

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI. *23577-85*
COMPLAINT NO: CC0060000000044024

Rahul Vivek Nadkarni

... Complainant.

Versus

Vidhi Realtors
(Gaurav Discovery)

... Respondents.

MahaRERA Regn: P51800007949

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

Appearance:

Complainant: Adv. M.R. Bhargav.

Respondents: Adv. Mr. Krishna Agrawal.

FINAL ORDER

7th June 2018.

The complainant complains that he booked flat no. 404-B in respondents registered project Gaurav Discovery situated at Malavani, Malad (west). The respondents agreed to deliver its possession on or before 30st October 2015 but they failed to deliver it on the agreed date. Now, complainant wants to withdraw from the project and therefore, claims his amount with interest and or compensation under Section 18 of Real Estate (Regulation and Development) Act, 2016(RERA).

2. The respondents have pleaded not guilty but they have not filed their reply.
3. Heard both the sides.
4. Following points arise for determination and I record my findings as under:

1

** corrected 45 39 of RERA.*

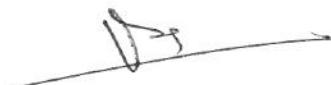
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POINTS	FINDINGS
1. Whether the respondents failed to deliver the possession of the booked flat on the agreed date?	Affirmative.
2. Whether the respondents are liable to pay the complainant his amount with interest?	Affirmative.

REASONS

5. The complainant has filed a registered agreement for sale dated 05.09.2013. However, in Para-17 thereof date of possession is left blank. When the agreement was executed, it was governed by Section 4 of Maharashtra Ownership Flats Act 1963 which prevents the promoter from accepting more than 20% of the sale price of the flat without first entering into written agreement for sale. Sub-Clause (1A) (a) (ii) provides that it is obligatory on the promoter to specify the date by which the possession of the flat is to be handed over to the purchaser. Now the respondents cannot take disadvantage of their own wrong and deny the date suggested by the complainant. Respondents have not filed explanation/reply to deny that the respondents agreed to deliver the possession of the flat on or before 31st October 2015. This fact is not challenged by the respondents. It is admitted fact that the respondents have not delivered the possession of the flat till the date of the complaint. Therefore, I hold that the respondents have failed to hand over the possession of the flat on the agreed date.

6. Section 18 (1)(a) of RERA provides that if the promoter fails to deliver the possession on the specified date for delivering the possession mentioned in the agreement, the allottee has option to withdraw from the project and claim his amount with interest. The complainant has exercised the option of withdrawing from the project. Therefore, it is liability of the respondents to refund his amount with interest. The rules framed under RERA prescribe the rate of interest which is 2% above the SBI's highest MCLR which is currently 8.05%. Thus, the respondents are liable to pay



the interest at the rate of 10.05% on the amount of the complainant from the date of receipt. The complainant has filed the payment format marked Exh. 'A'. The complainant is not entitled to claim the amount paid towards stamp duty because on cancellation of agreement for sale, the complainant can get refund of the stamp duty from the concerned Authority as the stamp duty is paid in his name. Similarly, he is not entitled to get the amount of TDS, because it is the Income Tax which the allottee has to bear, it being a tax on his income.

7. The complainant is therefore entitled to get only the amount of consideration paid by him to the respondents. He is entitled to get reimbursement of amount paid towards service tax, VAT and the registration charges of the agreement for sale because he had to part with these amount only because he entered into the contract with the respondents and now on non-performance of the said contract the respondents are liable to reimburse these amount. With these observations, I find that the complainant is entitled to get only the amount of consideration of the flat, the charges of registration and sale tax, VAT amount. He is also entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the following order.

ORDER

The respondents shall pay the complainant the amount mentioned in payment format marked Exh. A excluding the amount of TDS.

The payment format marked Exh. A shall form the part of the order.

The respondents shall pay aforesaid amount with simple interest at the rate of 10.05% per annum from the respective dates of their payment mentioned in payment format till they are refunded.

