

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI
COMPLAINT NO. CC005000000000219

Mr. Prashant Madhukar Karodpati. ... Complainant.

VERSUS

1. Sigma One Shilp Ventures
2. Narayan Ashok Bharekar
3. Kapil Vilas Gandhi
4. Shreekumar Mukund Kasat
5. Chandrakant Tukaram Bharekar ... Respondents.

MahaRERA Regn:- P52100009637

Complainant: In person.

Respondents: Represented by Mr. O.S. Tilekar, Adv.

COMPLAINT NO. CC005000000010388

1. Jitendra D. Chaudhari
2. Nilima Jitendra Chaudhari ... Complainants.

VERSUS

1. Sigma One Shilp Ventures
2. Narayan Ashok Bharekar
3. Kapil Vilas Gandhi
4. Shreekumar Mukund Kasat
5. Chandrakant Tukaram Bharekar ... Respondents.

MahaRERA Regn:- P52100009637

Complainant: In person.

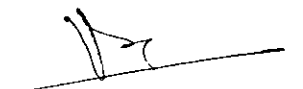
Respondents: Represented by Mr. O.S. Tilekar, Adv.

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

Final Order.

30th January 2018.

The complainants have been seeking the refund of their amount with interest and/or compensation from the respondents under section 18 of



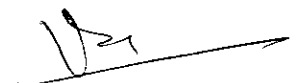
Real Estate (Regulation and Development) Act, 2016, (RERA), as the respondents have failed to deliver the possession of their flats on agreed dates.

Pleadings of complainants.

2. Mr. Prashant Madhukar Karodpati booked a flat no. B-305, Mr. Jitendra D. Chaudhari and Mrs. Nilima Jitendra Chaudhari have booked flat no. B-302 in the respondents' La Cabana project situated at village Susgaon, District Pune. The respondents agreed to deliver these flats within the period of 30 months from the actual commencement of work at site. The respondents themselves have contended in their reply that the development activities started on 01.01.2015 and therefore, the respondents agreed to deliver possession of these flats on or before 30th June 2017. However, they have failed to hand over the possession of these flats on the agreed date, hence, the complainants have been claiming their amount with interest and/or compensation under section 18 of RERA.

Defence of respondents.

3. The respondents have pleaded not guilty and they have filed their reply. They contend that the Assistant Director of Town Planning recommended their building plan on 30.10.2012 and thereafter, the Collector, Pune granted permission to use the land for non-agricultural purpose and approved the construction plan on 05.02.2013. Thereafter, they got the approval of the revised plan on 31.12.2014 and started development activities on 01.05.2015. Therefore, they contend that since the development work commenced at site on 01.05.2015, the respondents' contractual liability to hand over the possession of the flats to the complainants was on or before 30.06.2017. According to them, the Town Planning Authority came to be entrusted with Pune Metropolitan Regional Development Authority. They completed the parking slab of C and D buildings in May 2015 and that of A & B buildings in October 2015. They



received plinth checking certificate of C & D buildings on 17.03.2016 and that of A & B buildings on 18.05.2016. They have mentioned while registering the project that the project shall be completed by 31.03.2018, therefore they contend that the complaints are pre-matured. They contend that the project is delayed because of the reasons beyond their control. According to them, since the market is falling, the complainants want to withdraw from the project. The respondents have further contended that the complainants themselves are claiming refund of their amount and therefore, they are entitled to forfeit a part of their amount as per clause-2 (f) of the agreement. Hence, they request to dismiss the complaints.

4. Following points arise for consideration and I record findings thereon as under.

POINTS.	FINDINGS.
a. Whether the respondents failed to deliver the possession of the complainants' flats on agreed date?	Affirmative.
b. Whether the respondents prove that they were prevented from completing the project in time because of the reasons which were beyond their control?	Negative.
c. Whether the complainants are entitled to get refund of their amount with interest?	Affirmative.

