

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

COMPLAINT NO: CC00500000010517

1. Sukrut Rajmane
2. Kastur Rajmane
3. Yogesh Rajmane

...

Complainants.

Versus

Darode Jog Homes Pvt. Ltd.

...

Respondents.

Padmanabh Phase-I

MahaRERA Regn: -P52100005786.

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

Appearance:

Complainants: In person.

Respondents: Shri C. Mane Deshmukh Adv.

Final Order.

14th February 2018

Pleadings of parties.

The complainant no 1. Sukrut booked a Flat No. B-2, 307 and complainant no 2. Kastur booked a Flat No. B-2, 704 in respondents' registered project Padmanabh Phase-I situated at Dudulgaon Tal. Haveli Dist. Pune. The respondents agreed to hand over the possession of their flats on or before 23 October, 2017. The complainant no 3. Yogesh booked a Flat No. B-1, 501 in the above project. The respondents agreed to hand over the possession of his flat on or before 22 August, 2017. However, respondents failed to deliver the possession of the flats on the agreed dates. The complainants want to withdraw from the project. They claim their amount with interest u/s. 18 of The Real Estate (Regulatory & Development) Act, 2016 (for short, RERA).



2. The respondents have pleaded not guilty. They contend that they are not liable to repay the amount spent on stamp duty, registration charges, service tax and VAT. According to them, they could not complete the project within time because there was recession in the 2014 and there was no sale of units. They have completed the construction to the extent of 85 to 90 % and they are ready to give possession of the flats on or before December, 2018. They further contend that they are ready to pay monthly compensation at the rate of Rs. 5,000/- to the complainants from January, 2017 till they deliver the actual possession of the flats. The complainants agreed to receive this monthly compensation and waived their right to cancel the agreement. They are entitled to get refund of their amount with interest only on the deed of cancellation of the agreement for sale is registered. Therefore, they request to dismiss the complaint.

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

| Points. | Findings. |
|--|------------------|
| 1. Whether the respondents have failed to : deliver the possession of the flats on the agreed dates? | Affirmative. |
| 2. Whether the complainants are entitled to : get refund of their amount with interest? | Affirmative. |

REASONS.

Delayed Possession.

4. The complainants have relied upon agreements for sale showing that the respondents agreed to deliver possession of the flats booked by them on or before December 2016 or within 2.5 years from the date of agreements whichever is letter. On perusal of agreements I find that respondents agreed to hand over the possession of complainant nos. 1 & 2's flats latest on or before 23 October, 2017 and that of complainant no 3. Yogesh on or before 22 August, 2017. However, the respondents have not delivered the possession of the flats till the date of complaint. Hence I hold



that the complainants have proved that the respondents have failed to deliver the possession of the flats on agreed date.

Reason of delay:

5. The respondents contend that there was recession in the year 2014 and therefore, they could not sell units of the project to raise the funds for completing the project. I do not find this to be a valid reason.

Legal Provision:

6. Section 18 of RERA provides that if promoter fails to complete or is unable to give possession of an apartment on the date specified in the agreement and the allottee withdraws from the project, then he is entitled to get refund of his amount with interest from the date of its payment.

Entitlement of the Complainants.

7. The respondents have not disputed the payments made by the complainants which are reflected in their payment statements marked Ext. 'A, B & C' for identification. They have contended that they are not liable to reimburse the amounts spent by the complainants towards the stamp duty, registration charges and taxes as they are paid to the Govt. I find that out of the amount paid to the respondents the amount of stamp duty has been paid in the names of the complainants. The complainants are entitled to get the refund of the stamp duty paid in their names on cancellation of the agreements of sale. Therefore, the complainants cannot claim amount of stamp duty from the respondents. However, registration charges are not refundable. The complainants had to pay the taxes. Since the respondents have failed to deliver possession of the flats on the agreed dates, they are liable to reimburse the amount of registration charges and taxes. The complainants have mentioned the other consequential expenses which cannot be separately allowed, if Rs. 20,000/- are awarded to them towards the cost of the complaint. Respondents have failed to prove that complainants waived their right to get refund with interest. Therefore, complainants are entitled to get back the above mentioned sums except the amount of stamp duty.

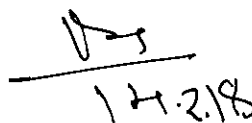
8. Complainants are entitled to get their amount with interest at the prescribed rate which is of State Bank of India's highest marginal cost of lending rate, it is



currently 8.05% + 2%. This interest is compensatory in nature. Hence, I do not find it necessary to award compensation separately because the ends of justice will be served if the interest at the prescribed rate is awarded. Hence, the following order.

