

STATE CONSUMER DISPUTES REDRESSAL COMMISSION  
MAHARASHTRA, MUMBAI

CONSUMER COMPLAINT NO.CC/19/97

1. Mr.Naresh Ambratlal Sahita

2. Mrs.Jyoti Naresh Sahita

Laxmi Palace,

Opp. Sapna Garden,

Ulhasnagar 421 003.

Dist.Thane.

Complainants

versus

1. M/s.Shanklesha Constructions

Through its Partner

Mr.Manish Prakash Mutha

101-103, Vikas Height,

Santoshi Mata Road,

Opp. HDFC Bank,

Rambaug,

Kalyan (W).

2. The Mutha Constructions

Site address-

(Opp Shahad Octroi Naka)

Shahad Circle, Shahad,

Kalyan(W) 421 103.

Dist.Thane.

Opponents

**BEFORE :**

Mr.Justice S.P.Tavade, Hon'ble President  
Mr.K.M.Lawande, Member

**PRESENT:**

For the  
Complainants: In person  
For the  
Opponents: None present

**JUDGMENT**

**(Dated 5<sup>th</sup> July, 2023)**

**Per:- Hon'ble Mr.Justice S.P.Tavade, President**

1] Complainants are resident of Ulhasnagar, District Thane. In the year 2012, they were in need of residential accommodation. In the same year, they came into contact with the opponent No.1, which is a partnership Firm. Opponents had launched their project in the name and style as 'Sai Nirvana', Opposite Shahad Octroi Naka, Village Shahad, Taluka Kalyan, District Thane, within limits of Kalyan Dombivli Municipal Corporation. Complainants booked flat No.2108, 21<sup>st</sup> floor, B Wing, admeasuring super built up area 1085 sq.ft. and carpet area 802 sqft., in the project floated by the opponents 'Sai Narvana' by paying amount of Rs.1,04,000/- by cheque, drawn on the Axis Bank Ltd., dated 27/02/2012 against receipt No.119. Complainants further paid amount of Rs.8,00,000/- vide cheque drawn on the Punjab National Bank dated 24/04/2012 to the opponent against which opponents issued receipt No.1001. Complainants further paid amount of Rs.56,442/- to the opponents, vide cheque dated 25/04/2012 drawn on the Punjab

National Bank, against receipt No.1004 issued by the opponents. Opponent No.2 issued allotment letter dated 02/05/2012 in favour of the complainants. Complainants further contended that, as per the demands of the opponents from time to time, complainants paid the amounts to the opponents as follows-

Amount	Date of Cheque	Bank Name	Receipt No. Issued by the opponents
Rs.35,372/-	24/07/2013	Punjab National Bank	4966
Rs.3,50,000/-	18/08/2013	Indian Overseas Bank	4967
Rs.43,260/-	18/08/2013	Indian Overseas Bank	4968
Rs.48,022/-	31/08/2015	Axis Bank Ltd.	
Rs.33,580/-	06/03/2018	Axis Bank Ltd.	11122

It is further contended that, the complainants received call from opponents, whereby they were asked to pay Rs.3,00,000/- towards separate parking charges and Rs.3,50,000/- for amenities. Complainants were ready and willing to pay the said amounts but due to the lack of funds, they could not pay. Hence, Complainants contacted ICICI Bank and applied for home loan of Rs.34,00,000/- but the ICICI Bank demanded approved plan of the project. Complainants demanded approved plan from the opponents but they did not provide the approved plan. Hence, complainant No.2

applied for approved plan from the local authority - Kalyan Dombivli Municipal Corporation, under Right to Information Act, whereby complainants came to know that the plans were sanctioned in the year 2015, but the opponents collected amount of Rs.13,10,000/- from the Complainants, prior to the approved plans. Complainants provided the copy of approved plan to the ICICI bank. Accordingly, the ICICI Bank approved loan of Rs.34,00,000/- @ 8.60 p.a. interest and the said amount was disbursed by the Bank on 01/04/2015. Thereafter, complainants used to make enquiry about the registration of the agreement. Opponents used to promise the complainants that, they would execute the agreement. But ultimately on 01/10/2015 opponents executed registered Agreement to Sale in favour of the complainants. Opponents agreed to handover possession of the booked flat to the complainants in the month of December 2017. It is further contended that, after December 2017, complainants visited the office of the opponents but opponents refused to hand over possession of the booked flat to the complainants. Hence, complainants issued legal notices dated 19/07/2016, 23/01/2018 and 09/05/2018 through Advocate and demanded possession of the flat as well as damages and compensation from the opponents. It is further contended that, inspite of receipt of notices, opponents failed to reply the notices and to give any intimation regarding the completion of the project. Hence, complainants filed present complaint and prayed for possession of the booked flat alongwith interest and compensation and costs from the opponents.

