

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

**COMPLAINT NO: CC006000000001969**

Siddharth Pandey  
Rakhi Pandey

... Complainants.

**Versus**

KD Lite Developers Pvt. Ltd.  
(Ruparel Orion)

... Respondents.

MahaRERA Regn: - **P51800004525**

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

**Appearance:**

Complainants: M/s Hariani & Co.

Respondents: Adv. Alvina Castelino.

**Final Order.**

11<sup>th</sup> April 2018

The complainants have been claiming their amount with interest and compensation under Section 18 of Real Estate (Regulation and Development) Act, 2016, (RERA) from the respondents by this complaint.

2. The complainants contend that they booked flat no. B-302 with two car parking spaces situated in the respondents' registered project 'Ruparel Orion' Chembur, Mumbai. The respondents agreed to deliver the possession of the flat by 31<sup>st</sup> March 2016. They failed to hand over the possession on the agreed date. Hence the complainants have filed this complaint.

3. The respondents have filed their reply wherein they have referred to the fact that the cheque of Rs. 2,35,087/- dated 10<sup>th</sup> January 2015 issued by the complainants bounced. The respondents have also been disputing the complainants' claim of Rs. 80,000/- paid to the respondents towards the

legal fees. The respondents have contended that they are entitled to get reasonable extension of time as contemplated in Clause 36 of the agreement. According to them, this is the SRA project and they have mentioned the list of the developments taken place from time to time in respect of their project. Events which have occurred before the agreement of sale are not relevant and hence will not quote them. The agreement for sale has been executed on 10<sup>th</sup> January 2015. The respondents contend that the last revised letter of intent was approved on 21.12.2016 and was issued on 04.03.2017. By virtue of these letters of intent they have amended plans and intimation of approval on 29<sup>th</sup> March 2017. According to them, though they have received commencement certificate on 5<sup>th</sup> October 2012 itself they could not complete the project in time mainly because the Government resolved on 06.04.2008 to give an accommodation having carpet area of 269 sq. ft. in place of 225 sq. ft. free of cost to the members of housing society and therefore, they had to revise plans and seek necessary approvals. They had to face litigations also to which they have referred to in their reply. The occupants of the neighbouring plots bearing no. 366 also caused obstruction in the construction work and therefore, they contend that they were prevented by the causes which were beyond their control for completing the project in time. Hence, they request to dismiss the complaint.

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

Points.	Findings.
1. Whether the respondents have failed to : deliver the possession of the flat on the agreed date?	Affirmative.



- |  |              |
|--|--------------|
| 2. Whether the respondents were prevented by the causes beyond their control for completing the project in time? | Negative.    |
| 3. Whether the complainants are entitled to get refund of their 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 deliver the possession of the apartment on the date specified in the agreement. It gives the option to allottee to withdraw from the project. In view of this provision, the complainants have exercised their right to withdraw from the project and claim refund of their amount with interest.

5. Section 18 of RERA allows the allottee to collect his amount with interest at prescribed rate which is 2% above the MCLR of SBI. The current rate of MCLR of SBI is 8.05%. Thus, allottee is entitled to get simple interest at the rate of 10.05% on their amount from the date of its receipt by the promoter.

#### Delayed possession.

6. Respondents have not disputed the fact that they have not handed over the possession of a flat on agreed date. I hold that this fact is proved.

#### Causes for delay:

7. The respondents have mentioned the causes of delay in their reply to which I have briefly referred to. The respondents were aware of the fact that it being SRA project, they were to face many hurdles, they were to seek various permissions and they were to revise the plans and specifications when needed. Despite these facts, they entered into the agreement for sale



of the flat with complainants on 10<sup>th</sup> January 2015 and promised the complainants that they shall deliver the possession of the flat by 31<sup>st</sup> March 2016. Therefore, they cannot use difficulties faced by them as the shield to deny the complainants' claim. Even otherwise, the respondents were not entitled to get the extension for more than 3 + 3 months for the reasons which were beyond their control in completing the project as contemplated by Section 8 (b) of the Maharashtra Ownership Flats Act 1963 under which the project was governed at relevant time. Even after enjoying the grace period of six months, the respondents have not completed the project. Section 8 of the said Act in such situation permits the allottee to get refund of his amount with interest from the date of payment. Section 18 of RERA is the similar provision. The complainants have exercised their right to withdraw from the project and claim refund of their amount. Therefore, I find that respondents are liable to refund their amount with interest from the date of receipt thereof.

