

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

COMPLAINT NO: CC006000000001602

Ajit Rasiklal Sanghvi ... Complainants.
Malini Ajit Sanghvi
Hrisal Investment Advisors Pvt. Ltd.
Sterling Consultancy Services Pvt. Ltd.

Versus

Shree Ram Urban Infrastructure Ltd. ... Respondents.
(Palais Royale)

MahaRERA Regn: -P51900006786

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

Appearance:

Complainants: Adv.Mr. Jairam Chandanani.

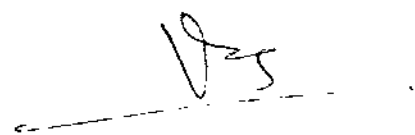
Respondents: Representative of Official Liquidator,
Mr. Chintamani Labde.

Final Order.

16th March 2018

The complainants have filed this complaint to get refund of their amount with interest and/or compensation paid by them in the context of purchasing a residential flat measuring 450.17 sq.mtrs. carpet area on the 24 SW level together with two garages measuring 74.32 sq.mtrs. build-up area, in respondents' project Palais Royale situated at Lower Parel Division, Mumbai.

2. The complainants contend that they booked the above mentioned flat together with two garages on 17.07.2015 for Rs. 25 crores. The respondents agreed to deliver the possession of the flat and garages on or



before 31st December 2017 but failed to deliver the same as agreed. Therefore, complainants claim their amount as they want to withdraw from the project.

3. The respondent no. 1 has filed the reply to contend that the complainants have not made the payment of consideration as agreed by them in time. They could not complete the project in time because of various litigations. The plans were required to be modified and therefore, they could not complete the project in time. These grounds were beyond their control. Hence they request to dismiss the complaint. Thereafter, the Official Liquidator has been substituted in place of the respondents.

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 flat and garages to the complainants on or before 31 st December 2017?	Yes
2. Whether the complainants are entitled to : get refund of their amount with interest?	Yes

REASONS.

Delayed possession.

4. The registered agreement for sale has been placed on record, it shows that the respondents agreed to deliver the possession of the flat and garages on or before 31st December 2017. Admittedly, the possession of flat and garages have not been handed over to the complainants till this date. Hence, I hold that the complainants have proved that the respondents have failed to hand over possession of the flat and garages on agreed date.

5. So far as the reasons for delay are concerned, respondents have mentioned list of litigations faced by them in respect of the project. It appears that the litigations arise only because the construction was not made in accordance with the sanctioned plans and therefore, the respondents cannot take the advantage of their own wrong to contend that because of those litigations the completion of the project is delayed. The respondents themselves have contended that they have to change/modify the plans which has delayed the project. However, the complainants have booked their flats in the year 2015 that is much after the start of litigations. The respondents are the professional promoters and they were aware of the obstacles coming in their way when they entered into an agreement for sale with the complainants. They were aware of the litigations as well as the modifications of the plans, despite this they estimated the time and agreed to deliver the possession on/or before 31st December 2017. Hence, they cannot change their stand and take benefit of their own wrongs. To conclude, I hold that the respondents have failed to prove that the causes of delay were beyond their control.

Legal position:

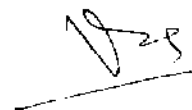
6. The Section 18 of RERA provides that allottee can claim refund of his amount with interest and/or compensation if the promoter fails to deliver the possession of the apartment on the date specified in the agreement. It gives the option to allottee to withdraw from the project. In view of this provision, the complainants have exercised their right to withdraw from the project and claim refund of their amount with interest.

7. Section 18 of RERA allows the allottee to collect his amount with interest at prescribed rate which is 2% above the MCLR of SBI . The current rate of MCLR of SBI is 8.05%. Thus, the complainants are entitled to get simple interest at the rate of 10.05% p.a. on their amount from the date of their payment till they are repaid.

