

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

COMPLAINT NO.CC00600000000240

Shri Nikhil Ravindranath Rao .. Complainant.

V/s

Shri Jayesh Shah ..Respondent.

Coram:

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

14th November 2017.

FINAL ORDER

The Complainant has filed this complaint under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (RERA).

2. The Complainant contends that he booked flat No. 0603 situated on 6th floor, A-wing of Respondent's Gaurav Discovery Project, village Malwani, Malad(West), Mumbai Suburban District for Rs. 36,48,540/-. The Respondent agreed to deliver the possession of the flat by the end of December 2016. However, the Respondent has failed to deliver the possession of the flat on the specified date, therefore, the Complainant seeks the refund of the monies paid by him to the Respondent, with interest and compensation.

3. The Respondent contends that the Agreement of Sale had been executed in the year 2015 when RERA was not in force and therefore,



this Authority has no jurisdiction to adjudicate this dispute. The Respondent contends that he could not deliver the possession of the flat by the end of December 2016 as agreed because he got the Completion Certificate to build only 17 floors and accordingly they have been constructed. However, he proposes to construct a building comprising of 21 floors but the Competent Authority did not give the permission for constructing the upper four floors. Hence, this reason of delay was beyond his control. Hence, he denies liability to refund the money. According to him, if he would be found liable to refund the amount paid by the Complainant, the Complainant is entitled to get it back with simple interest at the rate of 9 % per annum as mentioned in Clause 17 of the Agreement of Sale. Therefore, he requests to dismiss the complaint.


4. Following points arise for consideration.

- 1) Whether MahaRERA has jurisdiction to entertain this complaint?
- 2) Whether the Complainant is entitled to get refund of the amount paid by him to the Respondent, with interest and compensation under Section 18 of RERA?

5. I answer these points in affirmative for the following reasons:

6. **Jurisdiction:**

The respondent's learned advocate submits that the agreement of sale has been executed during the Maharashtra Ownership of Flats (Regulation of promotion of Construction, Sale, Management and Transfer) Act 1963 (for short, MOFA) regime. RERA came into effect from 1st May, 2017 and it is prospective. He further submits that the date of possession mentioned in registration certificate is not crossed



and therefore there is no breach of any provision of RERA. Hence, MahaRERA has no jurisdiction to entertain this complaint.

I find, the cause of action for claiming possession after the lapse of the agreed date of possession becomes a recurring cause of action. The claimant's right to claim his money back or to claim possession continues the agreed date of possession till the date of filing of complaint. If the cause of action survives after coming into force of RERA, MahaRERA gets jurisdiction over all the disputes pertaining to the eligible real estate projects requiring registration u/s. 3. The ongoing projects bring with them the legacy of rights and liabilities created under the statutes of the land in general and The Indian Contract Act and MOFA in particular. Section 79 of RERA bars the jurisdiction of the civil court from entertaining any suit or proceeding in respect of any matter which the Authority, Adjudicating Officer or Appellate Tribunal is empowered by or under RERA to determine. Hence, the Authority gets the jurisdiction over such matters which the civil court had. The Authority can take cognizance of the agreements executed under MOFA also and is equally competent to grant the relief relating to it. This view gets the support from Section 88 of RERA which provides that its provisions shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. MOFA has not been repealed. In this context, section 71(1) of RERA can be looked into. It provides that for the purpose of adjudicating compensation u/ss. 12, 14, 18 & 19 of RERA, an Adjudicating Officer can be appointed by the Authority. Its proviso provides that any person whose complaint in respect of matters covered by sections 12, 14, 18, 19 of RERA is pending before the Consumer Disputes Redressal forum, State Consumer Disputes Redressal Commission or National Consumer Dispute Redressal Commission **on or before the commencement of RERA**, he may, with



the permission of the said forum withdraw the complaint pending before it and file it before the Adjudicating Officer under RERA. This provision therefore, indicates that sections 12, 14, 18, 19 RERA are retroactive. The right to claim return of amounts paid by the allottee to the promoter is preserved by Section 18 of the Act.

