

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

COMPLAINT NO: CC006000000044523.

Amit Dinkar Dongrikar

... Complainant.

Versus

Housing Development & Infrastructure Ltd.
Sarang Rakesh Wadhawan
Rakeshkumar Kuldip Singh Wadhawan
(HDIL Paradise City Sector 4)

... Respondents.

MahaRERA Regn: P99000012735

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

Appearance:

Complainant: Adv. Anil D'souza.

Respondents: Mr. V.K.Madan Mohan, AR.

FINAL ORDER

10th October 2018.

Complainant's case.

The complainant booked flat no. 205, C-Wing of Building No. 12, Sector-4 of the respondents' registered project 'Paradise City-Sector-4' situated at village Mahim, Taluka Palghar. The respondents agreed to hand over the possession of the flat on or before 30.06.2014. They failed to deliver the possession of the flat till the date of complaint and therefore, the complainant withdraws from the project and claims refund of his amount with interest and/or compensation under Section 18 of Real Estate (Regulation and Development) Act, 2016 (RERA).

Respondents' defence

2. The respondents admit that they have failed to hand over the possession of the flat on agreed date. However, they contend that as per clause 32 of the agreement, they were entitled to get reasonable extension



of time for completing the building on account of non-availability of building material or force majeure. There was ban on sand mining and therefore there were shortage of sand. There were other issues regarding the demonetization scheme launched by the Government which caused recession. Therefore, they were prevented by sufficient causes from completing the project in time. The complainant did not take any objection even after crossing the agreed date of possession, therefore, he acquiesced the delay. Hence, they request to dismiss the complaint.

Delayed possession:

3. Heard both the parties. The respondents have admitted that they agreed to deliver the possession of the complainant's booked flat on or before 30.06.2014 and they have not delivered it. Hence, this fact has been established by the complainant.

Reasons of delay:

4. The respondents have produced documents and the order of the National Green Tribunal dated 04.02.2014 to show that during the year 2014 & 2015 there was shortage of the sand but they were to complete the project before 30.06.2014. It was possible to procure sand from other places. The respondents also referred to some labour problem, demonetization scheme and fall of sale as the reasons causing the delay. These causes do not appear to be genuine because till the date of complaint the flat is not made ready. It is necessary to note that the provisions of Maharashtra Ownership Flats Act, 1963 are applicable by virtue of Section 88 of RERA. Section 8(b) of the said Act provides that if the promoter is prevented to give possession within specified time for the reasons beyond his control, then such agreed period can be extended by three months and if the reasons still exist then this period can be extended by next three months. Thus, on this count the respondents are entitled to get maximum extension of time to the extent of six months and not beyond that. There is delay of more than six months in this case. Therefore, I find that the grounds of




delay pressed into service by the respondents will not exonerate them from their liability of refunding complainant's money with interest under Section 18 of RERA.

Complainant's entitlement.

5. The complainant has filed the payment format marked Exh.'A' showing the payments made by him towards the purchase of the flat. The respondents have denied their liability to pay Rs. 60,200/- paid towards the stamp duty and Rs. 13,560/- towards registration mentioned therein. The complainant wants to withdraw from the project. The agreement for sale has been executed on 12.11.2013. It needs to be cancelled. The proviso to sub-section (1) of Section 48 of the Maharashtra Stamp Act provides that if the stamp duty of an agreement to sale of immovable property on which the stamp duty is paid, is registered under the provisions of Registration Act and thereafter such agreement is cancelled by registration of cancellation deed for whatsoever reasons before taking the possession of the property which is the subject matter of such agreement, within the period of five years from the date of execution of the agreement to sale , then the application for relief be made within six months from the date of registration of cancellation deed. Therefore, the stamp duty can be refunded only when the agreement is cancelled within a period of five years. This period of five years is going to expire on 11th November 2018 and if the complainant's claim is not satisfied till that day he will not be able to seek refund of the stamp duty. So by taking practical view in this matter, I find that the complainant is entitled to get reimbursement of the amount of stamp duty if his claim would not be satisfied on or before 11th November 2018. The registration charges are not refundable. Hence, the complainant is also entitled to get their refund.

6. The complainant has mentioned in the payment format that he paid Rs. 10,000/- to the respondents on 15.10.2013 for Misc. purpose. However,



he has not produced any proof of its payment. Hence, the complainant is not entitled to get this amount of Rs. 10,000/-.

7. The respondents are liable to pay interest at prescribed rate from the date of payment of the aforesaid amount. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 8.55%. The complainant is also entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the order.

ORDER

The respondents shall pay the complainant the amount mentioned in Exh.'A' except the amount of Rs. 10,000/- allegedly paid for misc. purpose, with simple interest at the rate of 10.55% per annum from the date of the payment of the amount till they are refunded.

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

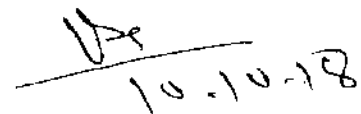
The payment format marked Exh.'A' shall form the part of the order.

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

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

Mumbai.

Date: 10.10.2018.



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

W. I. A.

BEFORE THE FORUM OF REAL ESTATE REGULATORY AUTHORITY

MAHARASHTRA, MUMBAI

COMPLAINT NO. CC 006 000 000 044 523 OF 2018

Mr. Amit Dongrikar

]...Complainants

v/s

M/s. Housing Devp. & Infra. Ltd. & Ors.

]...Respondents

PAYMENT FORMAT

Sr No	Date	Amount INR	Purpose	Receipt No.	Cheque No. with Bank Name
01	04.03.2011	1,31,820	Towards Booking Amount	HDIL PCRB 2011 MAR 00 115	Chq No. 828880 dated 04.03.2011 drawn on Shamrao Vithal Co-op Bank
02	30.12.2010	75,000	Towards Booking amount	HDIL PCRC 2010 Dec 4, 359	Cash
03	12.11.2013	60,200	Stamp Duty		Chq No. 34437 dated 01.10.2013
04	30.11.2013	13,560	Registration	MH 000 75 13 43 2013 14 M	
05	06.05.2013	5,326	Service Tax	1100/ 2013/ 160000 2213	Chq No. 019575 dated 04.05.2013 drawn on Shamrao Vithal Co-op Bank
06	04.06.2014	12,032	VAT	1100/ 2014/ 160000 4200	Chq No. 067711 dated 04.06.2014 drawn on Shamrao Vithal Co-op Bank

Admit
Admit
Admit
Admit

07. 15.10.2013 10,000/- MISC No receipt given

Amit Dongrikar
Complainant's Name

Complainant's Signature

Respondent's Remarks Respondent's Name

Respondent's Signature