

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

COMPLAINT NO: CC005000000010401

Chinmay Manekar
Abhay Manekar

... Complainants.

Versus

M/s. Jalan Maple Shelters
Vijay Narayan Jalan
Sachin Ashok Agarwal
(Aura City C3,C4)

... Respondents.

MahaRERA Regn: -P52100003004

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

Appearance:


Complainants: Mr.N.K.Agrawal,Adv.
Respondents: Adv. Anaviksha.

Final Order.

5th March 2018

The complainants have filed this complaint under Section 18 of Real Estate (Regulation and Redevelopment) Act, 2016 (for short, RERA) for refund of their amount with interest and/or compensation as the respondents have failed to deliver the possession of flat no. 102, of their registered project Phase-III, Aura City situated at Shirur, Dist. Pune within 24 months from the agreement for sale dated 29.11.2012.

2. The respondents have filed their reply to admit that they have failed to deliver the possession of flat booked by complainants on agreed date. They contend that they could not deliver the possession of the flat in time because Environmental Clearance and Plinth checking certificate were not



given by the concerned Authorities in time. There was shortage of sand and problems in getting water and electric supply. According to them, the period of possession can be extended on account of non-availability of raw material as per Clause-12(i) of the agreement. They contend that the amount claimed by the complainants is not acceptable to them. According to them they have paid Rs. 83,500/- towards stamp duty and Rs. 16,700/- for registration fee. They have received only Rs. 14,17,700/- towards the consideration of the flat. Rs. 68,300/- have been received on account of service tax and VAT. Hence, they request to dismiss the complaint.

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

Points.	Findings.
1. Whether the respondents have failed to : deliver the possession of the flat on the agreed date?	Affirmative.
2. Whether the complainants are entitled to : get refund of their amount with interest?	Affirmative.

REASONS.

Relevant provision:

4. The Section 18 of RERA provides that the complainant can claim refund of his amount with interest and/or compensation if the promoter fails to deliver the possession of the apartment on the date specified in the agreement. It gives the option to allottee to withdraw from the project. In view of this provision, the complainants have exercised his right to withdraw from the project and claim refund of their amount with interest.

5. Section 18 of RERA allows the allottee to collect his amount with interest at prescribed rate which is 2% above the MCLR of SBI. The current rate of MCLR of SBI is 8.05%. Thus, the complainants are entitled to get



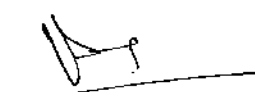
simple interest at the rate of 10.05% on their amount from the date of its receipt by the respondents.

Delayed possession:

6. There is no dispute between the parties that the agreement for sale has been executed on 29.11.2012 and the respondents agreed to deliver the possession within 24 months from the date of agreement. It is true that in Clause-12(i) of the agreement for sale it is mentioned that the respondents shall be entitled to reasonable extension of time for giving possession if the completion of the building is delayed on account of non-availability of steel, cement and other building materials, water or electric supply and delay in granting the permissions etc. According to the respondents they could not complete the project in time because there was shortage of sand, water and electric supply. The concerned Authority did not give Environmental Clearance in time and S. D. O. delayed the inspection of the plinth. Section 8 of Maharashtra Ownership Flats Act, 1963, provides that the promoters are entitled to get the extension of time for reasons beyond their control for three months and if they still exist, then further period of three months. So the maximum limit of extension under the law is only for six months. Therefore, even if it is taken for granted that the project was delayed because of the reasons beyond the control of the respondents, they have not completed the project even after lapse of extended period of six months. Hence, I find that the complainants have proved that the respondents have failed to deliver the possession of the flat on the agreed date.

Entitlement of complainants.

7. Learned advocate of the respondents during the course of arguments has not disputed the fact that Rs.2,50,000/- on 11.04.2012, Rs. 83,700/- on 05.11.2012, Rs. 17,950/- on 21.11.2012, Rs. 4,20,000/- on 12.12.2012, Rs. 16,700/- on 31.01.2013, Rs. 51,600/- on 02.08.2013, Rs.

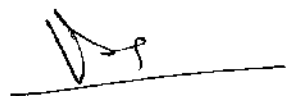


1,22,400/- and Rs. 1,25,000/- on 17.04.2013, Rs. 2,50,375/- on 26.08.2013 and Rs. 1,66,750/- on 11.12.2013 had been paid. These payments have been proved by complaints. The complainants have produced the receipt showing that Rs. 17,950/- had been paid by them on 30.11.2012 for registration of the agreement for sale. Thus, the complainant is entitled to get its reimbursement. The complainants claim Rs. 10,000/- towards the cash paid for Bank processing fee on 11.01.2012. They are entitled to get this amount from the respondents. Though the respondents have denied their liability to refund the amount collected from the complainants, paid towards the taxes, I find that respondents have committed default in delivering the possession of the flat and therefore, they have incurred the liability to reimburse the said amount. The complainants cannot be made liable to sustain this loss as they are not at default. Hence, I hold that the complainants are entitled to get the aforesaid amount with interest at the rate of 10.05 % from the respective dates of their receipts by the respondents till they are repaid. The complainants are also entitled to get Rs. 20,000/- towards cost of the complaint.

8. The learned advocate of the complainants admits that Rs. 83,500/- have been paid by the respondents in their names towards stamp duty. Therefore, this amount of Rs. 83,500/- cannot be claimed by the complainant. Since the interest at the prescribed rate is being awarded which is compensatory in nature, the complainants are not entitled to get compensation on any other grounds. Hence, the order.

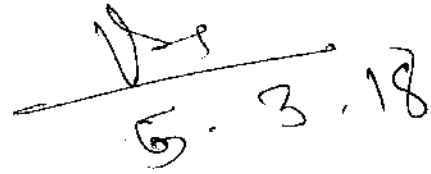
ORDER.

1. Respondents shall refund the complainants' amount mentioned in Para - 7 of the order with simple interest @ 10.05% from the date of their receipts till their repayment.
2. The respondents to pay the amount with interest as directed within 30 days as per Rule 19 of Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate



Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017.

3. The charge of the aforesaid amount shall be on the flat booked by the complainants till its repayment.
4. Complainants shall execute the deed of cancellation of the agreement for sale, at respondents' cost on satisfaction of his claim.



(B.D. KAPADNIS)

Member & Adjudicating Officer,
MahaRERA, Mumbai.

Mumbai

Date: 05.03.2018