

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.**
COMPLAINT NO: CC0060000000054789.

Sudhir Mahadik

... Complainant.

Versus

Shreedham Construction Pvt.Ltd.
(Crystal Homes)

...Respondents.

MahaRERA Regn: P51700007282

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

Appearance:

Complainant: Adv. Vaibhavi Parchake.

Respondents: Adv.U.B.Vawikar.

FINAL ORDER

9th October 2018.

The complainant contends that he booked twin bungalow No.72 of the respondents' registered project 'Crystal Homes' situated at Nhavé, Murbad, District Thane for total consideration of Rs. 29,00,000/- and paid Rs. 10,61,000/- against it, relying on the respondents' brochure of the project. He was told that the possession would be given latest by January 2017 but the respondents have failed to complete the project and hand over the possession as agreed. Therefore, the complainant contends that the respondents have either made incorrect or false statement regarding the viability of their project and hence, he claims refund of his amount with interest under Section 12 of RERA.

2. The respondents have filed their reply to contend that they launched the project by ascertaining that the project land was declared as "no Forest Zone" by the Forest Department in 2011. Thereafter, the Collector, Thane approved the plan on 30.04.2015 and the project was commenced in the



same year. The complainant booked the bungalow in 2016. The department of Town Planning and Assessment, Regional Planning, Thane, Palghar, Raigad by their letter dated 23.05.2017 declared that the project land came under "Forest Zone" and therefore, construction of the project is stopped. They have moved the Secretary of the Regional Planning Board to reconsider their matter and it is pending. In view of this, the respondents request to dismiss the complaint.

3. The learned Member- 1 has referred this case to the Adjudicating Officer as it comes under Section 12 & 14. Learned advocate does not press for applying section 14 of RERA. None for the respondents has appeared for recording the plea and therefore, the learned advocate of the complainant is heard on merit. Perused the reply and the documents produced by the parties.

4. There is no denial of the fact that the respondents have issued the brochure of the project and the complainant has relied upon the same while booking the bungalow. The respondents themselves have mentioned that the block numbers 511, 513, 516 & 535 of Village Nhave, Taluka Murbad, where the project is being constructed have been declared as "Forest Zone" and the letter dated 23.05.2017 to that effect has been placed on record. Since the project land comes under the Forest Zone, the construction work is stopped. Thus, it becomes clear that though the respondents by their brochure represented that their project is viable, it has become unviable. The project is now frustrated. In this circumstance; it is necessary for the respondents to refund the complainant's amount with interest as has been held by the Bombay High Court in the Neelkamal Realtors Suburban Pvt. Ltd.-vs-Union of India. In Para-259 of the Judgement the Bombay High Court has mentioned that where the promoter is unable to complete or hand over possession for no fault of his own, it would be open to him to claim frustration in such a case and return the money to the allottee with

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interest. So on this principle, I find that the complainant is entitled to get back his money with interest under Section 12 of RERA.

5. The complainant has placed the payment sheet marked Exh. 'A'. The complainant is entitled to get the refund of Rs. 61,000/- paid on 31.03.2016 and Rs. 10,00,000/- paid on 15.04.2016 with interest at prescribed rate from the date of payment till the refund. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 8.55%.

6. The complainant has filed the application dated 21.08.2018 showing that the complainant waives prayer (c) regarding compensation and prayer (d) regarding the cost of the proceedings. In result, the order.

ORDER

The respondents shall refund Rs. 61,000/- and Rs. 10,00,000/- paid on 31.03.2016 and 15.04.2016 respectively with simple interest at the rate of 10.55% per annum from the dates of payment till refund.

Mumbai.

Date: 09.10.2018.

B. D. Kapadnis
9.10.18

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