ORDER.

1. Respondents shall pay the complainant nos. 1,2 & 3 the amounts mentioned in the payment statements marked Ext. A, B, C respectively except the amount of stamp duty and other consequential expenses shown therein, with simple interest @ 10.05% from the date of their receipt till their repayment. Payment statements marked Ext. A, B, C shall form the part of the order.
2. The respondents shall pay complainants Rs. 20,000/- towards the cost of their complaint.
3. The charge of the aforesaid amount shall be on the flats booked by the complainants till their repayment.
4. On satisfaction of their claims, the complainants shall execute the deeds of cancellation of the agreements for sale, at respondents' cost.



(B.D. KAPADNIS)

Member & Adjudicating Officer,
MahaRERA, Mumbai.

Mumbai
Date: 14.02.2018

Padmanabh Phase I - B2-307 - Sukrut Rajmane

| Payment made to Builder till date (i.e. 06 Feb 2018) | | | | | | |
|--|---------------------|----------------|--|---------------------|-------------------|---------------------|
| Date | Bank Name | Cheque Number | Payment Details | Basic Amount | Service Tax & VAT | Total Amount Paid |
| 14-Mar-14 | Bank Of Maharashtra | 393163 | Stamp Duty | 1,55,500.00 | 28,372.00 | 2,89,872.00 |
| | | | Registration | 26,000.00 | | |
| | | | Booking Partial Payment | 80,000.00 | | |
| 09-Jul-15 | HDFC | 6388 | Booking full, Plinth-Full, 1st Slab-Full, 3rd Slab-Full, 5th Slab-Full Payment | 14,74,061.00 | 45,547.00 | 15,19,608.00 |
| 09-Jul-15 | HDFC | 882134 | 7th Slab-Full Payment | 2,59,011.00 | 9,065.00 | 2,68,076.00 |
| 22-Mar-16 | HDFC | 435410 | Brickwork-Full Payment | 2,59,009.00 | 9,389.00 | 2,68,398.00 |
| Total Payment Made to Builder till 06 Feb 2018 | | | | 22,53,581.00 | 92,373.00 | 23,45,954.00 |
| Other Consequential Expenses till date (i.e. 06 Feb 2018) | | | | | | |
| Date | Bank Name | Cheque Number | Payment Details | Basic Amount | Service Tax & VAT | Total Amount Paid |
| 08-Nov-17 | ICICI Bank | Online Payment | RERA Fees | 5,000.00 | 115.72 | 5,115.72 |
| Till 06-Feb-18 | N/A | Cash | RERA documentation and advocate consultation | 5,000.00 | - | 5,000.00 |
| Till 06-Feb-18 | N/A | Cash | Traveling and other expenses for submission of documents & attending case in Mumbai RERA office | 6,000.00 | - | 6,000.00 |
| Till 06-Feb-18 | N/A | N/A | Financial loss due to leaves taken at office for submitting documents and attending CASE in RERA Mumbai office | 20,000.00 | - | 20,000.00 |
| Total Consequential Expenses till date (i.e. 06 Feb 2018) | | | | | | 36,115.72 |

Total payment issued to the Builder till date is Rs. 23,45,954/- of which basic amount is Rs. 22,53,581/- and Service Tax and VAT is 92,373.00/-
Other Consequential Expense till date (i.e. 06 Feb 2018) is Rs. 36,115.72/-

