

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

COMPLAINT NO: CC005000000000227

Atul Narhar Deshpande.

...Complainant.

V/s

Babasaheb Bhagwan Atkire .

.... Respondent.

MahaRERA Regn. : P52100007249

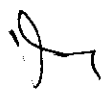
Coram: Hon'ble Shri B.D. KAPADNIS.  
(Member & Adjudicating Officer)

**Final Order.**

21<sup>st</sup> November 2017

The complainant, by this complaint seeks the refund of the amounts paid to the Respondent on account of agreement of sale of flat no. E-6 of Respondent's S.S. Platinum Park Project situated at Pune.

2. The complainant complains that on booking of the above numbered flat, the respondent agreed to deliver its possession on or before 30<sup>th</sup> September 2015 but he failed to deliver the possession till the date of the complaint. Therefore, he seeks the refund of Rs.15,73,298/- with interest and compensation under section 18 of Real Estate (Regulation and Development) Act, 2016. The respondent has pleaded not guilty. The respondent has admitted that the complainant booked the flat as contended by him. However, he contends that he is not at fault for the delay. According to him, Asstt. Director of Town Planning, Pune passed N.A. order of 15.05.2012. He wanted to construct 11 floors in E-Wing for which the environmental clearance certificate was required. Hence, he applied for the same on 06.02.2013. Pending that application, in March 2015 Asstt. Director of Town Planning, Pune was replaced by Pune

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Metropolitan Development Authority (PMRDA) as the sanctioning authority for all projects situated outside the limits of Pune Municipal Corporation. The State Level Expert Appraisal Committee directed him to submit a plan for approval before sanctioning authority i.e. PMRDA. The respondent approached PMRDA which sanctioned only P + 6 floors due to height restrictions. However, the PMRDA finally approved the building plans on 03.12.2016 sanctioning P+11 floors for E-Wing under some conditions. Thereafter he submitted the approved plans to State Level Expert Appraisal Committee, Environment Department, Government of Maharashtra for obtaining necessary environmental clearance which is still awaited. He contends that because of these reasons which were beyond his control, he could not complete the project in time and deliver the possession of the flat to the complainant on the specified date mentioned in the agreement. He further contends that if the complainant wishes to withdraw from the project, he is ready to refund principal amount received from the complainant towards part consideration but requests to grant 6 equal monthly instalments for payment thereof.

3. Does the complainant prove that he is entitled to get his amount back with interest from the respondent on his failure to deliver the possession of flat no. E-6 on or before 30<sup>th</sup> September 2015? , is the only point that arises for consideration. I answer it in affirmative for following reasons.

**Reasons:**

4. Section 18 gives an option to allottee to withdraw from the project and demand his amounts back with interest, if the promoter fails to give the possession of the flat on the date specified in the agreement. In this case, there is no dispute between the parties on the point that the Respondent agreed to deliver the possession of the flat on 30<sup>th</sup> September 2015 but till the date, the project is incomplete and the possession has not

been given. In this situation, the complainant withdraws from the project and claims refund of amount paid by him to the Respondent.

5. The complainant has produced the statement of payments which shows that he paid Rs. 1,62,000/- towards stamp duty and Rs. 30,000/- towards registration fee, Rs. 7,000/- toward legal charges on 13.03.2013. He paid first instalment of Rs.1,00,001/- and Rs. 3,090/- towards service charges on 18.02.2013. He paid the second instalment of Rs.5,50,770/-, 1 % of vat amounting to Rs. 32,540/- and service tax Rs. 17,020/- on 09.03.2013. He paid third instalment of Rs.3,34,962/- and service tax Rs. 10,350/- on 06.04.2013. He paid 4<sup>th</sup> instalment of Rs.3,15,807/- and service tax Rs. 9,758/- on 11.05.2013. Thus, he paid Rs.15,73,398/- to the Respondent. The respondent agrees that he received Rs.15,73,298/- from the complainant. The complainant is entitled to get these amounts with interest at the rate of marginal cost of lending rate of interest of SBI which is currently 8.15 + 2 % from the dates of respective payments. In addition to this, he is also entitled to get Rs.20,000/- towards the cost.

6. So far as causes of delay mentioned by the respondent are concerned, the respondent himself contends that on 15.05.2012 he had only N.A. order. He started to collect the instalments of consideration from the complainant from time to time as mentioned in the above para. When he did not have the approvals of the Competent Authority for making the construction or when he did not have the environmental clearance certificate, he was not entitled to recover any money from the allottee. He was running his own risk and therefore only because some delay is caused for one reason or other for getting approvals, he cannot blame the system as such to seek the exemption from the payment of interest. I have taken the broad view and even after taking the fact into consideration that the competent authorities have not acted as swiftly as they were expected to



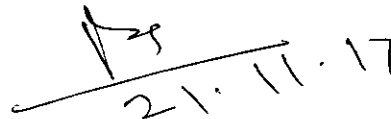
act, the respondent at the most be exempted from the complainant's claim of compensation, with this, I pass the following order.