2] Notices of this complaint were served upon the opponents. Opponents appeared through representative on 14/01/2020 but failed to file written version within stipulated period. Hence, complaint proceeded 'without written version' against the opponents.

3] Complainants filed affidavit of evidence and documents namely- copies of receipts of booking amount paid to the opponents, copy of allotment letter issued by the opponents in favour of the complainants, copies of receipts issued by the opponents, copy of letter dated 16/07/2013, copy of agreement to sale executed between the parties, copies of payment receipts, copies of legal notices and copy of sanctioned plan.

4] Heard complainants. Perused written argument filed on record on behalf of the complainants. Complainants have reiterated the contents of complaint in their affidavit of evidence. It is affirmed that the complainants had booked flat No.2108, 21<sup>st</sup> floor, B Wing, admeasuring super built up area 1085 sq.ft. and carpet area 802 sqft., in the project floated by the opponents, namely, 'Sai Narvana' by paying amount of Rs.1,04,000/- by cheque, drawn on the Axis Bank Ltd., dated 27/02/2012 against receipt No.119. Other receipts shows that the complainants had paid amount of Rs.13,10,000/- to the opponents till August 2015. It is also established from the certified copy of the sanctioned plan sought under the Right to Information Act that the complainants had obtained sanction plan of 'Sai Nirvana' project, floated by the

opponents, from the local authority of Kalyan Dombivli Municipal Corporation wherein it is established that the plan was sanctioned in the year August 2015. But the opponents collected huge amount of Rs.13,10,000/- from the complainants prior to the sanction of the plan. It is established from the documents that the complainants had obtained loan of Rs.34,00,000/- from the ICICI Bank @ 8.60% per annum. Said amount was disbursed by the bank to the complainants. Complainants paid all the installments to the opponents through ICICI Bank and for the same receipts have been issued by the opponents.

5] Complainants have also produced on record registered Agreement to Sale dated 01/10/2015 wherein the details of booked flat are given in para 5. It is also mentioned in the registered agreement para 19 that, they agreed to handover possession of the book flat on or before December 2017. It appears that the complainants had paid in all Rs.47,10,000/- to the opponents towards consideration of the booked flat. It means 99% amount of the booked flat was paid by the complainants to the opponents. In spite of receipt of payment, opponents failed to handover possession of the booked flat to the complainants till the year 2018.

6] It is affirmed that the complainants had issued legal notices dated 19/07/2016, 23/01/2018 and 09/05/2018 to the opponents. Said notices were received by the opponents but opponents failed to reply the same. Similarly, opponents failed to

handover possession of the booked flat to the complainants. Hence, complaint came to be filed on 29/01/2019. So it can be said that opponents have received entire amount of consideration but failed to handover possession of the booked flat to the complainants. Therefore, opponents are guilty of deficiency in service as well as unfair trade practice. Complainants are entitled for possession of the booked flat and interest on delayed delivery of possession as well as compensation for mental and physical harassment and costs of litigation. Hence, we proceed to pass the following order-

**ORDER**

- 1] Complaint is hereby partly allowed.
- 2] It is hereby declared that the opponents are guilty of deficiency in service and unfair trade practice.
- 3] Opponent Nos.1 and 2 are jointly and severely directed to handover possession of the booked flat namely flat No. 2108, admeasuring super built up area 1085 sq.ft. and carpet area 802 sq.ft., 21<sup>st</sup> floor, B wing, 'Sai Nirvana', opposite Shahad Octroi Naka, Village Shahad, Taluka Kalyan, District Thane within a period of 2 months from the date of passing of this order.
- 4] Opponent Nos.1 and 2 are jointly and severely directed to pay interest on Rs.13,10,000/- @9% p.a. from 01/01/2018 till handing over possession of the aforesaid flat to the complainants.

- 5] Opponent Nos.1 and 2 are jointly and severely directed to pay interest @ 12% p.a. on the amount of Rs.34 lakhs from 01/10/2015 till handing over possession of the aforesaid flat to the complainants.
- 6] Opponent Nos.1 and 2 are jointly and severely directed to pay amount of Rs.2,00,000/- to the complainants towards compensation for mental and physical harassment.
- 7] Opponent Nos.1 and 2 are jointly and severely directed to pay amount of Rs.50,000/- to the complainants towards costs of litigation.
- 8] Opponent Nos.1 and 2 are jointly and severely directed to comply with the aforesaid order, clause 4 to 7, within a period of 30 days from the date of receipt of copy of this order.
- 9] Copy of this order be supplied to both the parties.

**[Justice S.P.Tavade]**  
**President**

**[K.M.Lawande]**  
**Member**