

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

COMPLAINT NO: CC0060000000055197

Sudip Dutta

... Complainant.

Versus

Suresh Singh.
(Sheltrex Smart Phone City)

...Respondent.

MahaRERA Regn: P52000007063

Coram: Shri B.D. Kapadnis,

Hon'ble Member & Adjudicating Officer.

Appearance:

Complainant: In person.

Respondents: through Mr. Sharad Vishnu Patil.

FINAL ORDER

27th September 2018.

The complainant contends that he booked flat No. 216 in D-6 Wing of the respondents' registered project 'Sheltrex' situated at Shirshe Tanaji Malusari City, Taluka-Karjat, Dist. Raigad. The respondents executed agreement for sale on 24.07.2012 and agreed to hand over the possession of the flat within 36 months from the date of agreement i.e. on or before 23rd July 2015. The complainant wants to withdraw from the project and claims refund of his amount with interest and / or compensation.

2. The respondents have failed to file the reply. However, their representative submits that the project was stuck and the respondents took over the construction in September 2014. If the complainant wants to cancel the booking then, they are entitled to collect the cancellation charges.

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



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

REASONS.

3. The agreement dated 24.07.2012 produced by the complainant shows that the respondents agreed to hand over the possession of the flat within 36 months from the date of the agreement. i.e. on or before 23rd July 2015. However, the respondents have failed to hand over the possession of the flat on agreed date. Hence, I record this finding.
4. The complainant withdraws from the project on the respondents' failure to hand over the possession of the flat on the agreed date. Hence, he is entitled to get refund of his amount with the interest at prescribed rate from the date of payment till refund, under Section 18 of RERA. The prescribed rate of interest is 2% above the SBI's highest MCLR which is currently 8.5%. The complainant is entitled to get the interest on the amount paid by him from the date of payment, in view of Section 2 (za)(ii) of RERA. The respondents have not disputed payment mentioned by the complainant in the payment format marked Exh.'A'. However, the respondents have denied their liability to pay the incidental expenses, amount of stamp duty, insurance, VAT, legal fees.
5. The respondents have committed default in handing over the possession of the flat on the agreed date. Therefore, the respondents must refund the amount of consideration paid by the complainant. The complainant is also entitled to get reimbursement of the expenses which he had to incur for the purpose of the obtaining loan namely the insurance premium and the legal fees as well as the expenses regarding the execution



and registration of the agreement for sale except the amount of stamp duty, because the stamp duty appears to have been paid in the name of the complainant and he would be entitled to get its refund from Sub Registrar's Office on cancellation of agreement. Therefore, this amount of Rs. 25,750/- cannot be claimed by the complainant. Rest of the amount will have to be refunded. The complainant is also entitled to get Rs. 20,000/- towards the cost of the complaint.

The interest is compensatory in nature as held by the Hon'ble High Court in Neelkamal Realties-vs-Union of India. Hence, no compensation is granted. In result, the following order.

ORDER

The respondents shall refund the amount mentioned in the payment format marked Exh.'A', except the amount of stamp duty Rs. 25,750/-, with interest at the rate of 10.5% from the date of payment till they are refunded. Exh." A" shall form part of the order.

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

The charge of the ordered amount shall be on the complainant's booked flat, till the satisfaction of his claim.

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

Mumbai.

Date: 27.09.2018.



27.9.18

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

Name of Complainant- Sudip Dutta & Shreya Dutta

Complain No. - CC006000000055197 Dated 3/7/2018

Payment Format

Filed By (complain)

Expt A. V. Member

S No.	Date	Amount	Purpose	Receipt No. / Cheque no. with Bank name
1	23.3.2012	5000	Token Money	Cheque No - 350734 , Bank -Standard Chartered, Receipt no- 7593
2	23.4.2012	72250	Second payment	Cheque No - 350735 , Bank -Standard Chartered Receipt no- 7594
3	No Date	306425	Disbursement by DHFL	Cheque No - 275248 , Bank - Axis Bank
4	21.7.2012	5000	Legal Fees	Receipt No- 7959
5	21.7.2012	5150	VAT	Cheque No - 142008 ,Bank - ICICI Bank, Receipt no-806
6	Details with DHFL	15960	Insurance	ICICI Prudential Life Insurance Policy done by DHFL directly
7	24.7.2012	25750	Stamp Duty / Franking Value	Receipt no - 365663, bank- The Kapol Co-op bank ltd.
8	24.7.2012	10	Service charge for franking by bank	Receipt no - 365663, bank- The Kapol Co-op bank ltd.
9	25.7.2012	5150	Registration Fees	Receipt No- 5305
	25.7.2012	1140	Registration Xerox Fees	Receipt No- 5305
Total	441835			

Complainant Name & Signature

Sudip Dutta.
S.D.

Respondents Remarks

Ramkumar
Kumar Patel

Respondents Name & Sign