REASONS

5. Parties have entered into the agreement for sale in respect of complainants' booked flats. On perusal of those agreements it becomes clear that the respondents have agreed to deliver the possession of the booked flats within 30 months from the date of commencement of construction work at site. The complainants brought to my notice that in the agreement itself the respondents have mentioned that the "*promoters*



have accordingly commenced construction of said building/s, in accordance with the plans sanctioned by the Collector, Pune vide order No. PMA/NA/SR/359/2012 dated 05.02.2013". The agreements for sale have been executed in favour of Mr. Prashant Karodpati on 18.12.2014, and in favour of Mr. & Mrs. Choudhery on 26.12.2014. The respondents have mentioned in their reply that the construction activities on site started on 01.01.2015. So from 01.01.2015 within the period of 30 months they were required to hand over the possession of the complainants' flats. This date comes to 30th June 2017, hence, I hold that the respondents have agreed to deliver the possession of the complainants' flats on 30.06.2017. It is admitted fact that the respondents have not delivered the possession of these flats to the complainants on the said date. On the contrary, they have mentioned that the proposed date of the completion of the project was 01.11.2017 and revised date of completion is 31.03.2018. In this context, Hon'ble Bombay High Court has held in Nilkamal Realtors Suburban Pvt. Ltd. – v/s – Union of India in Writ Petition No. 2737 of 2017 in Ordinary Original Civil Jurisdiction that the Court cannot re-write the contracts of the parties, therefore, the dates specified in the agreements for sale shall be deemed to be agreed dates of possession for the purpose of Section 18 of RERA. Hence, I hold that the respondents have failed to deliver the possession of the flats on the agreed date as their project is delayed.


REASONS FOR DELAY:

6. The respondents have contended that on 31.12.2014, the Collector, Pune sanctioned the revised plan. According to them, the work of construction up to parking slab of 'C' Building was completed in May 2015 and that of B building in October 2015. The letters for checking the plinth were issued on 26.05.2015 & 08.10.2015 respectively. But the plinth checking certificate of 'C' building has been received on 17.03.2016 and of 'B' building has been received on 18.05.2016, this caused the delay which was beyond their control. In this context, Hon'ble Bombay High Court has

observed in the case of Nilkamal Realtors Suburban Pvt. Ltd. – cited Supra that the promoter having sufficient experience in the open market, is expected to have a fair assessment of time required for completing the project. Therefore, the promoters they being experienced in the field having expertise in dealing with the official matters, have to take the proper decision regarding the time likely to be taken by them for completion of their project, while booking the flats and promising the people. Therefore, respondents cannot take somersault and blame the system. The respondents have also mentioned that the planning authority changed and went to PMRDA but at that time no proposal of their project was pending before the said authority which got delayed because of the said change. Therefore, I do not find that reasons causing delay were beyond the control of the respondents.

Entitlement of complainants.

7. The respondents contend that since the complainants have been claiming refund of their amount, they are entitled to forfeit Rs. 50,000/- under clause-2(f) of the agreement. This clause provides that 'in the event of the agreement being terminated by the purchasers for any reason whatsoever, the promoter shall be entitled to retain/withhold/forfeit the minimum amount of Rs. 50,000/- from and out of amount so far then paid by the purchaser to the promoter.' Complainants of their own are not terminating the agreements. The respondents themselves have defaulted in handing over the possession of the booked flats on agreed date. Section 18 of RERA confers option upon them to withdraw from the project and claim their amount with interest as the respondents have failed to deliver the possession of their flats on agreed date. So clause-2(f) of the agreement has no role to play in these cases. I hold the complainants are entitled to get back their full amount with interest.



8. When the promoter makes the default in delivering the possession of the flats on agreed date, he becomes liable to refund all the amount paid by the allottee. He also becomes liable to reimburse the allottee all the expenses incurred by him relating to the transaction such as the payment of taxes, registration charges and ancillary expenses.

9. Mr. Prashant Karodpati has filed payment details marked Exhibit - 'A'. He is entitled to get refund of the amount mentioned in column (E) & (G) thereof as these sums have been paid to the respondents towards the price of the flat. Mr. Prashant has paid Rs. 2,30,000/- towards stamp duty in his name for registering the agreement for sale. On cancellation of the agreement for sale, he will be entitled to seek refund of the stamp duty. Hence, the respondents are not liable to reimburse this amount. However, on 12.12.2014 he paid Rs. 35,000/- towards registration charges which he is entitled to get. He is also entitled to get the misc. expenses mentioned in column (L) to the extent of SBI Home Loan processing fee, POA advocate fees for bank loan, general POA receipt expenses only. He is also entitled to get Rs. 20,000/- towards cost of this complaint. Since the complainant is getting the interest which is compensatory in nature all other his claims cannot be allowed and hence they are rejected.