Dr. A

22-13

Padmanabh Phase I - B2-704 - Kastur Rajmane

| Payment made to Builder till date (i.e. 06 Feb 2018) | | | | | | |
|---|---------------------|---------------|---|--------------|-------------------|-------------------|
| Date | Bank Name | Cheque Number | Payment Details | Basic Amount | Service Tax & VAT | Total Amount Paid |
| 15-Mar-14 | ICICI | 952458 | Booking Partial Payment | 50,000.00 | 0.00 | 50,000.00 |
| 15-Mar-14 | Bank Of Maharashtra | 393163 | Stamp Duty | 1,21,800.00 | 22,223.00 | 1,77,039.00 |
| | | | Registration | 20,300.00 | | |
| | | | Booking part payment | 12,716.00 | | |
| 12-Jul-14 | Union Bank Of India | 86147 | Booking part payment | 1,85,476.00 | 5,731.00 | 1,91,207.00 |
| 01-Nov-14 | Bank Of Maharashtra | 393166 | Booking full payment | 1,57,518.00 | 4,868.00 | 1,62,386.00 |
| 21-Jan-15 | Bank Of Maharashtra | 393167 | Plint full, 1st slab part payment | 2,11,705.00 | 6,541.00 | 2,18,246.00 |
| 16-Feb-15 | Bank Of Maharashtra | 393168 | 1st slab full payment | 1,94,005.00 | 5,995.00 | 2,00,000.00 |
| 15-Apr-15 | Bank Of Maharashtra | 393171 | 3rd slab full payment | 2,02,855.00 | 6,268.00 | 2,09,123.00 |
| 27-Jun-15 | Bank Of Maharashtra | 393174 | 5th slab full payment | 2,02,855.00 | 6,268.00 | 2,09,123.00 |
| 05-Sep-15 | Bank Of Maharashtra | 393175 | 7th slab full | 2,02,855.00 | 6,268.00 | 2,09,123.00 |
| 17-Sep-16 | Bank Of Maharashtra | 393179 | 7th slab full, Brickwork part payment | 2,03,658.00 | 7,637.00 | 2,11,295.00 |
| Total Payment Made to Builder till 06 Feb 2018 | | | | 17,65,743.00 | 71,799.00 | 18,37,542.00 |
| Other Consequential Expenses till date (i.e. 06 Feb 2018) | | | | | | |
| Date | Bank Name | Cheque Number | Payment Details | Basic Amount | Service Tax & VAT | Total Amount Paid |
| Till 06-Feb-18 | N/A | Cash | RERA documentation and advocate consultation | 5,000.00 | - | 5,000.00 |
| Till 06-Feb-18 | N/A | Cash | Traveling and other expenses for submission of documents & attending case in Mumbai RERA office | 6,000.00 | - | 6,000.00 |
| Total Consequential Expenses till date (i.e. 06 Feb 2018) | | | | | | 11,000.00 |

Total payment issued to the Builder till date is Rs. 18,37,542/- of which basic amount is Rs. 17,65,743/- and Service Tax and VAT are 71,799.00/-

Other Consequential Expenses till date (i.e. 06 Feb 2018) is Rs. 11,000/-

Yogesh Kajmane

B 1- 501

| Payment made to Builder till date (i.e. 06 Feb 2018) | | | | | | |
|---|---------------------|---------------|--|--------------|-------------------|-------------------|
| Date | Bank Name | Cheque Number | Payment Details | Basic Amount | Service Tax & VAT | Total Amount Paid |
| 13-Mar-14 | Bank Of Maharashtra | 25027 | Stamp Duty | 113,200.00 | 20,323.00 | 200,000.00 |
| | | | Registration | 18,860.00 | | |
| | | | Booking Partial Payment | 47,617.00 | | |
| 13-Mar-14 | Bank Of | 25029 | Booking Partial Payment | 10,743.00 | 331.00 | 11,074.00 |
| 8-May-14 | HSBC Bank | 169727 | HDFC loan processing fee | 9,410.00 | | 9,410.00 |
| 8-May-14 | | CASH | HDFC loan stamp duty | 3,600.00 | | 3,600.00 |
| 3-Aug-15 | HDFC Bank | 101075 | Booking full, Plinth-Full, 1st Slab-Full, 3rd Slab-Full, 5th Slab-Full Payment | 1,072,860.00 | 33,154.00 | 1,106,014.00 |
| 26-Aug-15 | HDFC Bank | 136234 | Brickwork | 188,530.00 | 6,599.00 | 195,129.00 |
| 31-Dec-15 | HDFC Bank | 309670 | Brickwork - Part | 158,728.00 | 5,556.00 | 164,284.00 |
| Total Payment Made to Builder till 06 Feb 2018 | | | | 1,623,548.00 | 65,963.00 | 1,689,511.00 |
| Other Consequential Expenses till date (i.e. 06 Feb 2018) | | | | | | |
| Date | Bank Name | Cheque Number | Payment Details | Basic Amount | Service Tax & VAT | Total Amount Paid |
| Till 06-Feb-18 | N/A | Cash | RERA documentation and advocate consultation | 5,000.00 | - | 5,000.00 |
| Till 06-Feb-18 | N/A | Cash | Traveling and other expenses for submission of docs & case | 6,000.00 | - | 6,000.00 |
| Till 06-Feb-18 | N/A | N/A | Financial loss due to casual leaves taken at office | 20,000.00 | - | 20,000.00 |
| Total Consequential Expenses till date (i.e. 06 Feb 2018) | | | | | | 31,000.00 |

Total payment issued to the Builder till date is Rs. 1689511/- of which basic amount is Rs. 1623548/-
Other Consequential Expenses till date (i.e. 06 Feb 2018) is Rs. 31,000/-

Harc