

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.
COMPLAINT NO: CC006000000012074

Nilesh Subhash Korde

... Complainant.

Versus

1. Arun Shelar
2. Metadesign india Pvt Ltd.

...Respondents.

MahaRERA Regn: P51900006531

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

Appearance:

Complainant: In person.

Respondent no.1: In person.

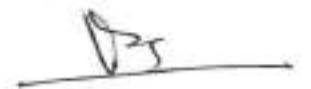
Respondent no.2: Kaylegal & Associates LLP.

FINAL ORDER.

04.07.2018.

The complainant has filed this complaint under Section 18 of Real Estate (Regulation and Development) Act, 2016 (RERA) to seek refund of his amount paid by him to the respondents in respect of his booked flat in respondents' registered project, on their failure to hand over its possession on the agreed date.

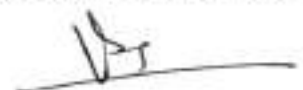
2. The complaint booked flat no. C-4 through Respondent No. 1 in the respondent no. 2's registered project Mblu situated at Village Anandwali, Gangapur, Nasik. The respondent No. 1 failed to deliver its possession on agreed date 12.11.2015. The complainant wants to withdraw from the project and therefore he claims the amount paid by him to the respondent no.1 towards the consideration of the flat, and the premium paid to the Insurance Co., stamp duty, registration charges and other ancillary charges paid to the Bank of Maharashtra as well as Rs. 50,000/- paid to the



respondent no. 2 towards brokerage. He also claims rent for the period from 01.11.2015 to 01.11.2017.

3. The respondent no.2 have filed the reply wherein they admit that the complainant booked the flat and they agreed to deliver its possession within 24 months from the date of the agreement. According to them, after booking, the amount of initial payment was made by the complainant. He was required to pay Rs. 4,00,000/- more to them to show initial payment made to them in order to obtain loan amount. The complainant is the relative of their employee Mr. Shelar, the respondent no. 1 herein. The complainant did not have money to make payment to the respondents and therefore they gave him Rs. 4,00,000/- as hand loan which the complainant paid them by paying Rs. 3,00,000/- on 20.02.2015 and Rs. 1,00,000/- on 26.02.2015. These two payments were not paid by the complainant towards the consideration of the flat as contended by the complainant. They have not disputed the remaining payment paid towards the consideration. However, they have denied their liability to refund the amount of brokerage and other incidental charges, registration fee, stamp duty and rent to the complainant. On the contrary they contend that the complainant himself was guilty of non-payment of the amount due and therefore, payment letters were sent to him from time to time. 90% of work is completed and therefore they request to dismiss the complaint.

4. The respondent no. 1 Mr. Shelar has filed reply to contend that the complainant wants to purchase a flat. The complainant approached him, he being his relative and he is Civil Engineer in the employment of Respondent No. 2 in those days. So he helped the complainant in booking the flat in respondents' project. He supports the respondent no. 2 by contending that the complainant was in need of Rs. 4,00,000/- for paying them to the respondent no. 2 for obtaining the loan and therefore the respondent no. 2 by going out of way gave hand loan of Rs. 4,00,000/- to the complainant, he being the relative of the respondent no.1. He admits



that he received Rs. 35,000/- from the complainant by the cheque dated 16.03.2015. In this context he submits that he borrowed Rs. 35,000/- as a personal loan from the complainant for the purpose of paying his LIC Policy instalment. Thereafter he took the loan from the LIC and received Rs. 80,000/-. He repaid Rs. 35,000/- to the complainant out of this amount in cash. Thereafter he did not receive any money from the complainant. According to him, the relations of the two families have become strained and therefore the complainant has falsely contended that he paid Rs. 50,000/- to him towards brokerage.

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

POINTS	FINDINGS
1. Whether the respondent no. 2 have failed to hand over the possession of the booked flat on the agreed date?	Affirmative.
2. Whether the complainant is entitled to get his amount with interest under Section 18 of RERA?	Affirmative.

REASONS

6. There is no dispute on the point that the complainant booked flat no. C-4 in respondents' registered project and the respondent no. 2 agreed to deliver its possession within 24 months of the agreement dated 13.11.2013. The respondent has not disputed that till the date of complaint the possession of the flat has not been delivered. Hence, I hold that the complainant has proved that the respondent no. 2 failed to hand over the possession of the flat on the agreement date.