8. The complainants have filed purshis marked Exh. A showing the payment made by them to the respondents towards the cost of the flat including the amount of stamp duty of Rs. 7,92,500/- and Rs. 80,000/- paid towards legal fees to the respondents. I find that the stamp duty is paid in the name of the complainants and therefore, the complainants can get refund of stamp duty on cancellation of the agreement for sale. Hence, the complainants are not entitled to get reimbursement of the stamp duty from respondents.

9. The complainants have claimed Rs. 80,000/- towards the payment of legal fees to the respondents. The respondents have denied this payment. The complainants have produced statement of account of HDFC Bank(Annex., C-3) to prove that they paid Rs. 80,000/- on 04.03.2014. Respondents have committed default in handing over the possession of a flat on the agreed date, hence they are liable to reimburse the amount of Rs. 80,000/ claimed by complainants. Hence, except the amount of stamp

duty, the respondents are bound to repay the amount mentioned in the purshis marked Exh. 'A'. They are also liable to pay to the complainants Rs. 20,000/- towards the cost of complaint. Hence, the following order.

### ORDER.

1. Respondents shall refund the amount mentioned in purshis marked Exh.'A', except the amount of stamp duty, with simple interest at the rate of 10.05% per annum from the date of receipt or payment to the Government as the case may be, till they are refunded. Exh.'A' shall form the part of this order.
2. The respondents shall pay the complainants Rs. 20,000/- towards the cost of the complaint.
3. The charge of the aforesaid amount shall be on the flat booked by the complainants till its repayment.
4. Complainants shall execute the deed of cancellation of the agreement for sale, at respondents' cost on satisfaction of their claim.

Mumbai.  
Date: 11.03.2018.



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



Suran madam

BEFORE THE HON'BLE ADJUDICATING OFFICER OF REAL ESTATE REGULATION  
AUTHORITY

MAHARASHTRA, MUMBAI

COMPLAINT/APPLICATION NO. CC006000000001969

महारेण	
आवक	1074
दिनांक	4/4/2018
सही	

Between

Rakhi Pandey & Anr.

And

K.D. Lite Developers Private Limited

Ent. A.

Member / AO II

...Applicants

...Respondent

PURSHIS

Pursuant to the directions given by the Hon'ble Adjudicating Officer of the Maharashtra Real Estate Regulatory Authority ("MahaRERA"), Mr. Bhalchandra Kapadnis, on the hearing held on 4 April 2018, please find below the details of payments made by the Complainant to the Respondent:

Sr. No.	Amount (in Rupees)	Date of Payment	Particulars
1.	11,00,000/-	11/01/2013	Towards consideration paid by the Complainants to the Respondent.
2.	7,00,000/-	15/02/2013	Towards consideration paid by the Complainants to the Respondent.
3.	5,00,000/-	15/04/2013	Towards consideration paid by the Complainants to the Respondent.
4.	8,00,000/-	20/08/2013	Towards consideration paid by the Complainants to the Respondent.
5.	70,000/-	28/08/2013	Towards consideration paid by the Complainants to the Respondent.
6.	31,70,000/-	20/01/2015	Towards consideration paid by the Complainants to the Respondent.
7.	7,92,500/-	10/01/2015	Stamp Duty on the Agreement for Sale
8.	31,960/-	10/01/2015	Registration Fees and scanning charges on Agreement for Sale
9.	1,58,500/-	10/01/2015	Value Added Tax (VAT)
10.	2,35,087/-	10/01/2015	Service Tax
11.	80,000/-	03/04/2015	Legal Fees paid to the Respondent
	76,38,047/-		Total

Sd/-

M/s. Hariani & Co.  
Advocates for the Applicants