

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

COMPLAINT NO: CC006000000000234

Sanjay Gupta

... Complainant.

Versus

Sai Ashray Developers Pvt. Ltd.
M/S Sai Ashray Developers Pvt. Ltd.
(Prasadam Phase III)

... Respondents.

MahaRERA Regn: P51700005877.

Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

Appearance:


Complainant: Adv. Nilam Hate.

Respondents: Adv. Sayed Asif.

FINAL ORDER
6th February 2019.

The complainant has filed this complaint under section 18 of the Real Estate (Regulation and Development) Act, 2016(RERA) to claim refund of his amount with interest and/or compensation by contending that the respondents have failed to hand over the possession of his booked flat no. 506, Q-wing of the respondents registered project 'Prasadam Phase III' situated at Village Chikloli, Taluka Ambernath on agreed date 31.05.2016 with grace period of nine months, as he withdraws from the project.

2. The respondents have filed the reply to contend that while registering the project with this Authority, they have revised the date of possession as 21st December 2020. The complainant's booked flat is in


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Vrindavan building which is constructed up to 7th floor. Respondents could not give the possession of the flat on or before May 2016 with grace period of nine months i.e. before 20th February 2017 because water was not available for construction due to lack of rainfall in the year 2016 and because of demonetization and GST, the sale declined. The respondents offered another flat to the complainant in building Dwaraka but the complainant refuses to accept it and claims money. They have received Rs. 18,53,834/- against the total value of the flat Rs. 23,80,500/-. They have paid service tax on amenities and the amount of consideration out of the amount received by them. Therefore, they request to dismiss the complaint.

3. Following points arise for determination and my findings thereon as under:

POINTS	FINDINGS
1. Whether the respondents have failed to hand over the possession on the agreed date?	Affirmative.
2. Whether the complainant is entitled to get refund of his amount with interest?	Affirmative.

REASONS

4. There is no dispute between the parties that the respondents agreed to hand over the possession of the flat on or before 31st May 2016 with grace period of nine months. Thus, the agreed date of possession is February 2017. Date of possession mentioned in the agreement is material date and not the revised date, as has been held by the Hon'ble Bombay High Court in Neelkamal Realators Suburban Pvt. Ltd. Vs. Union Of India (W.P. no.2730 of 2017). The respondents have not handed over the possession of the flat on the agreed date. I record my finding to this effect.


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5. Section 18 of RERA gives option to the allottee to withdraw from the project on promoter's failure to hand over the possession of the flat on the date specified in the agreement for sale. The complainant withdraws from the project. In this situation, section 18 of RERA empowers him to seek refund of his amount with interest and/or compensation. The respondents have admitted that they have received Rs. 18,53,874/- from the complainant. However, they deny their liability to reimburse the complainant amount of the tax, registration fee and stamp duty. Hence, it is necessary to consider this aspect in details. As per the principle of restitution/restoration the complainant is to be placed at a place which he had before he entered into the agreement for sale. In other words, he is entitled to claim all the amount which have been spent by him for purchasing the flat. Respondents must shoulder this liability because they have committed breach of contractual obligation of handing over the possession of the flat on the agreed date. Hence, the complainant is entitled to get re-imbursement of the amount of taxes and registration charges also. The agreement for sale shows that Rs. 1,19,100/- have been paid towards the stamp duty and Rs. 26,860/- has been paid as registration charges. Similarly, Rs. 900/- have been paid towards the registration charges of rectification deed and stamp duty of Rs. 500/- is paid on it. Since five years have not lapsed after execution of these documents, complainant is entitled to get the refund of the stamp duty from the Government. Hence, the complainant cannot claim the amount of stamp duty at this stage. The complainant claims pre EMIs paid to bank but I do not find them admissible because the complainant is entitled to get the interest on loan amount from the date of its disbursement. The complainant is entitled to get simple interest at prescribed rate from the date of payments till the refund. It is 2% above SBI's highest MCLR which is currently 8.55%. The complainant is also entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the following order.

ORDER

The respondents shall repay the amount of consideration, the tax and registration charges referred to in the order with interest at the rate of 10.55% per annum from the date of payment till they ^{get it} their refund.

The respondents shall pay the complainant Rs. 20,000/- towards the cost of the complaint.


It is hereby clarified that if the complainant's claim is not satisfied within five years of the agreement or deed of rectification, he shall be entitled to get reimbursement of stamp duty.

The charge of the aforesaid amount shall be on the flat booked by the complainant till the satisfaction of his claim.

Complainant shall execute the deed of cancellation of the agreement for sale, at respondents' cost on satisfaction of his claim.

Mumbai.

Date: 06.02.2019.


(B. D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.