

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

COMPLAINT NO: CC006000000057083

Narendra Gala.

... Complainant.

Versus

M/s Srushti Sangam Pvt Ltd
(Moulick Enclave)

...Respondent.

MahaRERA Regn: P51800012986

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

Appearance:

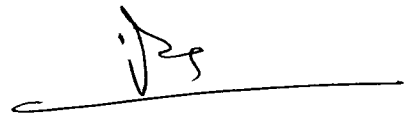
Complainant: Adv. Pooja Gaikwad.

Respondents: Absent.

Final Order

23rd July 2019.

The complainant contends that he was sitting tenant of room no. 11 situated on the 2nd floor of Rashmoni Sadan situated at Kurla. The said building is being developed by respondents and they entered into an agreement with the complainant on 18th February 2006, thereby respondents agreed to allot flat no. 402 admeasuring 553 sq.ft. plus terrace. The complainant purchased an additional area of 600 sq.ft. for Rs. 10,00,000/- and paid the entire consideration on 18th July 2008. Respondents agreed to hand over the possession of the said flat with additional area within 18 months from the date of agreement that is from 18.02.2006. Since respondents have failed to hand over the possession of the flat on agreed date 18th August 2007, the complainant seeks possession of the flat with O.C. and seeks interest on his investment/compensation for delayed possession from 01.08.2007 till handing over the possession of the flat.

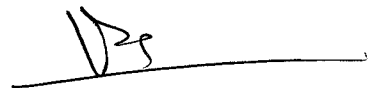


2. The complainant further seeks compensation of Rs. 5,00,000/- for damages caused to the old furniture and fixtures. He also alleges that the respondents have failed to form the society/association of the allottees though more than 51% flats have been sold/allotted.
3. The respondents have pleaded not guilty but they have failed to appear to file the explanation and contest the complainant's claim when the complaint is kept for hearing today.
4. Following points arise for determination and I record my findings thereon as under:

POINTS	FINDINGS
1. Whether the respondents have failed to hand over the possession of the flat no. 402 on agreed date 17.08.2007?	Affirmative.
2. Whether the complainant is entitled to get interest /compensation on his investment for delayed possession?	Affirmative.
3. Whether the complainant is entitled to get Rs. 5,00,000/- towards the compensation for loss or damages of the furniture and fittings as contemplated in Clause 36 of the agreement for sale?	Affirmative.
4. Whether the respondents have contravened Section 11(4) (e) of RERA for not forming the association/society of the allottees, even after the sale of more than 51% of the flats of the project?	Affirmative.

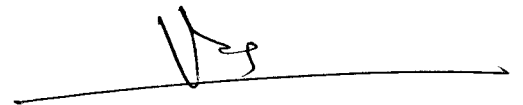
REASONS

5. The complainant has produced the agreement for sale executed by the respondents in his favour on 18.02.2006, which shows that the respondents allotted flat no. 402 of the project in lieu of the complainant's



room no. 11 , 2nd floor of Rashmoni Sadan situated at Kurla. It also shows that the complainant purchased additional area of 600 sq.ft. for Rs. 10,00,000/- and paid the amount on 18.07.2008 itself. The respondents have agreed to hand over the possession of the flat 'within 18 months from the date of handing over the possession of the tenanted premises in his/her occupation against the flat for 18 months'. This agreement is executed on 18.02.2006. Therefore, I take it for granted that the tenanted premises of the complainant was vacated on the date of agreement though he submits that he vacated in the month of May 2004. Thus, the respondents were liable to hand over the possession of the flat on 17.08.2007. The respondents have failed to hand over the possession on agreed date. Hence, the complainant is entitled to get interest on his investment at prescribed rate from the date of respondents' default made in handing over the possession on the agreed date till handing it over under section 18 of RERA.

6. The complainant has paid Rs. 10,00,000/- for purchasing the additional area but the real consideration is surrender of his tenancy right of the tenanted premises room no. 11 and handing over its possession. Therefore, the amount of consideration paid by the complainant cannot be ascertained in terms of money but clause 35 of the agreement comes to his help. It provides that the respondent has agreed to pay the complainant monthly rent of Rs. 20,000/- and refunded deposit of Rs. 2,00,000/- till the tenant occupies the booked flat. The amount of Rs. 20,000/- appears to be converted into Rs. 25,000/- and there are no initials of the parties. Therefore, I find that the agreed monthly rent is only of Rs. 20,000/-. Though there is a mention of giving post-dated cheques towards rent of next 12 months, the complainant submits that the respondents have not paid him any rent. I find that the complainant is entitled to get interest/rent on his investment from 18.08.2007 till the respondents hand over the possession of the booked flat.



7. The Clause 36 of the agreement for sale shows that the respondents have agreed to pay the complainant Rs.5,00,000/- towards the compensation for damages caused to the fittings and fixtures. The respondents have not paid this amount and hence, the complainant is entitled to get it.

8. After visiting the web page of the project, I find that out of 33 flats 27 flats have been booked and this information is updated on 28.06.2019. Therefore, it is the responsibility of the promoter to form the society/association of the allottees as required by Section 11 (4)(e) of RERA.

9. The complainant is also entitled to get Rs. 15,000/- towards the cost of the complaint. Hence, the following order.

ORDER


The respondents shall pay Rs. 20,000/- per month from 17.08.2007 to complainant till handing over the possession of flat no. 402 towards the interest (by way of rent) on his investment.

The respondents shall pay the complainant Rs. 5,00,000/- towards the compensation for damages caused to the old furniture and fixtures.

The respondents shall form the society/association of the allottees within next two months.

The respondents shall pay the complainant Rs. 15,000/- towards the cost of the complaint.

Mumbai.
Date: 23.07.2019.


23.7.19.
(B. D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.