

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

COMPLAINT NO.CC006000000001397

Shri Rohan Sitaram Manohar
Shri Sitaram Bhikaji Manohar .. Complainants.
V/s

Vidhi Realtors.

(Gaurav Discovery) ..Respondents.
Regn No. 51800007949.

Coram: Shri B.D. Kapadnis

Hon'ble Member & Adjudicating Officer

Complainant: In person.

Respondents: Mr. Krishna Agrawal, Adv.

FINAL ORDER

16th January 2018.

The Complainants have filed this complaint under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (in short, RERA).

2. Complainants contend that they booked flat No. F-1302 situated on 13th floor, of Respondents' Gaurav Discovery Project, village Malwani, Malad(West), Mumbai Suburban District. The Respondents agreed to deliver the possession of the flat by the end of December 2016. However, the Respondents have failed to deliver the possession of the flat on the specified date, therefore, the Complainants seek the refund of the monies paid by them to the Respondents, with interest and compensation.

3. The Respondents contend that the Agreement of Sale had been executed in the year 2014 when RERA was not in force and therefore, this Authority has no jurisdiction to adjudicate this dispute. The Respondents contend that they could not deliver the possession of the flat by the end of December 2016 as agreed because they got the



Commencement Certificate to build only 17 floors and accordingly they have been constructed. However, they propose to construct a building comprising of 21 floors but the Competent Authority did not give the permission for constructing the upper four floors. Hence, this reason of delay was beyond their control. They deny liability to refund the money. According to them, if they would be found liable to refund the amount paid by the Complainants, the Complainants are entitled to get it back with simple interest at the rate of 9 % per annum as mentioned in Clause 17 of the Agreement for Sale. Therefore, they request to dismiss the complaint.

4. Following points arise for consideration. I record findings thereon as under:

Points	Findings
1. Whether MahaRERA has jurisdiction to entertain this complaint?	Affirmative.
2. Whether the Complainants are entitled to get refund of the amount paid by them to the Respondents, with interest and compensation under Section 18 of RERA?	Affirmative.

5. **Jurisdiction:**

The respondents' learned advocate submits that the agreement of sale has been executed during the Maharashtra Ownership of Flats (Regulation of promotion of Construction, Sale, Management and Transfer) Act 1963 (for short, MOFA) regime. RERA came into effect from 1st May, 2017 and it is prospective. He further submits that the date of possession mentioned in registration certificate is not crossed and therefore there is no breach of any provision of RERA. Hence, MahaRERA has no jurisdiction to entertain this complaint.



6. I find, the cause of action for claiming possession after the lapse of the agreed date of possession becomes a recurring cause of action. The claimants' right to claim their money back or to claim possession continues from the agreed date of possession till the date of filing of complaint. If the cause of action survives after coming into force of RERA, MahaRERA gets jurisdiction over all the disputes pertaining to the eligible real estate projects requiring registration u/s. 3. The ongoing projects bring with them the legacy of rights and liabilities created under the statutes of the land in general and The Indian Contract Act and MOFA in particular. Section 79 of RERA bars the jurisdiction of the civil court from entertaining any suit or proceeding in respect of any matter which the Authority, Adjudicating Officer or Appellate Tribunal is empowered by or under RERA to determine. Hence, the Authority gets the jurisdiction over such matters which the civil court had. The Authority can take cognizance of the agreements executed under MOFA also and is equally competent to grant the relief relating to it. This view gets the support from Section 88 of RERA which provides that its provisions shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. MOFA has not been repealed. In this context, section 71(1) of RERA can be looked into. It provides that for the purpose of adjudicating compensation u/ss. 12, 14, 18 & 19 of RERA, an Adjudicating Officer can be appointed by the Authority. Its proviso provides that any person whose complaint in respect of matters covered by sections 12, 14, 18, 19 of RERA is pending before the Consumer Disputes Redressal forum, State Consumer Disputes Redressal Commission or National Consumer Dispute Redressal Commission **on or before the commencement of RERA**, he may, with the permission of the said forum withdraw the complaint pending before it and file it before the Adjudicating Officer under RERA. This



provision therefore, indicates that sections 12, 14, 18, 19 RERA are retroactive. The right to claim return of amounts paid by the allottee to the promoter is preserved by Section 18 of the Act. This view has been endorsed by Hon'ble Bombay High Court in Nilkamal Realtors Suburban Pvt. Ltd.-v/s- Union of India, Original Side, Writ Petition No. 2737 of 2017.