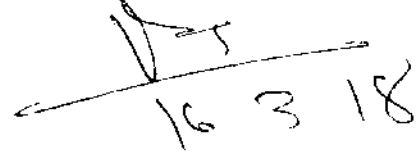
8. The complainants have produced the statement marked Exh.'A' showing the payments made by them to the respondents in respect of the purchase the flat and garages. The respondents have not denied the amount mentioned therein. Since the complainants are withdrawing from the project, the respondents are liable to refund their amount received by them towards the consideration of the flat and garages. They are liable to reimburse the complainants in respect of other ancillary expenses incurred by them relating to the taxes and the registration charges. However, the complainants are not entitled to get Rs. 1crores 25 lakhs paid by them towards the stamp duty mentioned in their statement, because of on cancellation of the agreement for sale, they are entitled to get its refund. Hence, except the amount of stamp duty, the respondents are liable to pay the complainants all amount mentioned in the statement of payment with simple interest at the rate of 10.05% p.a. from the date of their payment either to the respondents or to the Government till they are re-paid. The complainants are entitled to get Rs. 25,000/- towards the cost of this complaint. Hence, the order.

ORDER.

1. Respondents shall pay the complainants all the amount shown in Exh 'A' except the amount of stamp duty with simple interest at the rate of 10.05 % per annum from the respective dates of their payment either to the respondents or to the Government as the case may be, till they are re-paid.
2. The payment schedule marked Exh. 'A' shall form the part of the order.
3. The respondents shall pay Rs. 25,000/- to the complainants towards the cost of the complaint.



4. The charge of the aforesaid amount shall be on the flat booked by the complainants till its repayment.
5. Complainants shall execute the deed of cancellation of the agreement for sale, at respondents' cost on satisfaction of their claim.



(B.D. KAPADNIS)

Member & Adjudicating Officer,
MahaRERA, Mumbai.

Mumbai
Date: 16.03.2018

Statement of Total Claim

Purchaser Name	Type of Payment	Date of Payment / Cheque	Payment Gross Amount (A)	No. of Days	Interest @12% up to 31-10-2017 (B)	Total (A+B)
Hrisal Investment Advisors Pvt. Ltd.	Towards flat purchase	30-06-2015	3,53,50,000	854	99,25,118	4,52,75,118
Sterling Consultancy Services Pvt. Ltd	Towards flat purchase	30-06-2015	1,51,01,010	854	42,39,867	1,93,40,877
Ajit Rasiklal Sanghvi and Malini Ajit Sanghvi	Towards flat purchase	13-07-2015	11,11,00,000	841	3,07,18,389	14,18,18,389
Hrisal Investment Advisors Pvt. Ltd	Towards flat purchase	08-12-2015	50,00,000	693	11,39,178	61,39,178
Sterling Consultancy Services Pvt. Ltd	Towards flat purchase	08-12-2015	50,00,000	693	11,39,178	61,39,178
Sterling Consultancy Services Pvt. Ltd	Towards flat purchase	28-01-2016	34,00,000	642	7,17,633	41,17,633
Sterling Consultancy Services Pvt. Ltd	Towards flat purchase	29-03-2016	49,50,000	582	9,47,145	58,97,145
Sterling Consultancy Services Pvt. Ltd	Towards flat purchase	11-03-2016	1,00,000	600	19,726	1,19,726
		Total (1)	18,00,01,010		4,88,46,234	22,88,47,244
Hrisal Investment Advisors Pvt. Ltd.	Towards Stamp Duty & Regn.	17-07-2015	1,25,30,000	837	34,47,981	1,59,77,981
Sterling Consultancy Services Pvt. Ltd	Towards M-VAT	11-08-2015	25,00,000	812	6,67,397	31,67,397
Ajit Rasiklal Sanghvi and Malini Ajit Sanghvi	Towards Service Tax	14-07-2015	70,00,000	840	19,33,151	89,33,151
Hrisal Investment Advisors Pvt. Ltd		08-12-2015	2,22,575	693	50,711	2,73,286
Sterling Consultancy Services Pvt. Ltd		08-12-2015	2,22,575	693	50,711	2,73,286
Sterling Consultancy Services Pvt. Ltd		30-01-2016	2,22,575	640	46,832	2,69,407
Sterling Consultancy Services Pvt. Ltd		29-03-2016	2,22,575	582	42,588	2,65,163
		Total (2)	2,29,20,300		62,39,371	2,91,59,671
		Grand Total (1+2)	20,29,21,310		5,50,85,605	25,80,06,915

30,000
1,25,000
Registration
Stamp duty paid
by company