Moreover, relevant part of section 18 of RERA reads,

'18. Return of amount and compensation-


(1) If the promoter fails to complete or is unable to give possession of an apartment plot or building, -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;'

On plain reading of this provision it becomes clear that date of completion referred to in this provision means the date specified in the agreement. The word "therein" refers to the "agreement" and not the date of completion revised by the promoter unilaterally while registering the project. Hence I find myself unable to accept the submission of respondent's learned advocate that as the date of completion mentioned in registration certificate is not crossed, this Authority has no jurisdiction. Considering all these aspects, I find that the Authority has jurisdiction to entertain this complaint as the complainant's right to claim back their money in the case of withdrawal from the project still subsists under RERA.

8. Refund of amount, interest & compensation.

The Complainant has placed the Agreement of Sale on record which shows that the Respondent agreed to deliver the possession of the flat by December 2016. Admittedly, the Respondent has failed to deliver the possession of the flat on the specified date mentioned in the Agreement.



Section 18 of RERA gives two options to the allottee, when the Promoter fails to give the possession of the apartment on the date specified in the agreement. The first option is to continue with the project and claim interest on his investment. Second option is to withdraw from the project and demand for refund of the monies paid by him to the Promoter with interest and compensation as the case may be. In this case the Complainant has exercised his right to claim back his monies.

I have heard the Complainant and Learned Advocate of the Respondent on the amounts paid by the Complainant. There is no dispute between the parties that the Complainant paid Rs. 9,11,400/- on 1.7.2011 as the booking amount, Rs.26,48,940/-, the loan amount had also been collected by the Respondent on 1.7.2015. Thus, Rs.35,60,340/- have been paid by the Complainant towards the consideration of the flat. The Respondent is liable to refund the same. Section 18 provides that the allottee is entitled to get these amounts with interest at such a rate as may be prescribed. Rule 18 of Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Penalty payable in form of Complaint and Appeal etc.) Rules, 2017 provide that the interest shall be marginal cost of lending rate of interest of SBI + 2 %. The marginal cost of lending rate of interest of SBI is currently 8.5 %. Thus, the Respondent is liable to re-pay the amount of Rs. 9,11,400/- with interest at the rate of Rs. 10.15 from 1.7.2011. He is liable to pay Rs.26,48,940/-, the loan amount with interest



charged by the banker since disbursement of the loan amount till the satisfaction of complainant's claim.

Misc. expenditures- The Complainant also claims Rs. 11,215/- towards loan processing charges on 17.8.2011, Rs. 2,85,000/- + 13,950/- towards the Stamp Duty and Registration Fee on 11.3.2015 and 30.6.2015 respectively. He also claims Rs. 1,13,990/- towards vat and service tax deposited on 9.11.2012, total Rs. 4,24,155/-. In my opinion the Complainant is entitled to get reimbursement of these amounts with interest @ 10.15% because he had to pay the same and because of the Respondent's failure to deliver the possession on time, he cannot be made to sustain these losses. On the other hand, so far as the refund of Stamp Duty and Service Tax are concerned, the Respondent is entitled to get their refund from the concerned authorities, so he also would not be at any loss. Since I have directed the Respondent to pay principal amount with interest, I do not find it necessary to direct him to pay the rent of Rs. 11,28,000/- claimed by the Complainant.

The Complainant is also entitled to get reasonable amount of Rs. 20,000/- towards the cost of complaint and hence, the following order.

ORDER

A. The Respondent shall pay the Complainant Rs. 9,11,400/- with interest at the rate of Rs. 10.15 from 1.7.2011.

B. The Respondent shall pay the Complainant Rs. 26,48,940/-, the loan amount and shall bear its interest charged by the banker since 1.7.2015 till the satisfaction of complainant's claim.




C. The Respondent shall pay Rs. 4,24,155/ to the Complainant towards the Misc. expenses with interest at the rate of Rs. 10.15 from respective dates of their payment mentioned in Para-8 of this order together with Rs. 20,000/- towards the cost of the complaint.

D. On satisfaction of the entire claim, the complaint shall execute the document of cancellation registered agreement of sale, at the cost of respondent.

E. The charge of these amounts shall remain on the flat No. 6031 of Gaurav Discovery till the satisfaction of the Complainant's claim.

Mumbai:

Date: 14.11.2017.


14.11.17
(B.D. Kapadnis)

Member & Adjudicating Officer
MahaRERA, Mumbai.