

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI  
COMPLAINT NO. CC005000000000138

Mr. Sachin Arun Siddhe

Mrs. Sheetal Sachin Siddhe ... Complainants.

**VERSUS**

Ark Prem Constructions ... Respondents.

MahaRERA Regn:- P52100000942

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

Complainant: In person.

Respondent: Represented by Mr. Vivek V. Salunke, Adv.

**Final Order.**  
29<sup>th</sup> December 2017

Whether the possession only for fixing Furniture and Renovation, without Occupation Certificate and without the actual Occupation will deprive an allottee from the benefits of Section 18 of Real Estate (Regulation and Development) Act, 2016? Is the crucial issue involved in this complaint.

2. The Complainants complain that they booked Flat No. A-506 in respondents' Alfa Landmark project and respondents agreed to deliver possession of the said flat in March 2014 but they have failed to deliver it till the date of complaint. Hence, complainants seek refund of amount paid by them to respondents with interest and compensation under Section 18 of The Real Estate (Regulation and Development) Act, 2016 (in short, RERA.)



3. The Respondents have pleaded not guilty. They have opposed the complainants' claim by contending that the agreement for sale was executed before RERA came into force and therefore MahaRERA does not get jurisdiction to adjudicate upon this dispute. However, this issue has been treated as preliminary issue and by my order passed on 15.11.2017, I have held that the Authority has jurisdiction.

4. The Respondents have mainly opposed the complaints' clam on the ground that the complainants have taken possession of the flats on 05.04.2015 itself, therefore this complaint is not maintainable. The project is complete and they have submitted an application on 10<sup>th</sup> July 2017 for obtaining Occupation Certificate. It is awaited. They have further contended that at the time of Registration of their project they have submitted that the Project shall be completed in September 2018 hence they have not committed any default. Hence, they request to dismiss the complaint.

5. Following point arise for consideration. I record finding thereon as under: -

<u>Points</u>	<u>Finding</u>
(1) Whether possession given for renovation and for furniture without occupancy certificate deprives the allottee from the benefits of Section 18 of RERA ?	Negative
(2) Whether the Respondents have failed to deliver the possession of the complaints' booked flat on the agreed date?	Affirmative
(3) Whether complainants are entitled to get Refund of their amount with interest?	Affirmative



## REASONS:

6. The Respondents have relied upon their letter dated 05<sup>th</sup> April 2015 addressed to the Complainant Mr. Sachin. The letter clearly shows that they have handed over the possession of Flat No.506 to the Complainants for "Furniture and Renovation". Mr. Sachin has also acknowledged that he received the possession of the flat. Therefore, the Respondents have been contending that the possession of the flat has already been given to the Complainants. It is the submission of the complainant Mr. Sachin that the letter for possession was required for submitting it to the Bank for releasing the last instalment of Home loan. I am not going to enter into the arena of this controversy. I have taken the facts disclosed in the letter as they are. So on the basis of these facts I have to see whether legal possession of the flat has been handed over by the Respondents to complainants or not. On the plain reading of the letter it becomes clear that the possession has been handed over only for the purpose of "Furniture and Renovation". It means that it was not for the purpose of occupying it or for the purpose of residing in it.

7. The reply of the Respondents is very clear on the point that the respondents have applied for the occupation certificate and the certificate is awaited. On this backdrop now it is necessary to look at section 3 (2) (i) of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. The relevant portion of it reads as under:

### **3. General Liabilities of Promoters.**

(2) A promoter, who constructs or intends to construct such block or building of flats, shall -

- (i) Not allow persons to enter into possession until a completion certificate, whether such certificate is required to be given under any law, is duly given by the Local authority and no persons shall take



possession of a flat until such completion certificate has been duly given by the Local Authority.

8. After going through this provision of law it becomes clear that the promoter is restrained from giving possession of a flat until he gets completion certificate. Similarly, the allottee is also prohibited from taking it until the completion certificate is duly given by the Local Authority.

9. It is not in dispute that the completion certificate is required in this case and admittedly the certificate has not been issued. In the facts and circumstances, I find that the possession was given by the Respondents for limited purpose of "Furniture and Renovation" which is locally called as fit out possession. Such a possession without completion Certificate is not allowed and therefore I hold that fit out possession only for the purpose of erecting furniture and making renovation cannot be said to be in possession in the eye of law to deprive the allottee of the benefits of Section 18 of RERA Act. The Complainants submit that they have not moved to the flat for residing in it as the completion certificate has not been received. Therefore, I hold that only because the complainants have received the "Possession for Furniture and Renovation," it will not deprive them of their Right to claim refund of their amount under Section 18 of RERA.

10. There is no dispute on the point that the Respondent agreed to hand over the possession of the flat by the end of March 2015. It has also been proved by the Complainants that till the date of complaint they have not moved into the flat for want of occupation certificate. The Respondents therefore have failed to prove they have handed over the legal possession of the flat to the Complainants on the agreed date. I record my finding to this effect.

11. The respondents have not explained as to why the project is delayed. Hence, this case squarely falls under Section 18 of RERA.

  
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12. When the allottee does not get the possession of a flat on the agreed date of possession, he gets legal right to withdraw from the project and demand his amount. The complainants have exercised this right and they have demanded the amount paid by them to the Respondents in the context of the purchase of above numbered flat.

13. The complainants have produced the table market Exhibit 'A' which shows that they paid Rs.1,00,000/- on 15/7/ 2014; 7/8/14; 20/8/14; each. They have paid Rs. 21,500/- on 30/8/2014; Rs. 6,190/- on 15/7/14; Rs.1,78,500/- on 06.09.2014, Rs.18,21,636/- on 14.2.15, Rs.4,11,182/- on 23/07/15. The Respondents have not disputed the receipt of this amount. The Complainants are entitled to get refund of these amount.

14. Section 18 of RERA lays down that the allottee is entitled to get back his amount with interest at the rate prescribed by Rules. The Rate of interest prescribed by Rules in our state is MCLR of SBI which is currently 8.05% plus 2%. Thus, the complainants are entitled to get the aforesaid amounts with this rate of interest from the date of their respective payments. The Complainants are also entitled to get Rs. 20,000/- towards the cost of the complaint. Hence following order:

#### **ORDER.**

- (1) The Respondents shall pay the Complainants the amount mentioned in Para 13 of this order with interest @ 10.05% from the date of their receipt till their payment.
- (2) The Respondents shall pay the complaints Rs. 20,000/- towards the cost of complaint.
- (3) On satisfaction of the claim, the Complaints shall execute a document of cancellation of agreement of sale that too at respondents' cost.



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

Mumbai  
Date: 29.12.2017

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI.

COMPLAINT NO: CC005000000000138

Sachin Arun Siddhe  
Sheetal Sachin Siddhe

---Complainants.

**Versus**

ARK Prem Constructions - Avinash Katnagar

---Respondents.

MahaRERA Regn: P52100000942


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

**ORDER ON THE RECOVERY APPLICATION FILED IN COMPLAINT NO.  
CC005000000000138**

The complainants report the non-compliance of the order passed on 29.12.2017 and seek its execution.

2. The respondents have failed to appear to show cause even after service of the notice marked Exh. 'A'.
3. Issue recovery warrant under Section 40(1) of RERA against the respondents.
4. Complainants to file statement showing the amount due till the date.

Mumbai.  
Date:10.12.2018.

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