

BEFORE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

COMPLAINT NO: CC005000000000325

Anil Mohan Chhabria

... Complainant.

Versus

Now Realty Promoters & Builders  
Formerly known as Amit Enterprises  
Promoters & Builders Pvt. Ltd.  
(24 K Sereno Building C & D)

... Respondents.

MahaRERA Regn: P52100005080

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

Complainant: Represented by Mr. V.A.Joshi, Adv.


Respondents: Represented by Mr. Milind Deshpande, Adv.

**Final Order**

11<sup>th</sup> January 2018.

The complainant claims his amount paid to the respondents towards purchasing flat no. 1402 of building 'D' in respondents' project 24 K Sereno situated at Pune, on respondents' failure to deliver its possession on the agreed date namely 30.09.2016.

2. The respondents have pleaded not guilty and filed their explanation to contend that they agreed to hand over the possession of the booked flat on or before 30.09.2015 with the grace period of 12 months i.e. on or before 30.09.2016. The complainant himself has contended that due to substantial delay and stoppage of construction work of the said project Sereno for nearly two years by the respondents, he was no longer interested in purchasing the said flat. However, he did not terminate the agreement because of clause-11 thereof which provides for forfeiture of minimum amount of Rs. 1,00,000/-. Since the



complainant was not interested in purchasing the flat, he did not pay the part of the consideration amount which was due between February 2016 to August 2016 when 5<sup>th</sup> slab was put, therefore he has wilfully defaulted. The agreement for sale contains reciprocal promises namely the complainant shall make the payment of all the dues payable to the promoter and the promoter/respondents will deliver the possession on 30.09.2016. Since the complainant defaulted in making the payment of part consideration though demanded, he is not entitled to claim the refund with interest. On the contrary, the respondents were entitled to recover Rs. 53,99,450/-, when 1 to 5 slabs were cast, during the period from 28.02.2016 to 12.09.2016. The interest at the rate of 10.15% is payable by the complainant amounting to Rs. 8,22,216/-. The respondents have admitted that the complainant has paid them Rs. 44,26,298/- and after deducting the amount of interest, Rs. 8,22,216/-, they are ready to refund him Rs. 36,40,082/- with interest.


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

| POINTS  | FINDINGS     |
|---|--------------|
| a) Whether the respondents have failed to deliver the possession of the booked flat on the agreed date? | Affirmative. |
| b) Whether the complainant is entitled to get refund of his amount with interest?                       | Affirmative. |

#### REASONS

##### Delayed project:

4. The respondents have not disputed that they have agreed to deliver the possession of complainant's booked flat on or before 30<sup>th</sup> September 2015 with the grace period of 12 months. The grace period means extra time allowed for meeting with requirement, satisfying obligation or implementation of



agreement. Therefore, agreed date comes to 30<sup>th</sup> September 2016. The respondents have admitted that they have not completed the project and therefore, they have not delivered the possession of the booked flat on the agreed date. Hence, I hold that the complainant has proved this point.

**Entitlement of the complainant.:**

5. The Section 18 of RERA provides that the complainant 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 complainant has exercised his right to withdraw from the project and claims refund of his amount with interest.

6. There is no dispute between the parties that the complainant has paid Rs. 5,00,000/- on 10.01.2013, Rs. 6,78,000/- Rs. 16,59,780/- on 17.10.2013. He paid Rs.4,00,639/- towards service tax and Rs. 1,07,989/- towards VAT on 17.10.2013 itself. He paid Rs. 10,79,890/- on 10.01.2015 towards the construction of the plinth. The complainant is entitled to get refund of these amounts.

7. The learned Advocate of the respondents has relied upon Section 54 of Indian Contracts Act and the case of National Insurance Company-v/s-Seema Malhotra Appeal (Civil) No. 1350 of 2001) decided by the Supreme Court of India on 20.02.2001 to make his submission. Section 54 of the Indian Contract Act reads, "*when the contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promiser cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.*"



The learned advocate of the respondents has argued that it has been specifically mentioned in Clause-13 of agreement for sale that the respondents shall hand over the possession of the flat on or before 30.09.2015 with grace period of 12 months subject to the complainant making payment of all the dues payable to the promoter in pursuance of the agreement for sale. He has also pointed out that it is mentioned in the said agreement that the complainant shall pay 10% of the consideration amount namely Rs. 10,79,890/- at the time of each slab. The complainant did not pay 10% of the consideration payable by him on 28.02.2016, 23.06.2016, 21.07.2016, 11.08.2016 and 12.09.2016 when slabs were cast. According to him, the complainant has made default in making the payment which he was bound to make to the respondents, therefore they are entitled to get interest at the rate of 10.15% on these amount which comes to Rs. 8,22,216/- and hence this amount of interest needs to be deducted from the amount which will be found due from the respondents. To my mind this logic may not be applied to this case as the allottee wants to withdraw from the project. If the respondents have invested their money in making the construction of a unit booked by complainant, they are going to get it on the complainant's withdrawal from the project and they shall make money by selling it. According to the respondents, complainant has paid Rs. 44,26,298/- which has been used by the respondents for constructing the flat. On the withdrawal of the complainant from the project, the flat shall remain with the respondents and they can sell it and compensate themselves. If the amount of interest claimed by the respondents would be deducted from the complainant's claim, then that would amount to disproportionate/unlawful gain of the respondents which is not permitted by section 72 of RERA. Therefore, I do not accept this submission of the learned Advocate.




8. Section 18 of RERA allows the allottee to collect his amount with interest at prescribed rate which is MCLR of SBI + 2%. The current rate of MCLR of SBI is 8.05% at present. Thus, the complainant is entitled to get simple interest at the rate of 10.05% together with Rs. 20,000/- towards the cost of the complaint. Hence, the order.

### ORDER

1. The respondents shall refund the amount mentioned in Para 6 of this order with interest at the rate of 10.05% to the complainant from the date of receipt thereof till they are repaid.
2. The respondents shall pay complainant Rs. 20,000/- towards the cost of complaint.
3. Complainant shall execute deed of cancellation of agreement for sale, at respondents' cost on satisfaction of his claim.
4. The charge of amount payable to complainant is kept on his booked flat until his claims is satisfied.
5. The respondents' claim for compensatory cost is rejected.

Mumbai.  
Date: 11.01.2018.

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