

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

COMPLAINT NO: CC006000000000479

Sunil T. Fulkar

.... Complainant.

Versus

SR Shah Vala Associates

Bhimsen Bagga & Hitanshu Bagga

... Respondents.

MahaRERA Regn: -P99000003052

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

Appearance:

Complainant: Adv. Mr. A.M. Mamidwar

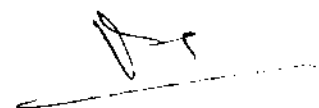
Respondents: Adv. Mr. Sanjay Chaturvedi.

Final Order

14th February, 2018.

The complainant has filed this complaint under Section 18 of Real Estate (Regulation and Development) Act, 2016 (in short, RERA) to claim his amount paid to the Respondents in the context of booking of flat no. 201 with interest and compensation.

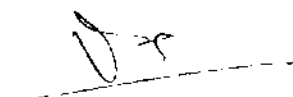
2. The complainant contends that he booked the flat no. 201, H wing of respondents registered project Surya Kirti Heights situated at



Chikhaldara, Tal. Vasai, Dist. Thane and the respondents agreed to deliver its possession on or before 31st July 2016. However, respondents have failed to deliver the possession of the flat till the date of complaint. He demands his money back with interest and compensation under Section 18 of the Act.

3. The respondents have pleaded not guilty. The respondents contend that the complainant did not have funds amounting to Rs. 3,94,000/- for paying service tax, development charges etc. and therefore, the respondents gave him the hand loan of the said amount which is admitted by the complainant in his affidavit dated 23 June, 2017. The complainant stated therein that the builder would not be liable to give possession before the amount mentioned in the affidavit with interest is paid in full. The complainant did not pay the said amount with interest at the rate of 24% p.a. hence they are not liable to hand over possession of the flat to the complainant. The complainant did not pay Rs. 2,18,356/- a principal amount and Rs. 97,576/- towards interest. Respondents have given a friendly loan of Rs. 94,000/- to the complainant. The building is complete and the respondents by their letter dated 05.10.2017 asked the complainant to take fit out possession after clearing dues and loans. The complainant put his furniture in the flat. Respondents made rented house available to the complainant but the complainant got transferred out of Mumbai and suddenly he vacated the rented premises. Therefore, the respondents request to dismiss the complaint.

4. Heard both the parties. Following point arises for consideration. I record finding thereon as under:



POINTS.

1. Whether respondents failed to hand over the possession of a flat on agreed date?
2. Whether the complainant is entitled to get refund of his amount with interest from the Respondents?

FINDINGS.

Affirmative.

Affirmative.

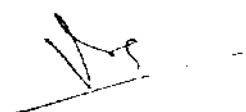
REASONS

RELEVANT PROVISION OF LAW.

5. The complainant has filed this complaint under Section 18 of the Act. It provides that on promoter's inability to give possession in accordance with the terms of agreement for sale or on date specified in the agreement for delivery of possession, the promoter becomes liable to refund amount received by him from the allottee with interest and/or compensation when the allottee wishes to withdraw from the project. The Hon'ble Bombay High Court has recently held in **Nilkamal Realtors Suburban Pvt. Ltd. – v/s – Union of India & Ors. in Writ Petition No. 2737 of 2017** of Ordinary Civil Jurisdiction, that Section 18 is retroactive and RERA is applicable to the disputes arising out of the agreements for sale, though they were executed prior to coming in force of RERA. Therefore, it is not necessary for me to go into details of applicability of Section 18 to this case.

DELAYED POSSESSION.

6. The agreement of sale has been placed on record, which clearly shows that the Respondents agreed to deliver the possession of the complainant's booked flat on or before 31st July 2016. Respondents



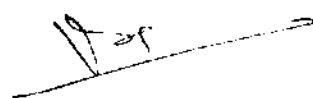
admit that the completion certificate and occupation certificate have not been received. Therefore, their offer to take fit out possession is not legal as Section 3(2)(i) of Maharashtra Ownership Flats Act, 1963 prohibits promoter from allowing persons to enter into possession until a completion certificate is duly given by the local Authority and no person shall take possession of a flat until such completion certificate has been given. It is also not in dispute that till the date, the respondents could not give the possession of the flat to the complainant. Obviously, this is the case of delayed possession.

REASON OF DELAY.

7. The respondents have taken a plea they could not obtain the completion certificate because their project is situated in a larger layout. In my opinion this cannot be said to be a valid ground sustainable under law.

COMPLAINANT'S ENTITLEMENT.

