

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

COMPLAINT NO: CC0060000000023909

Veera Cardoza

... Complainant.

Versus

M/s. Vidhi Realtors/Ravi Group
(Gaurav Discovery)

... Respondents.

MahaRERA Regn: P51800007949.

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

Appearance:

Complainant: P. Vas & Co.

Respondents: Ms. Jinam Shah.

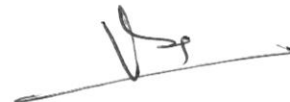
FINAL ORDER

8th August 2018.

The complainant contends in this complaint filed under Section 18 of Real Estate (Regulation & Redevelopment) Act, 2016 that she booked flat no.1701-A in respondents' registered project Gaurav Discovery, Malwani, Malad (West), Mumbai. The respondents agreed to deliver its possession on or before December 2015 but they failed to hand it over on the agreed date. The complainant wants to withdraw from the project, hence, she claims refund of her amount with interest.

2. The respondents have pleaded not guilty. They have not filed their reply but Ms. Jinam Shah has filed an Affidavit to deny the receipt of Rs. 5,00,000/- allegedly paid in cash.

3. Heard the complainant's advocate and Ms. Jinam Shah for the respondents.



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

| POINTS | FINDINGS |
|--|--------------|
| 1. Whether the respondents failed to hand over the possession of the booked flat on agreed date? | Affirmative. |
| 2. Whether the respondents are liable to refund Complainant's amount with interest? | Affirmative. |

REASONS

5. The complainant has produced the agreement for sale which shows that the respondents agreed to hand over the possession of the booked flat on or before December 2015. The respondents have not disputed the fact that they have not handed over the possession of the flat till the date of complaint. Hence I record my finding that the respondents have failed to hand over the possession of the booked flat on agreed date.

6. Section 18 (1)(a) of RERA provides that on promoter's failure to hand over the possession of the apartment on the agreed date, if the allottee intends to withdraw from the project, the promoter shall repay him his amount with interest at the prescribed rate. Hence, I find that the complainant is entitled to get refund of her amount with the interest from the date of its payments till its refund. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 8.5%. The complainant has filed the statement of claim marked Exh. 'A' which shows the payment made to the respondents. The respondents have admitted the receipt of all the amount mentioned in it except the payment of Rs. 5,00,000/- alleged to have been paid in cash in August 2013 for car parking. Hence it is necessary to consider this issue in detail. The complainant has filed the affidavit contending that the respondents insisted her to pay Rs. 5,00,000/- in cash for car parking without which they would not execute and register the agreement for sale. She submits that Rs. 1,90,000/- were withdrawn from

her account held in Syndicate Bank Bhayender (East) Branch on 22.07.2013, Rs. 1,50,000/- were withdrawn from Gerald Cardoza's account held in Syndicate Bank Cuff Parade Branch on 27.07.2013, Rs. 80,000/- withdrawn on 27.07.2013 and Rs. 80,000/- on 28.07.2013 from the Joint account of Gerald and her held in Model Co.op. Bank, Borivali Branch. This collected amount of Rs. 5,00,000/- was paid in cash to respondents' sales executive Mr. Terrance Monteiro in August 2013. She has also produced the statements of aforesaid accounts to support her contention. In order to rebut this Ms. Jinam Shah has filed the affidavit to deny the receipt of this payment. In fact, the respondents should have filed the affidavit of Mr. Terrance Monteiro to counter the affidavit of the complainant. I believe in complainant because her statement is corroborated by bank statements. In addition to this, the complainant has produced the payment schedule prepared by the respondents for project and on its reverse page it is clearly mentioned that Rs. 5,00,000/- were to be paid towards parking space. The complainant contends that it is written by the sales executive of the respondents but the respondents deny it. It being the weak evidence I do not rely on it. Hence I hold that the respondents are liable to pay all the sums mentioned in the statement of claim marked Exh.'A' with interest as discussed above. In addition to this the complainant is entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the order.

ORDER

1. The respondents shall repay the complainant the amount mentioned in statement of claim marked Exh. 'A' with simple interest at the rate of 10.5% per annum from the date of their payment till refund.
2. The respondents shall pay Rs. 20,000/- towards the cost of the complaint.
3. The charge of the complainant's amount shall be on his booked flat till the satisfaction of his claim.



4. The complainant, on satisfaction of her claim, shall execute the deed of cancellation of agreement for sale, at respondents cost.



8.8.18

Mumbai.

Date: 08.08.2018.

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