7. Section 18 of RERA gives an option to the allottee to withdraw from the project on the promoter's failure to hand over the possession of the flat on the agreed date. The complainant exercises this option and withdraws from the project. Therefore, he is entitled to get his amount with interest at the prescribed rate. The prescribed rate of interest is 2% above the SBI's



highest MCLR which is currently 8.5%. The complainant has filed the payment format marked Exh. 'A' reflecting the amount paid by him on various counts to which he has referred to in his complaint.

8. The respondent no.2 submit that they paid Rs. 4,00,000/- to the complainant as hand loan and the receipt thereof has also been produced by him which possess the signature of the complainant. The receipt shows that complainant took loan of Rs. 4,00,000/- from the respondent no. 2 on 18.02.2015. This fact has not been disputed by the complainant. The complainant makes feeble attempt to submit that he repaid that amount. His learned advocate submits that this being separate transaction, the respondent no. 2 cannot raise this issue in this proceeding. However, I find that the facts pleaded by both the respondents make it clear in order to obtain the loan, the complainant was required to show the payment of initial amount to the respondent no. 2. Therefore, the loan transaction is related to the main transaction of sale and purchase of the booked flat, so it is not a different issue. Hence, I am going to deal with this issue in this matter only.

9. The receipt of the loan produced by the respondent no.2 and affidavit of both the respondents as well as the stand taken by the complainant is sufficient to indicate that the complainant has taken the loan from the respondent no. 2. Now, next question is whether the complainant repaid it? In this context, the learned advocate of the complainant brings to my notice that Rs. 3,00,000/- paid on 20.02.2015 and Rs. 1,00,000/- paid on 26.02.2015. According to the respondent no. 2 these payments were repayment of loan amount. Hence, I find that these two payments made by the complainant were not towards the consideration of the flat but they were paid towards the repayment of the loan. Hence, this amount of Rs. 4,00,000/- will have to be excluded from the consideration while counting the amount paid by the complainant towards the price of the flat.



10. The complainant claims Rs. 49,550.76/- towards the premium of the insurance paid by him. The complainant admits that it was life policy taken in his name. Hence, this amount of premium has to be ignored. It was not connected with the transaction of sale and purchase of the booked flat.

11. The complainant claims of Rs. 6,067/- paid on 30.03.2015 towards Home Insurance Policy. It relates to the booked flat and therefore, this payment is relevant. The respondent no. 2 have incurred the liability to reimburse this payment because they defaulted in handing over the possession.

12. The complainant contends about brokerage that he paid Rs. 35,000/- by cheque on 16.03.2015 and Rs. 15,000/- on 19.03.2015 to the respondent no.1. The respondent no. 1 accepts the receipt of Rs. 35,000/- but contends that it was a loan taken from the complainant for paying the premium of his insurance policy and he repaid it when he received Rs. 80,000/- towards the loan from LIC. However, he has no other proof for showing the repayment.

13. The respondent no. 1 has denied the receipt of Rs. 15,000/- paid by cheque no. 14339. The complainant has produced the statement of his bank account marked Exh.'B' which shows that Rs. 15,000/- had been withdrawn from his account and paid to the respondent no.1 Mr. Arun Shelar. Therefore, I hold that the complainant has proved that Rs. 50,000/- had been paid by him to the respondent no.1. Now next issue is, whether this payment was towards the brokerage or not. The respondent no. 1 on this point submits that the complainant booked the flat in the year 2013 and the payment of Rs. 35,000/- + 15,000/- is of 2015. So according to him, it is not the brokerage because had it been brokerage, it would have been paid at the initial stage of the booking of the flat. In this context it is necessary to look into the facts admitted by the respondents that the respondent no. 1 is the employee of the respondent no. 2. The respondent no. 1 was in service of the respondent no. 2 in the year 2013 when the flat

was booked. The complainant wanted to purchase a flat and he approached the respondent no.1, he being the relative of the complainant and he being the Civil Engineer. It also appears from the facts pleaded by the respondents themselves that the complainant was in financial difficulty when he booked the flat and therefore, the respondent no. 2 lent him money amounting to Rs. 4,00,000/- only because he happens to be relative of the respondent no. 1, his employee. Thus, it becomes clear that there was cordial relation between the parties. It is possible that since the complainant was in financial difficulty in the year 2013, he might not have paid brokerage in the year 2013 but paid it when he was able to pay it in the year 2015. To conclude, I hold that the complainant has proved that he paid Rs. 50,000/- to the respondent no.1 and this payment was towards the brokerage.

