

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC005000000000179

Pravin Utam Hiwale	... Complainant.
Versus	
Darode Jog Homes Pvt. Ltd	... Respondent.

MahaRERA Regn: P52100005786

Coram: Hon'ble Shri B.D. KAPADNIS.

11th October 2017

Final Order

The complainants have filed this complaint for getting refund of the amounts paid by them to the respondent in the context of flat no. B2 - 808 and B1- 202 situated in the respondent's project Padamnabh at Moshi bearing MahaRERA registration no. P52100005786.

2. Complainant no.1 Mr. Pravin Hiwale entered into an agreement of sale with the respondent on 10.10.2014 and the respondent agreed to deliver the possession of the Flat No. B2- 808 on or before December 2016 or within two and half years from the date of agreement whichever is later. The complainant no. 2 Mr. Aanand Muttha also entered into the agreement of sale with respondent's on 28.11.2014 having similar contents. Therefore, the complainant no. 1 was entitled to get the possession of his flat in April 2017 and the complainant no. 2 was entitled to get the possession of his flat in May 2017. The revised the date of completion mentioned by the respondent while registering the project is 31.12.2018. The complainants want to withdraw from the project and claim back the money paid to the respondent.

3. An attempt to settle the matter amicably has failed.

4. The plea of the respondent is recorded and it accepts that the possession of the flats are not given on or before the dates agreed by the respondent. It submits to the orders of the Authority. I heard the parties.

5. Whether the complainants are entitled to get back their money paid to the respondent in the context of the transaction relating to the purchase of above numbered flats on respondent's failure to deliver their possession on the agreed dates?, is the point for determination. I record my finding in affirmative for the following reasons.



6. On perusal of the agreements of sale executed in favor of complainant Mr. Pravin Hiwale dated 10.10.2014 I find that the respondent agreed to deliver the possession of the flat on or before December 2016 or within two and half years from the date of agreement. So the date of possession agreed by the parties is April 2017. Similar provision appears in the agreement executed in favor of complainant no. 2 Mr. Aanand Muttha. His agreement is executed on 28.11.2014. It means that the agreed date of possession in his case is 28.05.2017. The respondent admits that it has not handed over the possession of the flats to the complainants till the date as the project is incomplete. In this circumstance, the complainants have exercised their option to withdraw from the project and they claim their amounts back with interest and compensation.

7. Section 18 of Real Estate (Regulatory & Development) Act, 2016 (for short, RERA) confers the right to claim the amounts paid to the promoter with specified interest on allottees. This provision also empowers me to grant compensation by keeping the factors laid down by Section 72 of RERA into consideration while adjudging the quantum. In view of this provision, I shall turn to the *pursis* marked Exhibit 'A'. It is signed by the complainants and Mr. Milind Choudhari, the representative of the respondent. It discloses that the complainant no. 1 Mr Pravin Hiwale has paid the respondent Rs. 17,44,291/- and the complainant no. 2 Mr. Aanand Muttha has paid Rs. 23,03,630/-. There is no dispute that these amounts have been paid to the respondent on the dates mentioned in the *Pursis* marked Ext.'A'. So the complaints are entitled to get back their money.

8. RERA is prospective and it has come in force with effect from 01.05.2017 in Maharashtra. Hence the complainants are entitled to get the interest on the above mentioned amounts at marginal cost of lending rate of interest of S.B.I. which is currently @ 8.15% plus 2%, till they are paid. The respondent has used the money of the complainants from the year 2014 and therefore, he has unfair advantage, on the other hand the complainants have suffered the loss as the result of default of the respondent. Hence, the complainants are entitled to get compensation @ 9% p.a. on the amounts mentioned in Ext 'A' from the date of their respective payments till 30th April, 2017. Respondent wants two months' time to make the payment.

Hence, the following order.



ORDER.

The respondent shall pay the complainant no. 1 Mr. Pravin Hiwale Rs. 17,44,291/- and Rs. 23,03,630/- to the complainant no. 2 Mr. Aanand Muttha with interest namely MCLR of S.B.I. i.e. 8.15% plus 2% from 01.05.2017 till their payment.

2. The respondent shall pay the compensation to the complainants @ 9% from the date of the respective payments mentioned in Ext 'A' till 30.04.2017.

3. The respondent shall pay the complainants Rs. 20,000/- towards the cost of the complaint.

4. Ext 'A' shall form the part of the order.

5. The respondent is allowed to make the payment within two months from the order.

A handwritten signature in black ink, followed by a horizontal line and the date 11.10.17.

(B.D. Kapadnis)

(Member & Adjudicating Officer)

MahaRERA, Mumbai.

Mumbai

Date: 11.10.2017.