

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.

Complaint No: CC003000000000017

Vijay Govindrao Vaidya ... Complainant.

Versus

Ms Sunder Sports Planet ... Respondents.

Ms Sunder Villa
M S Sunder Heritage through its partner
Runwal S
Ms Sunder Siddhi

MahaRERA Regn: P51500011267

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

Appearance:

Complainant: Adv. Mr. A.M. Momidwar.

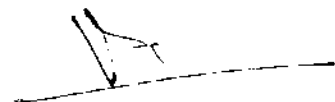
Respondents: Adv. Mr. N.P. Runwal.

Final Order.

20th June 2018.

Complainant has filed this complaint under Section 18 of Real Estate (Regulation and Development) Act, 2016 (In short, RERA) for getting refund of his amount with interest on the Respondents' failure to deliver the possession of his booked flat no. 403, N-Tower, of their registered project Shamit Octozone Sunder Siddhi situated at Nakshrawadi, Dist. Aurangabad, within 18 months from the agreement for sale dated 09.07.2012.

2. The respondents have filed their reply wherein they have admitted that the complainant has booked the above numbered flat in their project. According to them, they could not complete the project in time because there was scarcity of water during the period from 2012 to 2015. The Maharashtra



Pollution Control Board asked them to stop the work by their letter dated 27.12.2013, though they applied for their permission on 23.11.2011 itself. Thereafter, the Maharashtra Pollution Control Board granted the permission by their letter dated 29.03.2014. Thereafter they received the stop work letter dated 08.06.2014 from the Environmental Clearance Authority though they applied for it on 23.11.2011. Ultimately, they got Environmental Clearance on 16.01.2016. Therefore, the respondents contend that they could not carry on the construction because of the stop-work order issued by above named two authorities. They deny that they agreed to deliver the possession within 18 months from the date of agreement for sale executed in favour of the complainant. According to them, they have received Rs. 26,31,000/- out of total consideration of Rs. 34,51,000/- from the complainant. Complainant has taken compensation of Rs. 1,82,000/- from them at the rate of Rs. 7,000/- from January 2014 to March 2016 on account of the delay. They further contend that they have applied for obtaining completion certificate on 01.11.2017 and the certificate is awaited. Therefore, they request to dismiss the complaint.

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

POINTS	FINDINGS
1. Whether the respondents agreed to deliver the possession of the booked flat within 18 months from the date of agreement for sale?	Affirmative.
2. Whether the respondents have failed to deliver the possession of the complainant's booked flat on the agreed date?	Affirmative.
3. Whether the respondents have proved that they were prevented from completing the project within time due to the reasons which were beyond their control?	Negative.

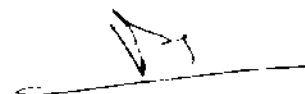


4. Whether the complainant is entitled to get refund of his amount with interest? Affirmative.

REASONS:

4. The respondents have denied that they agreed to deliver the possession within 18 months of the agreement. However, the complainant has produced the agreement executed in his favour on 09.07. 2012, it shows that in Para-11 of the said agreement, the respondents have agreed to give the possession of the flat within 18 months from the date of execution of agreement. Admittedly possession of the flat has not been given till the date of complaint. This fact has been proved by the complainant.

5. The respondents have contended that they could not complete the project in time because there was scarcity of the water during the period from 2012 to 2015. They have relied upon the clause-11 of the agreement for sale. On perusal of the said clause, I find that the parties have agreed that the non-availability of water shall be one of the causes for extension of time. The respondents have also relied upon the public interest litigation decided by the Hon'ble High Court Bench, Aurangabad and certain other documents issued by the Government to prove that there was scarcity of water in Marathwada Region during this period. The respondents have also produced the documentary proof to prove that though, they have applied for the sanction of Maharashtra Pollution Control Board on 23.11.2011, the Board issued a letter on 23.12.2013 to stop the work and finally granted the permission on 29.09.2014. They have also placed on record that though they applied for Environmental Clearance on 23.11.2011, the authority issued a letter dated 08.06.2014 to stop the work and finally gave the Environmental clearance on 16.01.2016. I find that though the respondents have produced the documentary evidence to prove the aforesaid facts, they are not entitled to get the benefit thereof because the respondents are under the contractual obligation to deliver the flat to complainant within 18 months from 09.07.2012. These facts may be relevant under Section 72 of RERA



