

COMPLAINT NO: CC006000000055583

## Versus

MahaRERA Regn: -P51800007873

**Appearance:**

Complainant: S. Bhimani.

Respondents: Adv. Subit Chakrabarti.

### Final Order.

The Complainant has been seeking refund of his amount with interest under Section 18 of the Real Estate (Regulation and Development) Act, 2016(RERA) because the respondents failed to hand over the possession of flat no. B-3201 of their registered project RNA Exotica situated at Goregaon on agreed date 31.12.2017.

2. The respondents have pleaded not guilty and have filed their reply to contend that the complaint is not maintainable because there is no agreement for sale and there is no agreed date of possession. They further contend that other allottees of the project have filed Suit No, 425 of 2017 in Bombay High Court and the construction work is being monitored by the High Court as per the order passed by it and the project is to be completed by 31<sup>st</sup> October 2019. Therefore, the complaint is premature and is not maintainable. They further contend that they could not complete the project because it is under rehabilitation scheme and they have to face

many hurdles in evacuating the encroachers, face the litigations and problems in obtaining the various sanctions and permissions mentioned in their reply. On 24.11.2010 they applied for Environmental Clearance and got it on 28<sup>th</sup> November 2012. They applied to the Airport Authority of India for height clearance on 04.11.2011. The said Authority gave its height clearance to the extent of 119.96 mtrs. above mean sea level and therefore, they had to file the Appeal on 12.02.2014 before the Appellate Committee of Ministry of Civil Aviation. On 27.08.2015 the said Authority revised the height and granted NOC. Therefore, they had reduced the height of the building by 5 residential floors and had to seek the amended approval from MMRDA. They have also referred to some issues regarding occupants who encroached in the building no R-210 during the period from 2015 to 2017. They got approval from MMRDA on August 2017 for amended building in which five upper floors have been reduced. Therefore, they submit that the reasons for delay are beyond their control. Hence, they request to dismissed the complaint.

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

<b>Points.</b>	<b>Findings.</b>
1. Whether the respondents have failed to: hand over the possession of the flat on agreed date?	Affirmative.
2. Whether the complainant is entitled to: get refund of his amount with interest?	Affirmative.

### **REASONS.**

#### **Relevant provision:**

4. The Section 18 of RERA provides that allottee can claim refund of his amount with interest and/or compensation if the promoter fails to hand over the possession of the flat on agreed date. It gives the option to allottee




to withdraw from the project. In view of this provision, the Complainant has exercised his right to withdraw from the project and he claims refund of his amount with interest.

5. Section 18 of RERA allows the allottee to collect his amount with simple interest at prescribed rate which is 2% above the highest MCLR of SBI. The current rate of highest MCLR of SBI is 8.55%.

**Respondents' inability to hand over the possession of a flat on agreed date.**

6. The respondents have taken the plea that there is no agreement for sale. However, the fact remains that they have issued the allotment letter on 16.01.2014 on the basis of the expression of interest form dated 22.10.2013. On perusal of these documents, I find that the parties have agreed that the respondents shall sell the flat to the complainant and the complainant shall purchase it. The amount of consideration is fixed and the schedule of its payment has also been agreed upon by the parties. Not only that, the respondents have accepted the amount of consideration and taxes from time to time amounting to Rs. 1,58,61,799/-. So these documents are sufficient to show that the respondents agreed to sell the flat by settling the terms and conditions of the transaction and also received the above mentioned consideration amount.

7. It is correct that there is no formal agreement for sale and in allotment letter as well as in expression of interest there is no mention of the date of possession. However, the complainant has produced the respondents' letter May 2016 addressed to RNA Exotica Members showing that the possession would be handed over by December 2017. The respondents could not deny these contents of the letter. In addition to this, the complainant has relied upon the allotment letter to which the terms and conditions of VCL scheme have been attached. The term no. 1 provides that 'a purchaser of a flat under valid agreement shall have an option to be exercised within or before 28.02.2017 (but not before 1<sup>st</sup> January 2017 or

  
\_\_\_\_\_

handing over of possession, whichever is earlier, to call refund of the payment made by him till such date together with such amount calculated (on the carpet area mentioned in the agreement) at the rate of RS. 5,050/- psf plus Rs. 17/- per sq.ft. towards floor rise (for each floor commencing from 2<sup>nd</sup> residential floor), excluding taxes, duties and charges, etc. paid. However, this refund will be subject to deduction of Tax at Source, wherever applicable and after deducting 3.75% of the agreed original consideration towards charges for operation of the Scheme.' Therefore, on the basis of this document the complainant contends that the agreed date for handing over the possession is December 2017. Relying on these documents, I find that the agreed date of possession is December 2017. In view of this finding I do not agree with respondents' learned Advocate when he submits that since the High Court has directed the respondents to complete the project by 31.10.2019 and hence the complaint is premature. Admittedly the respondents have not handed over the possession of the flat on the agreed date. Hence, the complaint squarely falls under Section 18 of RERA.

