stamp duty, registration, Document Charges, VAT, society charges, GST and car parking. The complainant paid total amount of Rs.22,59,688/- to the opponent from time to time by way of Cheque, Cash or NEFT. The opponent has issued receipts for the payments made by the complainant. The complainant made payments from the year 2014 till 2018. On 30/12/2017 the opponent no.1 executed Agreement to Sell in favour of the complainant. The complainant had booked flat admeasuring 735 sq.ft. (built-up area) but in the Agreement to Sell the opponent has mentioned area as 635 sq.ft. (built-up). The opponent has also assured that the complainant would be put in possession of the flats within 24 months from starting of the project. If he fails to handover possession as agreed he would pay interest on the amount received @12% per annum. It is contended that the opponent no.2 is the owner of the project. The opponent nos.1 and 2 executed Agreement to Sell in favour of the complainant who failed to handover possession till 2019. Hence, complainant has filed the present complaint.

- 2) Notice of the complaint was issued to the opponents. Both of them were served with the notice but they failed to appear in the complaint. Hence, complaint proceeded ex-parte against both the opponents.
- 3) The complainant has filed his affidavit of evidence along with documents, namely, receipts of payments of consideration, Registered Agreement to Sell, Written Promissory Note executed by the opponents, Statement of Accounts of complainant, office copy of notice sent by the advocate of the complainant to the opponents and the receipts issued by Grampanchayat.
- 4) We perused the affidavit of evidence, documents and heard advocate for the complainant. It is established by the complainant through documents that in the month of May, 2014 the complainant booked two flats admeasuring 735 sq.ft. with the opponent no.1 in its project namely, "Shree Krupa Sagar Sankul". The complainant paid entire amount of consideration including taxes between May, 2014 and 10th December, 2017. After receipt of the consideration amount the opponent no.1 executed the Agreement to Sell, wherein there is admission that the opponent has received amount of consideration from the complainant. The complainant has also produced on record the receipts showing amount of consideration which are at Exhibit-A to T-3.
- 5) We perused the registered Agreement to Sell wherein there is obligation that the Complainant would be put in possession of the flats within 24 months from the date of starting of construction. It is also mentioned in the Agreement that, if the opponent fails to handover possession as agreed he would pay interest on the amount received by him at the rate of 12% per annum. It is the case of the complainant that

the opponent no.1 has started the construction but the quality of construction is very low. The opponent no.1 used substandard material but could not complete the project. It appears from the evidence on record that the opponent failed to complete the project as assured. Therefore, it can be said that the opponent no.1 is guilty of deficiency in service. The registered agreement was executed by both the opponents and they had undertaken that they would complete the project and handover possession of the flats. It is established that in spite of receiving entire amount of consideration the opponents have failed to complete the project and handover possession of flats to the complainant. Therefore, the complainant is entitled for the reliefs claimed. Hence, we pass the following order:

ORDER

- (i) The complaint is partly allowed.
- (ii) The opponent nos.1 and 2 are held guilty of deficiency in service.
- (iii) Opponent nos.1 and 2 are jointly and severally directed to handover possession of Flat Nos.201 and 202 in Shree Krupa Sagar Sankul, Property Number – 334, At Post Aadai, Taluka – Panvel, District Raigad, Maharashtra, within a period of three months from the date of this order.

OR

In alternative, at the option of the Complainant, the Opponent nos.1 and 2 are jointly and severally directed to refund amount of Rs.25,59,668/- to the complainant with interest @12% per

annum from the date of payment till the date of realization of the entire amount.

- (iv) The Opponent nos.1 and 2 are jointly and severally directed to pay a sum of Rs.3,00,000/- towards compensation for mental agony and physical harassment along with costs of litigation of Rs.50,000/- to the complainant.
- (v) Copies of the order be furnished to the parties.

[Justice S.P. Tavade]
President

[A.Z. Khwaja]
Judicial Member

emp