

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

COMPLAINT NO: CC00600000001287

Reshma Nitin Rankhambe ... Complainant.

Versus

M/s. Patel Group & Co.
(Patel Colossus) ... Respondents.

MahaRERA Regn: P51700009981

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

Appearance:
Complainant: Legal Juris.

Respondents: None.

Final Order.
3rd April 2018

The complaint contends that she booked flat no. 702, Building No. A-4 in respondents' project Patel Colossus which was to be completed by December 2017. The respondents promised to give possession on or before March 2018. However, no progress at construction site was seen during 2015- 2016, therefore, the complainant has cancelled their booking in the year 2016. The respondents agreed to refund Rs. 12,55,358/-. They refunded Rs. 2,00,000/- in August 2016. However, two cheques for Rs. 4,00,000/- each dated 28.12.2016 were dishonoured. On 17.01.2017 and 30.01.2017 a cheque for Rs. 3,00,000/- was issued but the respondent no. 2 showed their inability to refund it. Therefore, on assurance of the



respondent no.2 the said cheque was not deposited. The complainant got the refund of Rs. 50,000/- in May 2017 and of Rs. 2,00,000/- in September 2017. A cheque dated 30.06.2017 issued by the opponent for Rs. 11,00,000/- dishonoured because of want of sufficient funds. Therefore, the complainant is claiming refund of Rs. 15,58,870/- with interest.

2. None is present on behalf respondents. The learned Advocate of the complainant has been heard on the points of maintainability of the complaint. He submits that the complaint's case is maintainable under Section 18(i)(b) of the Real Estate (Regulation and Development) Act, (RERA) and insists to proceed under the said provision. The relevant portion of section 18 reads as under:

"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)

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason."

On plain reading of this Section it becomes clear that if the promoter fails to complete or he is unable to give possession of an apartment due to discontinuance of business as a developer then the allottee is entitled to get his amount with interest.

3. In the fact and circumstances, I am convinced that complainant is allottee. However, I am not convinced with the arguments of the learned advocate of the complainant that the complainant is entitled to get refund of her amount under of Section 18 (1) (b) of RERA. The learned advocate has given emphasis on the words, "or for any reason" to submit that the respondents have not carried out the construction of the project and therefore, his case comes under this Clause. I find that the provisions of Sub-Clause (b) will have to be read as a whole. I find that under this Clause



the allottee is entitled to get refund of his amount on proof of following facts.

- A. The promoter fails to complete or he is unable to give possession of an apartment.
- B. Due to discontinuance of his business as a developer.
- C. This discontinuance of business as a developer may be on account of (a) suspension or (b) revocation of the registration or (c) for any other reasons.

Therefore, clause "for any other reason" co-relates to 'discontinuance of promoter's business as a developer'.

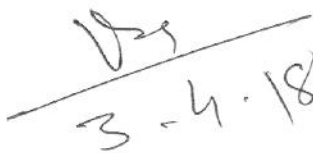
4. The complainant contends that the project has not been started by the respondents from the year 2015, but it does not mean that the respondents have discontinued their business. They might not have started the construction of project. Discontinuance of business as a promoter is quite different than not starting construction of a project. I have visited official website of MahaRERA and I find that on 02.04.2018 itself the respondents have updated the information of their project. This clearly indicates that they have not discontinued their business as a developer or they have not abandoned the project also. In any circumstance, I find that the case of the complainant does not fall under Section 18 (1)(b) of RERA as contended by the learned Advocate of the complainant. When this fact is indicated, a ruling to this effect is sought. Hence, the order.

ORDER

The complaint is dismissed as it is not maintainable under Section 18(1)(b) of RERA.

Mumbai.

Date: 03.04.2018.


3-4-18

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