**Entitlement of Complainant -Refund, interest, compensation & cost.**

8. The respondents have mentioned various reasons in their reply which caused delay in completing the project. Even if it is taken for granted that they are the genuine reasons which are beyond the control of the respondents, the respondents cannot claim the extension of more than six months of the date of possession in view of Section 8 (b) of Maharashtra Ownership Flats Act. Hence, the respondents are liable to refund the complainants amount shown in the statement of payments marked Exh. 'A' with interest at prescribed rate. Hon'ble Bombay High Court in Neelkamal Realtors Suburban Pvt. Ltd.-v/s-Union of India (Writ Petition No. 2737 of 2013, Original Side) held that the interest permissible under Section 18 is compensatory in nature. The complainant is entitled to get interest from the date of the payment till the refund as provided by Section



2 (za) of RERA. The respondents are liable to pay Rs. 20,000/- towards the cost of the complaint. Hence, the following order.

**ORDER.**

1. The respondents shall pay the complainant amount shown in the Exh. 'A' with interest at the rate of 10.55% per annum from the date of receipt till their repayment.
2. The Exh. 'A' shall form the part of this order.
3. The respondents shall pay the Complainant Rs. 20,000/- towards the cost of complaint.
4. The charge of the aforesaid amount shall be on the complainant's till satisfaction of Complainant's claim.

  
31.10.18  
(B.D. KAPADNIS)

Mumbai  
Date: 31.10.2018

Member & Adjudicating Officer,  
MahaRERA, Mumbai.

# Payment Plan

Highrise

Company : Skyline Construction Co.

Project : RNA Exotica

Ed. A. B. Member TJ

Name : Manish Mody		Apartment B-3201		Agreement Date :	
EOI Date :	22/10/2013	Salable :	1299.00	Registration Date :	01/01/1900
Terrace :	0.00	Garden :	0.00	Registration No :	
		Rate	12,394.00	Cost	16,099,806.00
Remarks	PS %	Claim Date	Amount	Service Tax	Total
95% due before 31st Dec	95	23/12/2013	15,294,816.00	567,131.00	15,861,947.00
13 On offering Possession	5		804,990.00	0.00	804,990.00
	100.00		16,099,806.00	567,131.00	16,666,937.00
Statutory Charges	0		454,650.00	0.00	454,650.00
Piped Gas Connection	0		25,000.00	0.00	25,000.00
Stamp duty & reg. exec. charges	0		10,000.00	0.00	10,000.00
Share & Administration	0		520.00	0.00	520.00
Money					
Interest free refundable security Deposit	0		100,000.00	0.00	100,000.00
	0.00		590,170.00	0.00	590,170.00
Grand Total :			16,639,576.00	567,131.00	17,257,107.00
Cheque No		Receipt Date	Receipt Amount	PS Amount	TDS Amount
726416 ✓		31/10/2013	500,000.00	0.00	5,051.00
949062 ✓		13/12/2013	500,000.00	442,971.00	5,051.00
726432 ✓		13/12/2013	500,000.00	505,051.00	5,051.00
726436 ✓		01/01/2014	4,000,000.00	4,040,405.00	40,405.00
726437 ✓		01/01/2014	3,288,175.00	3,321,389.00	33,214.00
949064 ✓		01/01/2014	2,300,000.00	2,323,233.00	23,233.00
949065 ✓		01/01/2014	2,100,000.00	2,121,213.00	21,213.00
792524 ✓		01/01/2014	2,500,000.00	2,525,253.00	25,253.00
726438 ✓		04/02/2014	15,001.00	15,153.00	152.00
Total:			15,703,176.00	15,294,668.00	158,623.00
TDS certificates received:-			0.00		
Total:					15,861,799.00

All receipts inclusive of taxes with TDS certificates received till date

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

COMPLAINT NO: CC006000000055583.

Manish Mody

---Complainant.

**Versus**

Skyline Construction Co.  
(Building on Sub plot - D,  
CTS No 101/B of village Goregaon)

---Respondents.

MahaRERA Regn: P51800007873

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

**ORDER ON THE RECOVERY APPLICATION FILED IN COMPLAINT.**

In this application for recovery Mr. Bhimani for the complainant submits that the respondents have not complied with the final order dated 31.10.2018 passed in the complaint. He further submits that in the matter of the same project, the respondents filed an appeal but did not deposit minimum amount prescribed under section 43(5) and therefore, that appeal is dismissed.


2. He submits that though the respondents have preferred an appeal bearing no. AT006/10976 against the order, they have not deposited any money nor they have paid any money to the complainant. Hence, he insists upon issuance of warrant.

3. Later on the respondents' advocate appeared, to say that they have preferred an appeal before the Appellate Tribunal. Filing of appeal ipso-facto shall not operate as stay to the execution proceeding as prescribed by Order 41 R-5 of C.P.C.

4. In the facts and circumstances of the case, issue recovery warrant under Section 40 (1) of RERA.

Mumbai.

Date:06.05.2019.

  
6-5-19

(B.D. Kapadnis)

Member & Adjudicating Officer,  
MahaRERA, Mumbai.