

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

COMPLAINT NO: CC0060000000012045

Mr. Arun Shantaram Hadap

... Complainant.

Versus

M/s. Hira Housing Cont.
(Hira Park)

... Respondents.

MahaRERA Regn: P51700012516.

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

Appearance:

Complainant: Adv. Avinash Pawar.

Respondents: Adv. U.S. Pande.

FINAL ORDER

22nd May 2018.

The complainant contends that he booked flat no. 703 in B Wing of respondents registered project Hira Housing Complex situated at Village Manda, Tal. Kalyan. The respondents agreed to deliver its possession on or before 30.06.2016 but they failed to hand over the possession till the date of complaint. Therefore, the complainant wants to withdraw from the project and claims refund of his amount with interest under Section 18 of Real Estate (Regulation and Development) Act, 2016 (RERA).

2. The respondents have filed their reply to contend that they have received only Rs. 17,49,999/- mentioned in their reply from the complainant. According to them, they paid Rs. 1,54,360/- towards the stamp duty and registration charges as the complainant pleaded with respondents to pay it on his behalf. The complainant gave cheque no. 050622 dated 10.10.2017 for Rs. 1,54,360/- drawn on Hindustan Co-operative Bank but the cheque was dishonoured and therefore, the



respondents filed a criminal case against the complainant. Similarly, Rs. 1,20,000/- were to be paid by the complainant towards water connection charges and electricity meter. The complainant's cheque of Rs. 1,20,000 bearing no. 092168 dated 23.10.2017 was dishonoured and therefore, the respondents filed another criminal case. Respondents contend that the complainant is liable to pay them Rs. 2,74,360/- with the interest from 16.06.2014, on 1,54,360/- and from April 2016 on 1,20,000/-.

3. Following points arise for determination. I record my findings thereon as under-

POINTS

FINDINGS

- | | |
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| 1. Whether the respondents have failed to deliver the possession of the booked flat on the agreed date 30 th June 2016? | Affirmative. |
| 2. Whether the respondents are liable to refund complainant's amount with interest as the complainant withdraws from the project? | Affirmative. |

REASONS

4. There is no dispute between the parties on the point that the complainant booked flat no. 703, B-Wing of Hira Housing Complex and the respondents agreed to hand over its possession on or before 30th June 2016. However, the respondents have failed to deliver its possession till the date of the complaint. Hence, I record my finding that the respondents have failed to hand over the possession of the flat on the agreed date.


5. Section 18 of RERA gives option to the allottee to withdraw from the project when the promoter fails to hand over the possession of the apartment on the agreed date. The complainant has exercised this option of withdrawal from the project. Therefore, the respondents are liable to refund his amount with interest at prescribed rate. The prescribed rate of interest is 2% above the SBI's highest MCLR.



6. The complainant has filed the payment format marked Exh.-'A'. The respondents have disputed the receipt of the loan amount disbursed on 18.09.2014. According to the complainant, the loan amount of Rs. 12,50,855/- had been collected by the respondents. The respondents contend that they received only Rs. 11,54,958/-. The loan amount had been directly disbursed by the Financer to the Respondents. Therefore, in order to support his claim, the complainant has produced the statement of Diwan Housing Finance Corporation Ltd. It clearly shows that Rs. 12,50,855/- had been disbursed on 18.09.2014. After considering this loan statement, I hold that the complainant has proved that Rs. 12,50,855/- had been paid to the respondents on 18.09.2014. The respondents have admitted the receipt of Rs. 1,61,041/- on 26.07.2016, Rs. 1,00,000/- on 25.11.2011, Rs. 1,70,000/- on 12.07.2012, Rs. 30,000/- on 17.07.2012, Rs. 30,000/- on 28.08.2012, Rs. 1,04,000/- on 19.03.2014. The complainant is entitled to get refund of these amount with interest, from the date of respective payments till they are refunded.

7. The complainant claims processing fee for loan charged by the Financer namely Rs. 2,900/- on 03.07.2014, Rs. 13,401/- on 06.09.2014 and Rs. 5,240/- on 18.09.2014. In order to support this, the complainant has relied upon the loan statement marked Exh.-'B' which shows that Rs. 2,581/- had been charged towards processing fee and Rs. 319/- had been collected towards service tax. The statement further shows that Rs. 11,677/- had been charged towards processing fee and Rs. 1,474/- had been collected towards service tax on 06.09.2014. The statement shows that on 18.09.2014 Rs. 62/- had been collected towards service charges. Therefore, the complainant is entitled to get the reimbursement of this much amount. Respondents are liable to pay Rs. 20,000/- to the complainant towards the cost of the complaint.

8. Though the respondents have mentioned about the dishonour of the cheques dated 10.10.2017 and 23.10.2017, the complainant has not claimed



the amount of those cheques. Since the complainant has been withdrawing from the project, he is not liable to make the payment of the said amount to the respondents and therefore, these amount will have to be ignored. The respondents have also claimed the interest on these amounts but they are not entitled to get the amounts and therefore, there is no question of getting interest on them. Hence the order.


ORDER

The respondents shall pay the complainant the amount mentioned in Para nos. 6 & 7 of the order with interest at the rate of 10.05% from the date of the receipt of the said amount till they are refunded.

2. The respondents shall pay the complainant Rs. 20,000/- as cost of the complaint.
3. The charge of the aforesaid amount shall be on the flat booked by the complainants till the satisfaction of his claim.
4. Complainant shall execute the deed of cancellation of the agreement for sale, at respondents' cost on satisfaction of his claim.

Mumbai.

Date: 22.05.2018.


22.5.18

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