

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

COMPLAINT NO: CC006000000057459

Valid Musa Bagdadi

... Complainant.

**Versus**

Vidhi Realtors  
(Gaurav Discovery)

... Respondents.

MahaRERA Regn: P51800007949.

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

**Appearance:**

Complainant: Adv. Aditya Shashital.

Respondent: Adv. Krishna Agarwal.

**FINAL ORDER**

**15<sup>th</sup> March 2019.**

The complainant contends that he booked flat no. 904, F-wing of the respondents' registered project 'Gaurav Discovery' situated at Malwani, Malad (West). The respondents by their letter dated 8<sup>th</sup> June 2015 agreed to hand over its possession by December 2015. However, they have failed to hand over the possession on the agreed date. Therefore, the complainant withdraws from the project and claims refund of his amount under Section 12 in alternative under Section 18 of RERA.

2. The respondents have pleaded not guilty and they have filed their reply to contend that agreement for sale has not been executed and therefore, Section 18 of RERA is not applicable in this case. According to them, the complainant defaulted in paying various instalments. He paid only Rs. 11,36,800/ out of Rs. 27,52,170/-. Therefore, they have terminated



his booking by their letter dated 6<sup>th</sup> September 2018. They request to dismiss the complaint.

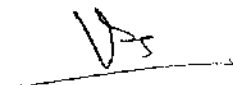
3. Following points arise for determination and I record my findings thereon as under:

POINTS	FINDINGS
1. Whether the respondents made false statement that they would give possession of the flat by December 2015?	Affirmative.
2. Whether the complainant is entitled to get refund of his amount with interest?	Affirmative.

#### REASONS

4. The respondents have not denied the fact that by their letter dated 08.06.2013, they have informed the complainant that the possession of the flat would be handed over to him by December 2015. The respondents have failed to hand over the possession of the flat on the said date and therefore, they have made false statement regarding the date of possession.


5. The respondents have admitted that the complainant has paid them Rs. 11,36,800/- towards consideration out of Rs. 27,52,170/-. It means that the complainant has made the payment of more than 20% in the year 2013 itself. Therefore, the respondents were under legal obligation to execute the registered agreement for sale in complainant's favour under Section 4 of Maharashtra Ownership Flats Act and under Section 13 of RERA when the payments were more than 20% and 10% of the total consideration respectively. The respondents cannot take advantage of their wrong to contend that the complaint is not maintainable because the agreement for sale has not been executed. The complainant has filed the payment statement marked Exh. 'A' which shows that he paid Rs. 12,16,356/-



including the service charges. The complainant is entitled to get reimbursement of service tax paid by him because he walks out of the project.

6. The respondents have taken the plea that the complainant did not pay the instalments and therefore, they have cancelled his booking on 06.09.2018. The learned Advocate of the complainant has brought to my notice that, the complainant applied for Bank Loan and the loan was also sanctioned. It was the responsibility of the respondents to give approved project finance number to the complainant for furnishing it to the Bank for releasing the loan amount. He has brought to my notice various letters sent by the complainant in the year 2013 itself repeatedly asking to respondents to provide APF number of the project. The respondents have not responded him and therefore, even after the loan was sanctioned it was not disbursed. Hence, the respondents cannot take the advantage of their own wrong. In fact, without first entering into the agreement for sale and registering it after receiving more than 20% as per Section 4 of MOFA and more than 10% as per Section 13 of RERA, they were restrained by the said provisions from demanding more money from the allottee without executing agreement for sale. Hence, I find that in the facts and circumstances of the case, the termination of booking is illegal.

7. To conclude, I hold that on the respondents' promise that the possession would be handed over by December 2015, the complainant has booked the flat. The date of possession is proved to be false. Hence he is entitled to get refund of his amount with interest under Section 12 of RERA. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 8.55%. The complainant is also entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the order.



## ORDER

The respondent shall refund Rs. 12,16,365/- to the complainant with simple interest at the rate of 10.55% from the date of receipt of the amount mentioned in Exh. 'A' till their refund.


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

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

The charge of the amount shall be on the booked flat till the satisfaction of the complainant's claim.

Mumbai.

Date: 15.03.2019.

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

CC006/S7459

*EPG  
Mandor*

Sr. No.	Date	Amount	Purpose	Receipt No.	Cheque No. with Bank Name
1	30/10/2012	3,00,000	Booking	PRA00853	296993 Axis Bank ✓
2	12/11/2012	7,36,800	Installment	PRA00895	296997 Axis Bank ✓
3	12/11/2012	32,037	Construction Service @ 3.09%	PRA00896	296998 Axis Bank
4	12/06/2013	32,037	Construction Service @ 3.09%	PRA01610	540184 Axis Bank
5	09/10/2013	4,005	Construction Service @ 3.09%	PRA02199	540185 Axis Bank
6	11/11/2013	1,00,000	Installment	MAN02468	540187 Axis Bank ✓
7	11/11/2013	4,005	Construction Service @ 3.09%	MAN02469	540187 Axis Bank
8	19/12/2013	7,481	Construction Service @ 3.09%	PRA02702	540188 Axis Bank

1216365

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*A. N. Santhiya*