Moreover, relevant part of section 18 of RERA reads,

'18. Return of amount and compensation-

(1) If the promoter fails to complete or is unable to give possession of an apartment plot or building, -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;'

7. On plain reading of this provision it becomes clear that date of completion referred to in this provision means the date specified in the agreement. The word "therein" refers to the "agreement" and not the date of completion revised by the promoter unilaterally while registering the project. Hence I find myself unable to accept the submission of respondents' learned advocate that as the date of completion mentioned in registration certificate is not crossed, this Authority has no jurisdiction. Considering all these aspects, I find that the Authority has jurisdiction to entertain this complaint as the complainant's right to claim back their money in the case of withdrawal from the project still subsists under RERA.

Refund of amount, interest& compensation.

8. The Complainants have placed the Agreement of Sale on record which shows that the Respondents agreed to deliver the possession of the flat by December 2016. Admittedly, the Respondents have failed



to deliver the possession of the flat on the specified date mentioned in the Agreement.

9. Section 18 of RERA gives two options to the allottee, when the Promoter fails to give the possession of the apartment on the date specified in the agreement. The first option is to continue with the project and claim interest on his investment. Second option is to withdraw from the project and demand for refund of the monies paid by him to the Promoter with interest and compensation as the case may be. In this case the Complainants have exercised their right to claim back their monies.

10. I have heard the Complainants and Learned Advocate of the Respondents on the amounts paid by the Complainants. There is no dispute between the parties that the Complainants paid the amount mentioned in the payment schedule marked exhibit 'A'. to the respondents except the TDS amount Rs. 11,288/- which is paid to the Government. They have paid Rs. 3,77,000/- towards stamp duty in the name of Mr. Rohan Manohar and on cancellation of agreement of sale he will be entitled to get its refund. Since the Respondents have defaulted in delivering the possession of the flat on the agreed date, they are liable to refund the same except the amount of TDS and stamp duty. Section 18 provides that the allottees are entitled to get these amount with interest at such a rate as may be prescribed. Rule 18 of Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Penalty payable in form of Complaint and Appeal etc.) Rules, 2017 provide that the interest shall be marginal cost of lending rate of interest of SBI + 2 %. The marginal cost of lending rate of



interest of SBI is currently 8.05 %. Thus, the Respondents are liable to re-pay the amount mentioned in this Para from the respective dates of their receipts till they are repaid.

11. The Complainants are also entitled to get reasonable amount of Rs. 20,000/- towards the cost of complaint and hence, the following order.

ORDER


A. The Respondents shall pay the Complainants the amount mentioned in Para 10 of this order with simple interest at the rate of 10.05% from the respective dates of their receipt till they are repaid together with Rs. 20,000/- towards the cost of the complaint. Statement marked as Exhibit 'A' shall form the part of this order.

B. On satisfaction of the entire claim, the complaints shall execute the document of cancellation registered agreement of sale, at the cost of respondents.

C. The charge of these amount shall remain on the flat No. F-1302 of Gaurav Discovery till the satisfaction of the complainants' claim.

Mumbai:

Date: 16.01.2018.


16.1.18
(B.D. Kapadnis)
Member & Adjudicating Officer
MahaRERA, Mumbai.

Complaint No:- CC006000000001397

Spl A

Schedule of Payment			
Flat No. 1302, F Wing, Gaurav Discovery			
Sr. No.	Payment Date	Amount	Description
1	30/03/2013	881375	Installment
2	30/03/2013	500000	Installment
3	17/03/2013	400000	Installment
4	17/03/2013	58134	Service Tax
5	17/06/2013	280000	Installment
6	17/06/2013	34880	Service Tax
7	17/06/2013	285000	Installment
8	17/06/2013	563825	Installment
9	17/09/2013	125000	Installment
10	17/09/2013	61256	Installment
11	17/09/2013	5813	Service Tax
12	27/09/2013	1881	TDS
13	01/11/2013	5814	Service Tax
14	01/11/2013	186256	Installment
15	20/12/2013	11256	Installment
16	22/11/2013	1881	TDS
17	20/12/2013	5812	Service Tax
18	20/12/2013	175000	Installment
19	27/12/2013	1881	TDS
20	09/04/2014	377000	Stamp Duty
21	09/04/2014	30000	Registration
22	20/03/2014	75255	VAT
23	30/03/2016	11288	TDS*
24	17/03/2013	100000	Ernest Money
Total		4178607	

*This amount was paid by us directly to government.

Rohini S. Manohar

Date: 20/12/2017

Rohini S. Manohar
S.B. Manohar