### ORDER

1. The respondent shall refund the amounts mentioned in Para 5 of this order with interest at the rate of 10.15% p.a. from the date of their payments.
2. The respondent shall pay the complainant Rs. 20,000/- towards the cost of complaint.
3. The charge of these amounts shall be on complainant's booked flat till his claim is satisfied.
4. The complainant shall execute the necessary documents of cancellation of booking of the flat at the Respondent's cost on satisfaction of his claim.

Mumbai.

Date: 21<sup>st</sup> November 2017.



21.11.17

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

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

**COMPLAINT NO. : CC005000000000227**

Atul Narhar Deshpande

...Complainant

Versus

Babasaheb Bhagwan Atkire  
(Ranjeet Property Developers Pvt. Ltd.)  
Maha RERA Regn. : P52100007249

... Respondent

**APPLICATION FOR STAY OF  
ORDER.**

**MAY IT PLEASE YOUR HONOUR:**

On behalf of above named Respondent it is most respectfully submitted and humbly prayed as under :

That the above stated Complaint was disposed on vide Order dated 21/11/2017 passed by Shri. B.D. Kapadnis. Copy of the Order dated 21/11/2017 is marked and annexed herewith as **Exhibit- A**. In the said Order the Respondent was inter alia directed to refund certain amounts to the Complainant with interest.

That the Respondent is willing to exercise his Right to Appeal to the Appellate Tribunal U/s. 44 of The Real Estate (Regulation and Development) Act, 2016. Further vide Notification dated 28/12/2017 the

Government of Maharashtra has established the Appellate Tribunal under The Real Estate (Regulation and Development) Act, 2016. However it is informed by the RERA Office that the procedure for Appeal to the Appellate Tribunal is yet to be determined and the same is likely to be done in the near future.

That since the Respondent is unable to Appeal in the light of the above circumstances, it is prayed as under:

- b) To stay the Order dated 21/11/2017 passed in the above Complaint.

And for this act of kindness, the Respondent shall ever pray.

Place : Mumbai

Date :

*Bhaskar*  
Respondent.

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Execution of the order  
is stayed till the  
end of appeal period.  
10.1.18

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

COMPLAINT NO: CC005000000000227

Atul Narhar Deshpande . . . Complainant.

**Versus**

Babasaheb Bhagwan Atkire . . . Respondent.

COMPLAINT NO: CC005000000000235

Ravindra Dinkar Patankar . . . Complainant.

**Versus**

Babasaheb Bhagwan Atkire . . . Respondents.  
(Ranjit Property Developers (I) Pvt. Ltd.)

MahaRERA Regn: -P52100007249

**Corum:** Shri B.D. Kapadnis,  
Hon'ble Member II,  
MahaRERA, Mumbai.

**Final Orders on the applications of the complainants filed u/s 63 of RERA.**

5<sup>th</sup> April 2018

These complaints have been decided on 21.11.2017 on merits and the respondents have been directed to refund the amount of the complainants with simple interest from the date of their payment with Rs. 20,000/- towards the cost of their complaints. However, respondents have not complied with the order. Therefore, the show cause notices under Section



63 of the Real Estate Regulatory Act (RERA) have been issued to the Respondents.

2. The respondents have failed to appear to show cause as to why penalty under Section 63 of RERA should not be imposed on them, though the notices to that effect have been served upon him. Even after the notice the respondents have not complied with the order.

3. Heard the complainants.

4. Rule 19 of Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and disclosures on website) Rule, 2017 provides -

“19. Timelines for refund - The refund of any amount which is payable by the promoters to allottees along with the applicable interest and compensation, if any, under the Act or the Rules and Regulations, shall be made by the Promoter to the allottee within thirty days from the date on which such refund along with applicable Interest and Compensation, becomes due and payable to the allottee:

Provided that, every instance thereof shall be reported by the concerned promoters within thirty days to the authority”. So the amount ordered become due after 30 days from the date of the order.

5. Section 63 of RERA provides that if any promoter fails to comply with any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend to 5% of the estimated cost of the real estate project as determined by the Authority.

6. It is submitted that the respondents have not complied with the orders. No reason has been assigned by him for non-compliance of the





orders. It has been submitted by the complainants that the respondents have not filed any Appeal against the orders passed in their complaints. Therefore, the orders have reached finality.

7. The complaints have been decided by me as the Member of MahaRERA. In this circumstance, as per the provisions of Section 63 of RERA, the penalty can be imposed on the respondents for non-compliance of the orders passed by the Authority for every day of default, till the order is complied with subject to the maximum limit of 5% of the estimated cost of the project. I am inclined to impose the penalty of Rs. 1,000/- per day on the respondents to meet the ends of justice. Hence, the order.

#### ORDER

The respondents shall pay penalty of Rs. 1,000/- per day of default in complying with the order, in each case u/s 63 of RERA from the day when the amount became due till it is complied with or till the penalty accumulates to the extent of 5% of the estimated cost of the project, whichever is earlier.

2. The respondents shall inform the Authority about the compliance of the order to stop the accruing penalty.

  
5.4.18

(B.D. KAPADNIS)

Member & Adjudicating Officer,  
MahaRERA, Mumbai.

Mumbai.  
Date: 05.04.2018.