14. So far as the respondent no.2's liability to reimburse the amount of brokerage paid to the respondent no. 1 is concerned, I find that on their failure to hand over possession of a flat as agreed, they have invited the liability to reimburse the complainant in this regard. The complainant is to be restored to his original possession.

15. The respondent no. 2 has brought on record that the complainant did not pay the money as agreed at the various stages of the completion of the project but now this issue becomes irrelevant because the complainant wants to withdraw himself from the project. The flat booked by the complainant though may be constructed to the extent of 90% but it would be at the disposal of respondent no. 2 and therefore, the money paid by the complainant for its construction will have to be returned by them with the interest at the prescribed rate is mandate of law.

16. The complainant claims Rs. 28,257/- paid towards the ancillary charges taken by LIC Finance for loan for the reasons mentioned above the respondent no. 2 is liable to repay this amount.



17. It appears that the stamp duty has been paid in the name of the complainant, therefore, on cancellation of agreement for sale, he is entitled to get its refund from the office of the Sub-Registrar. Therefore, the complainant is not entitled to get the reimbursement of stamp duty amount. However, the complainant is entitled to get the reimbursement of Rs. 30,560/- paid towards the registration charges.

17. The complainant claims rent from 01.11.2015 to 01.11.2017 which in my opinion he is not entitled to get because he is entitled to get the interest at the rate of 10.5% from the date of payment of amount referred to above. This is compensatory in nature.

18. The complainant is entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, I proceed to pass the following order.

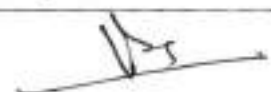
19. The respondent no. 1 submits that the complainant made some changes of his choice in the unit. They will have to remove the changes made by the complainant for which they will require Rs. 1,37,000/- as shown in their letter marked Exh. 'C'. At this stage it is necessary to look at Para-12 of the reply of the respondent no. 2 which shows that the additional work of interior has been done at the cost of the complainant. It appears that the flooring, window frame, granite and modification of western toilet are the changes. In fact, these are the improvements made in the flat and therefore, I find unable to accept that Rs. 1,37,000/- would be required for restoring the flat to its original position. It is possible that would be purchaser may like all the changes or he may not like few of them. Therefore, by taking into consideration this possibility, I hold that at the most the amount of Rs. 25,000/- would be quite sufficient for the restoration of the flat to its proper condition. So this amount needs to be deducted from the amount payable to the complainant.



ORDER

The respondent no. 2 shall refund the complainant the following amount minus 25,000/- with interest at the rate of 10.5% from the date of payment till refund.

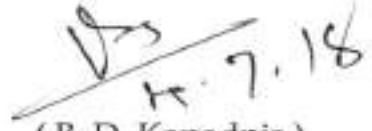
Date	Amount	Purpose
05/03/2013	2,50,000/-	Flat Booking
23/03/2013	1,00,000/-	Flat Booking
02/04/2013	50,000/-	Flat Booking
27/08/2013	50,000/-	Flat Booking
27/08/2013	50,000/-	Flat Booking
15/11/2014	25,000/-	Slab Amount
14/02/2015	3,00,000/-	Slab Amount
21/02/2015	35,000/-	Slab Amount
23/02/2015	15,000/-	Slab Amount
23/02/2015	25,000/-	Slab Amount
14/02/2015	50,000/-	Slab Amount
24/02/2015	50,000/-	Slab Amount
26/02/2015	25,600/-	Slab Amount
03/03/2015	8,72,191/-	Slab Amount
30/03/2015	6,667/-	Home Insurance
20/09/2015	2,00,000/-	Slab Amount
07/04/2016	1,66,529/-	Slab Amount
23/03/2017	5,61,280/-	Slab Amount
16/03/2015	35,000/-	Brokerage.
19/03/2015	15,000/-	Brokerage.
13.11.2013	30,560/-	Registration charges.
17.01.2015	1,150/-	Loan process fee.
03/02/2015	13,518/-	Loan process fee.



17/03/2015	3,871/-	Loan process fee.
18/10/2013	5,618/-	Loan process fee.
16/11/2013	4,100/-	Loan process fee.

The respondent No.2 shall pay the complainant Rs. 20,000/- towards the cost of the complaint.

Mumbai.
Date: 04.07.2018.


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