THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

COMPLAINT NO: **CC006000000056527**

Ashok ~~Raghvan~~ * Raghavan ... Complainant.

Versus

M/s. Sai Ashray Developers Pvt. Ltd. ... Respondents.
(Prasadan Phase IV)

MahaRERA Regn: **P51700011742**

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

Appearance:
Complainant: In person.
Respondents: Adv.Mr. Asif Sayed.

Final Order

4th December 2018.

The complainant, in his complaint filed under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (in short, RERA), contends that he booked flat no. 601, K-Wing, in respondents registered project Prasadam, situated at Chikloli, Taluka Ambernath, Dist. Thane. The respondents entered into an agreement with the complainant and agreed to hand over possession of the flat on or before 31st May 2016. However, the respondents have failed to deliver the possession on the agreed date. Hence, complainant sent letter on 19.06.2017 to terminate the agreement. The respondents did not refund his money even

* corrected 4539 ~~of~~ RERA
17/12/18

thereafter. He withdraws from the project and claims refund of his amount with interest and / or compensation.

2. The respondents have pleaded not guilty but they have not filed the reply. The learned advocate of the respondents admits that respondents agreed to deliver the fit out possession of the complainants' booked flat on or before 31st May 2016 with the grace period of 9 months. In other words, they agreed to deliver possession by February 2017. They revised the date of possession to 17.07.2021 while registering the project with MahaRERA. They could not complete the project in time due to less rain fall in 2016 and non-availability of water having less salinity for construction work. There was decline in the economy due to demonetisation and introduction of G.S.T. The contractors delayed the work. These reasons causing delay were beyond their control and hence they are entitled to get reasonable extension of time. Respondents have admitted the receipt of the amount submit in payment format marked Exh. 'A'. Therefore, respondents request to dismiss the complaint.

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

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

REASONS

Relevant law:

4. Section 18 of RERA provides, if the promoter fails to complete or is unable to give possession of an apartment plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; if the allottee withdraws from the project, promoter becomes liable to refund of the monies with interest and compensation as the case may be. In this case the Complainant has exercised his right to claim back his money.

Delayed Possession.

5. The respondents have not disputed the fact that they agreed to deliver the possession of the flat on 31.05.2016 with grace period of nine months i.e. on or before February 2017. It is fact that even after lapse of grace period they have not delivered the possession of the flat to the complainant. Complainant has proved that the respondents have failed to deliver the possession on the agreed date.

6. The respondents have referred to shortage of water for construction in the year 2016, decline of economy, demonetisation and levy of G.S.T. as the reasons which delayed their projects and these reasons were beyond their control. I find it very difficult to hold that these reasons were really sufficient to delay their project. Even if very lenient view is shown to accept these reasons as genuine, extension beyond the period of six months cannot be

given to the promoter u/s. 8(b) of Maharashtra Ownership Flat Act.

Complainant's Entitlement.

7. Respondents have not disputed the payment mentioned in the payment schedule filed by the complainant marked 'A' for identification. Since the complainant is withdrawing from the project he is entitled to get back the amount paid by him mentioned in the payment format Exh.'A'. The complainant has included stamp duty amount of Rs. 1,19,800/- in Exh.'A'. The duties paid in the complainant's name and therefore, on cancellation of the agreement for sale he will be entitled to seek refund of the stamp duty from the office of the Sub Registrar within five years of the date of the agreement. Hence, the complainant is not entitled to recover stamp duty amounting to Rs. 1,19,800/- from respondents at this stage.

8. Section 18 of RERA entitles the complainant to get above amount with interest at prescribed rate. Rule 18 of Maharashtra Real Estate (Regulation & Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest & Disclosures on Website) rules,2017 provides that the prescribed rate shall be 2% above the State Bank of India's highest marginal cost of lending rate which is currently 8.5%. Therefore, the complainant is entitled to get the above amount with simple interest at the rate of 10.5% from the respective dates of their payment till it is refunded by the respondents together with Rs. 20,000/- towards the cost of the complaint. In result, the order.

ORDER

ORDER

Respondents shall pay complainant the amount mentioned in Exh.'A' except the amount of stamp duty with simple interest at the rate of 10.5% p.a. from the respective dates of their payments till it is refunded.

Exh.'A' shall form the part of the order.

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

The charge of the amount awarded by this order shall remain on the flat booked by the complainant till complaint's claim is satisfied.

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

It is hereby cleared that in case of respondents' failure to satisfy the complainant's claim within five years from the date of agreement, the complainant shall be entitled to get refund of stamp duty Rs. 1,19,800/- from the respondents.

4.12.18

Mumbai.
Date: 04/12/2018.

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

Sent by email on 12/11/2018

Complaint No. CC006000000056527

Name of Complainant: ASHOK RAGHAVAN

Payment Format
(REVISED)

S. No.	Date	Amount	Purpose	Receipt No./Cheque No. with Bank Name
1	17.11.2014	₹ 100,000/-	Consideration towards booking amount	Cheque No. 241333 dated 17.12.2014 drawn On ICICI Bank, Thane Branch
2	17.11.2014	₹ 465,552/-	Consideration towards booking amount	Cheque No. 687916 dated 17.12.2014 drawn On ICICI Bank, Prabhadevi Branch
3	02.12.2014	₹ 143,800/-	Stamp Duty and Registration Charges	DD No 25668 dated 02.02.2015 drawn on ICICI Bank, Thane Naupada Branch
4	02.12.2014	₹ 6,500/-	Professional Charges & Scanning Charges	Cash Payment
5	02.09.2015	₹ 359,325/-	Consideration towards completion of Plinth Slab	Cheque No. 293951 dated 16.09.2015 drawn On ICICI Bank, Thane branch
6	02.09.2015	₹ 12,576/-	Service Tax	Cheque No. 293951 dated 16.09.2015 drawn On ICICI Bank, Thane branch
7	07.10.2015	₹ 167,683/-	Consideration towards completion of 1st Slab Less Excess Amount Received in Advance	Cheque No. 293956 dated 13.10.2015 drawn On ICICI Bank, Thane Branch
8	07.10.2015	₹ 8,384/-	Service Tax	Cheque No. 293956 dated 13.10.2015 drawn On ICICI Bank, Thane Branch
9	03.02.2015	₹ 239,550/-	Consideration towards completion of 3rd Slab	Cheque No. 293960 dated 10.12.2015 drawn On ICICI Bank, Thane branch
10	03.02.2015	₹ 8,684/-	Service Tax	Cheque No. 293960 dated 10.12.2015 drawn On ICICI Bank, Thane branch
11	03.02.2015	₹ 220/-	Service Tax	Cheque No. 293960 dated 10.12.2015 drawn On ICICI Bank, Thane branch
12	19.11.2016	₹ 239,550/-	Consideration towards completion of 5th Slab	Cheque No. 293983 dated 25.11.2016 drawn On ICICI Bank, Thane Branch
13	19.11.2016	₹ 10,780/-	Service Tax	Cheque No. 293983 dated 25.11.2016 drawn On ICICI Bank, Thane Branch

Complainant Name & Sign

ASHOK RAGHAVAN
12-11-2018

Respondents Remark

Payment Not Disputed

(ASHOK RAGHAVAN)
26-11-2018

Amol Dhanvij

Respondent's Name & Sign

04/12/2018