while assessing the compensation. At the most I may say, that these facts absolve them from paying compensation to the complainant. These facts would not help respondents to extend the period of completion of project. The agreement executed by the respondents has been governed by the Maharashtra Ownership Flats Act. Its Section 8 provides that if the promoter fails to give possession in accordance with the terms of his agreement of a flat duly completed by the date specified then the allottee is entitled to claim refund. It further provides that if the promoter for reasons beyond his control is unable to give possession of the flat by the date specified or the further agreed period and the period of three months thereafter and a further period of three months if those reasons still exists then in such a case the promoter shall be liable on demand to refund the amount received by him to the allottee. So this period is not beyond six months. Not only this, Hon'ble Bombay High Court in Neelkamal Realtors Suburban Pvt. Ltd.-v/s-Union of India (WP 2737 of 2017) has observed that the promoter having sufficient experience in the open market, is expected to have a fair assessment of the time required for completing the project. He has to complete all the formalities. Therefore, the respondents have not performed the formalities required to be performed for completion of the project on time, they cannot take the defence like the defence taken by the respondents in this case.

6. Section 18 of RERA gives an option to an allottee to withdraw from the project and demand refund of his amount with interest and/or compensation on the promoter's failure to deliver the possession of a flat on the agreed date mentioned in the agreement for sale. Here, the respondents have contended that the building is completed and they have also applied to the legal authority for issuance of completion certificate. I find that this authority has no authority to compel the complainant to continue in the project. It is the legal right of the allottees and the complainant has exercised his legal right to withdraw from the




project. Therefore, I have to adjudicate this matter in the light and spirit of Section 18 of RERA.

7. The respondents have admitted that they have received the consideration of Rs. 26,31,000/- from the complainant. Complainant relies upon the receipt of the registration charges showing the payment of RS. 31,020/-. The payment has been made by Demand Draft drawn on Akola Urban Co-operative Bank dated 07.07.2012. E-stamp amounting to Rs. 2,07,060/- has been purchased by the complainant. The complainant also contends that Rs. 10,000/- have been paid by him towards legal charges. The complainant is entitled to get refund of these amount except the amount of stamp duty with the interest at the prescribed rate under section 18 of RERA from the date of their respective payments. The complainant on the cancellation of agreement for sale is entitled to get refund of stamp duty from the concerned authority. The rules framed under RERA, prescribe the interest which is 2% above the highest MCLR of SBI, it is currently 8.05 %. Thus, the complainant is entitled to get interest on his amount at this rate from the date of payment to the promoters. The complainant is also entitled to get Rs. 20,000/- towards cost of their complaint. Hence, the order.

ORDER

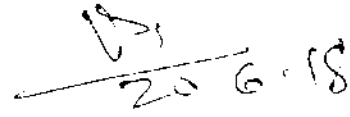
1. The respondents shall refund the amount mentioned in Para-7 of the order to complainant except the amount of stamp duty.
2. The respondents shall pay simple interest on the said amount at the rate of 10.05 % p.a. from the dates of their receipt till they are refunded as mentioned in the complaint.
3. The respondents shall pay Rs. 20,000/- to complainant towards the cost of the complaint.
4. Respondents are entitled to get set off, of compensation Rs. 1,82,000/- already paid to complainant.
5. Till the satisfaction of the complainant's claim, the charge of the aforesaid amount shall be on the flat booked by the complainant.



6. On satisfaction of the claim, the complainant shall execute the deed of cancellation of agreement in favour of respondents at respondents' cost.

Mumbai.

Date: 20.06.2018.



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