8. On the failure of the promoter to deliver the possession of the flat on the agreed date, the allottee gets an absolute right to decide whether he wants to withdraw from the project and claim back his money with interest and compensation or to continue with the project and claim interest on his investment for every month of delay till he gets the possession. In this case, the complainant wants to come out of the project and therefore he is entitled to get back all his money with interest at the rate prescribed under the Act and Rules framed thereunder. The complainant has submitted the statement of the monies paid by him to the respondents. The statement shows that he paid Rs. 30,000/- on 24.02.2016, Rs. 21,000/- on 02.03.2016, Rs.1,65,000/ on 19.03.2016, Rs. 25,000/- on 07.05,2016, Rs. 25,000/- on 06.06.2016, Rs. 50,000/- on



06.09.2016, Rs. 25,000/- on 25.10.2016, Rs. 1,03,000/- 02.06.2017, 1,01,000/-on 05.07.2016. These payments have been admitted by the respondents as can be seen from Exhibit 'A', the statement of payment. The respondents are liable to refund these amount. Complainant is entitled to get Rs. 20,000/- towards the cost of the complaint also.

* 8A. Statement of payment marked Exh. 'A' submitted by the complainant shows that Rs. 28,00,000/-have been collected by the respondents from the loan account of the complainant on 31.03.2016.It has been submitted by the Respondents that after deduction of tax deducted at source, they received only Rs. 27,95,310.50/- out of loan amount. Therefore, they have contended that they are liable to refund only this much amount. However, the complainant cannot be made to sustain this loss of tax because he had to pay the tax as he took the loan for purchasing the flat. The respondents have defaulted in handing over its possession on agreed date and therefore they have incurred liability to sustain this loss caused to the complainant. Respondents are liable to refund the entire loan amount Rs. 28,00,000/-

9. The complainant claims Rs. 31,030/- towards the registration charges. The respondents have produced their bank statement showing that Rs. 2,06,150/- had been paid from their bank account for stamp duty on 30.03.2016. The e-challan dated 30.03.2016 shows that Rs. 1,76,700/- had been paid on account of stamp duty and Rs. 29,450/- had been paid on account of registration fee in respect of complainant's booked flat in the name of the complainant himself. Therefore, the complainant cannot claim these two amounts separately. In fact, the complainant is entitled to get refund of the stamp duty on cancellation of the agreement for sale and the respondents will have to be absolved from liability to bear the cost of stamp duty. Complainant has not



produced any proof regarding the payment of Rs. 3,000/- on 02.04.2016 on account of legal charges. Hence, he cannot get it. To conclude, I hold that the complainant is entitled to get the amount mentioned in para no. 8 of this order only.

10. The prescribed rate of interest is marginal cost of lending rate of interest of SBI which is currently 8.05 + 2 %. Thus, the complainant is entitled to get the interest from the dates of payment of the amount mentioned in para 8 of this order till they are repaid. Interest at the rate of 10.05% is compensatory in nature, therefore, I do not find that complainant is entitled to get compensation under the other heads.

Hence, the following order.

ORDER

1. The respondents shall pay the complainant the amount mentioned in para 8 and *8A of this order by deducting the amount of stamp duty, with simple interest at the rate of 10.05% p. a. from their respective dates of payment till the date of their refund.
2. The charge of aforesaid amount shall be on the flat booked by the complainant till his claim is fully satisfied.
3. On satisfaction of the complainant's claim, he shall execute the deed of cancellation of agreement of sale in respondents' favour at respondents' cost.



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

Mumbai
Date: 14.02.2018

*Rectified as per the order of rectification u/s. 39 of RERA and signed amended order on 28.2.2018.

Ext. A

COMPLAINT NO. 006000000000479

S.NO	PAYMENT DETAILS	DATE	INR
	COST OF THE FLAT		29,45,000 ✓
	PAYMENT MADE BY COMPLAINANT		
1	BY CHEQUE 1	24.02.2016	30,000 OK 28.1
2	CHEQUE NO. 5	02.03.2016	21,000 OK 28.1
3	CHEQUE NO. 6	19.03.2016	1,65,000 OK 28.1
4	CHEQUE NO. 28	07.05.2016	25,000 OK 28.1
5	CHEQUE NO. 29	06.06.2016	25,000 0
6	RECEIPTS NO. 258	06.09.2016	50,000 ✓
7	RECEIPT NO. 257	25.10.2016	25,000 ✓
8	RECEIPT NO. 251	02.06.2017	1,03,000 ✓
9	RECEIPT NO. 409	05.07.2016	1,01,000 ✓
10	LOAN DISBURSEMENT AMOUNT	31.03.2016	28,00,000 ✗
11	REGISTRATION CHARGES	02.04.2016	31,030
12	LEGAL CHARGES AS PER AGREEMENT CLAUSE NO.9	02.04.2016	3,000
13	REGISTRATION OF SOCIETY	02.04.2016	2,000
	TOTAL:		33,81,030

All payments admitted except SR. no 10, 11, 12, 13.

In sr. no 10, we have received ₹ 27,95,310.50/-
after deduction of TDS / Bank charges.

TDS
27,95,310.50

Altamash
14/02/2018.

complaint