The respondents shall pay the complainant Rs. 20,000/- towards the cost of the complaint.



The charge of the aforesaid amount shall be on the booked flat of the complainant till the satisfaction of his claim.

The complainant on satisfaction of his claim, shall execute the deed of cancellation of the agreement for sale and the respondents shall bear its cost.

Mumbai.

Date: 07.06.2018.

A handwritten signature in dark ink, appearing to be 'B. D. Kapadnis', written over a horizontal line.

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

Ex-A-Dr. M. V. Narthar.

Date Of Receipt	Purpose	Installment Amt(Rs.)	service Tax 3.09%	VAT	TDS	Bank	Cheque No.
01-10-2012	Booking Amt	Rs.2,00,000	Rs.6,180			SBI	621063 / 306003
23-10-2012	Installment	Rs.5,52,000				UCO	621065
23-10-2012		Rs.6,46,502				SVC	306006
23-10-2012		Rs.1,37,536				SBI	895302
23-10-2012		Rs.2,00,000				SBI	810910
			Rs.47,464			SBI	895301
21-01-2013	Installment	Rs.10,41,619	Rs.32,186			UCO	621068 / 621067
22-02-2013	1st slab	Rs.1,38,882	Rs.4,291			SBI	810915 / 810916
20-03-2013	2nd slab	Rs.50,000 Rs.51,882 Rs.37,000				Union Bank sbi sbi SBI	141421 895314 810918 895315
			Rs.4,291				
24-04-2013	3rd slab	Rs.1,38,882	Rs.4,291			sbi	810920 / 810923
09-05-2013	4th slab	Rs.2,46,000				sbi	810925
09-05-2013	5th slab	Rs.31,764					895317
			Rs.8,582			union bank	141426
15-07-2013	6th slab	Rs.1,37,493	Rs.4,291			sbi	810929 / 810928
05-08-2013	7th slab	Rs.1,37,493	Rs.4,291			sbi	002808 / 002805
21-08-2013	8th slab	Rs.1,37,493	Rs.4,219			sbi	002808 / 002809
22-08-2013	VAT			69,441		sbi	002811
28-08-2013	TDS				Rs.1389	sbi	
28-08-2013	TDS				Rs.1389	sbi	
07-09-2013	9th slab	Rs.1,37,493	Rs.4,291			sbi	002812 / 002814
17-09-2013	10th slab	Rs.1,37,493	Rs.4,291			sbi	002815 / 002816
30-10-2013	11th slab	Rs.1,37,493	Rs.4,291			sbi	002820 / 002818
30-10-2013	12th slab	Rs.1,37,493	Rs.4,291			sbi	002819 / 002820
15-11-2013	13th slab	Rs.1,37,493	Rs.4,291			sbi	002824 / 002825
24-02-2014	Brick Work	Rs.2,06,241	Rs.4,291			sbi	002834 / 810916
06-03-2014	TDS				Rs.1389	J.V	
06-03-2014	TDS				Rs.1389	J.V	
06-03-2014	TDS				Rs.1389	J.V	
06-03-2014	TDS				Rs.1389	J.V	
06-03-2014	TDS				Rs.1389	J.V	
06-03-2014	TDS				Rs.1389	J.V	
17-01-2015	14th Slab	Rs.1,37,493	Rs.4,291			sbi	000713 / 000712
16-03-2015	15th slab	Rs.1,37,493	Rs.4,291			sbi	000715 / 000716
04-05-2015	16th Slab	Rs.1,37,493	Rs.4,291			sbi	000718 / 000719
06-06-2015	TDS				Rs.4,125	sbi	
01-07-2015	TDS				Rs.1,374	J.V	
03-05-2017	Plastering	Rs.2,06,241 Rs.53,96,972	Rs.9,375 Rs.1,70,010	Rs.59,441	Rs.16,611	sbi	950715 / 950714

Total Rs.56,53,034

Regd. char.

318801 - M. V. Narthar