10. Mr.& Mrs. Chaudhari have filed payment details marked Exhibit - 'A'. They are entitled to get refund of the amount mentioned in column 3.1, 3.2 as these sums have been paid to the respondents towards the price of the flat. They have paid Rs. 2,30,000/- towards stamp duty for registering the agreement for sale. The duty is paid by them. On cancellation of the agreement for sale, they shall be entitled to seek refund of the stamp duty. Hence, the respondents are not liable to reimburse this amount. However, on 26.12.2014 they had paid Rs. 36,920/- towards registration charges and ancillary expenses which they are entitled to get. They are also entitled to get the misc. expenses mentioned in column 5 to the extent of SBI Home Loan processing fee, POA advocate fees for bank loan, general POA receipt

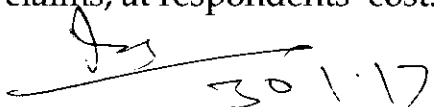
expenses only. They are also entitled to get Rs. 20,000/- towards cost of this complaint. Since the complainants are getting the interest which is compensatory in nature all other their claims cannot be allowed and hence they are refused.

11. Section 18 of RERA allows the interest at the prescribed rate. The rules prescribe the rate of interest shall be of MCLR of SBI + 2%. The current MCLR of SBI is 8.05%, hence complainants are entitled to get their amount with the interest at the rate of 10.05% from the date of their payments. Hence, the following order.

ORDER

1. The respondents shall pay Mr. Prashant Karodpati the amount mentioned in the statement marked at Exhibit- A subject to the observations contained in paragraph 9 of this order.
2. The respondents shall pay Mr.& Mrs. Chaudhari the amount mentioned in the statement marked at Exhibit- A subject to the observations contained in paragraph 10 of this order.
3. Payment details marked Exhibit 'A' in both the complaints shall form the part of this order.
4. The respondents shall pay the above amount with interest at the rate of 10.05% from the date of their receipt till they are repaid.
5. The respondents shall pay Rs. 20,000/- towards the cost of each complaint to the respective complainants.
6. The charge of aforesaid amount shall be on the flats booked by complainants till satisfaction of their claim.
7. Complainants shall execute deed of cancellation of agreements for sale on satisfaction of their claims, at respondents' cost.

Mumbai.
Date: 30.01.2018.


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

(E)

Own Contribution

16-Jun-14	HDFC cheque 457948 (Sigma One Receipt No. 035, date 15-Jun-2014)	Booking	2,00,000.00
12-Aug-14	SBI cheque 897653 (Sigma One Receipt No. 045)	15% of agreement cost Rs.45,99,319/-	4,89,898.00
5-Dec-14	HDFC cheque 457947 (Sigma One Receipt No. 003)	service tax	21,318.00
18-Dec-14	SBI cheque 897651 (Sigma One Receipt No. 055)	VAT	45,993.00
25-May-15	SBI cheque 897652 (Sigma One Receipt No. 102)	Plinth	98,683.00
25-May-15	HDFC cheque 457946 (Sigma One Receipt No. 102)	Plinth	4,11,215.00
25-May-15	SBI cheque 897551 (Sigma One Receipt No. 102)	Plinth	1,80,000.00
3-Jun-15	SBI cheque 897654 (Sigma One Receipt No. 114)	service tax	21,317.00
5-Nov-15	HDFC cheque 457951 (Sigma One Receipt No. 145)	first slab	2,23,732.00
5-Nov-15	SBI cheque 897552 (Sigma One Receipt No. 145)	first slab	98,220.00
5-Nov-15	HDFC cheque 457952 (Sigma One Receipt No. 146)	service tax	11,268.00
20-Jan-16	HDFC cheque 457956 (Sigma One Receipt No. SSVSSV/203)	second slab	3,21,952.00
20-Jan-16	SBI cheque 897553 (Sigma One Receipt No. SSVSSV/204)	service tax	11,751.00

Sub-Total 21,35,347.00

(G)

SBI Home Loan Contribution amount

3-May-16	RTGS drawn on SBI RACPC Baner branch (Sigma One Receipt No. SSVSSV/276)	third & fourth slab	6,43,904.00
23-May-16	RTGS drawn on SBI RACPC Baner branch (Sigma One Receipt No. SSVSSV/279)	service tax	23,342.00
30-Jun-16	RTGS drawn on SBI RACPC Baner branch (Sigma One Receipt No. SSVSSV/291)	brick work	6,89,897.00
30-Jun-16	RTGS drawn on SBI RACPC Baner branch (Sigma One Receipt No. SSVSSV/291)	service tax	25,009.00
21-Nov-16	NEFT SBIN216325040026 (Sigma One Receipt No. SSVSSV/330)	internal plaster	6,89,898.00
21-Nov-16	NEFT SBIN216325040026 (Sigma One Receipt No. SSVSSV/330)	service tax	31,045.00
Sub-Total			21,03,095.00