

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

COMPLAINT NO: CC006000000001986

Ashok P. Pardhi / Reshma Ashok Pardhi
Arati P. Vichare / Shrikat P. Vichare
Jayesh Nayak (Girish Chandavarkar)
Dr. Pravin Mahajan
Anuja Bhupal Apte / Bhupal Vinayak Apte
Ajay Raorane / Anjali Ajay Raorane
Shilpa Mahesh Saboo
Hitesh Pachmatiya / Deepak Gandhi
Kisor Gupta

... Complainants.

Versus

Sapphire Space Infracon Pvt.Ltd.
(Sathyanagar Phase 1)

... Respondents.

COMPLAINT NO: CC006000000002012

Suhas P. Bhogale
Prashant Kumar Mishra
Ahmed Abdul Sayyed
Kapildev G. Yagnik
Bonhishika Majumdar
Ramakant V. Nerurkar
Swapnil R. Nerurkar
Sameer B. Dave
Shyamkumar Sharma
Ramlal B. Kumawat

... Complainants.

Versus

Sapphire Space Infracon Pvt.Ltd.
(Sathyanagar Phase 1)

... Respondents.

MahaRERA Regn: - P99000011436

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



Appearance:

Complainants: Adv. Shashikant Kadam.

Respondents: Adv. Deepa Pohuja.

Final Order.30th May 2018

The complainants have filed these complaints under Section 18 of Real Estate (Regulation and Redevelopment) Act, 2016 (RERA). Complainants have pleaded following material facts-

Name of Complainant	Flat No.	Possession date
Ashok P. Pardhi / Reshma Ashok Pardhi	A-454	30.06.2011
Arati P. Vichare / Shrikat P. Vichare	A-459 & A-460	30.06.2011
Jayesh Nayak (Girish Chandavarkar)	A-477 & A-478	31.03.2011
Dr. Pravin Mahajan	A-542 & 543	30.06.2011
Anuja Bhupal Apte / Bhupal Vinayak Apte	A-570 & 571	31.03.2011
Ajay Raorane / Anjali Ajay Raorane	A-579	30.06.2011
Shilpa Mahesh Saboo	A-588	31.03.2011
Hitesh Panchmatiya / Deepak Gandhi	A-446	31.03.2011
Kisor Gupta	A-450	31.03.2011
Suhas P. Bhogale	A-287	30.06.2011
Prashant Kumar Mishra	A-310	30.06.2011



Ahmed Abdul Sayyed	A-322	30.06.2011
Kapildev G. Yagnik	A-323	30.06.2011
Bonhishikha Majumdar	A-326	31.05.2011
Ramakant V. Nerurkar	A-333	30.06.2011
Swapnil R. Nerurkar	A-334	30.06.2011
Sameer B. Dave	A-341	30.06.2011
Shyamkumar Sharma	A-382	31.03.2011
Ramlal B. Kumawat	A-395	30.06.2011

Respondents have failed to deliver possession of these flats of their registered project Sathyanagar, Phase I situated at village Navale Tal. & Dist. Palghar till the date of complaints. Complainants want to withdraw from the project. They claim their amount with interest on their investments u/s. 18 of the Real Estate (Regulation and Development) Act, 2016 (for short, RERA).

2. The respondents have pleaded not guilty. They have filed the reply to contend that they along with Sapphire Space Infracon Pvt. Ltd. and Shriram Lan entered into the joint development agreement on 05.10.2009 to develop the project land for low income housing, they launched the project in 2009. The agreements for sale came to be executed with the complainants in the year 2010. They agreed to deliver the row houses near about 31.03.2011 but they could not complete the project because in September 2010 news appeared in the Newspaper regarding ban on sand mining. Therefore, supply of the sand reduced considerably and its price increased. They had to procure river sand from other places which proved

very expensive and the cost of construction increased beyond threshold of builder's tolerance, the project became infeasible. Because of increase in the cost, first contractor started to default to honour the construction milestones. They could not increase the price despite sale price escalation clause in the agreement. In December 2011, the contractor abandoned the project and in 2012 D.C. Rules were amended. Shriram Lan who was to provide the services of contractors appointed another contractor on turnkey basis but his services were terminated in January 2013 as he could not cope up with the construction milestones due to costly sand. Respondents faced financial trouble in the year 2014. Shriram Lan failed to recommend contractor and honour their commitments. Therefore, dispute between the partners started which adversely affected the construction work. In December 2014 Shriram sold its shares in favour of respondents Shri Sapphire and respondents executed amended joint development agreement on 11.12.2014. Thereafter, Shriram sold its share-holding in respondents' company to Sapphire on 03.03.2015. Subsequently, Sapphire took over the share holdings of respondents, so the respondents' company is controlled by Sapphire and it took the task of reviving entire project. Therefore, they contend that these reasons were beyond their control. Hence, they request to dismiss the complaint.

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

POINTS.	FINDINGS.
1. Whether the respondents have failed to deliver the possession of the row houses booked by the complainants on agreed dates?	Affirmative.
2. Whether the complaints are entitled to get refund of their amount with interest?	Affirmative.



REASONS

4. The respondents have not disputed the fact that they entered into agreements for sale of the row-houses in favour of complainants and agreed to deliver their possession on or before 31.03.2011. However, they have failed to deliver the possession on agreed date. Therefore, I record my finding that the respondents have failed to deliver the possession of row-houses of the complainants on agreed dates.

Reasons for delay:

5. The respondents have contended that there was ban on sand mining and therefore, supply of the sand reduced considerably. It resulted into the increase in cost of construction and the contractor therefore, abandoned their project. I find that the documents placed on record by respondents do show that the Hon'ble High Court banned sand mining from river bed for some time. Therefore, there was shortage of sand. It is pertinent to note that the agreements have been executed by the parties when Section 8 of Maharashtra Ownership Flats Act, 1963 was in force. Section 8 (b) of the said Act provides, the agreed period for delivering the possession of the flat can be extended for first three months if cause in delay beyond the control of the promoter exist and it can be extended further for three months if they further exist. Under no circumstances this period can be extended beyond these six months. Section 8 also makes it clear that if the promoter fails to deliver the possession on the agreed date, then the promoter makes himself liable to refund the allottees' amount from the dates received by him.

6. The respondents have contended that in the year 2012, D.C. Rules changed but they agreed to deliver the possession of the flats before 31.03.2011 and DC Rules have been changed thereafter. Hence it cannot come to their help. The respondents have referred to some internal problems faced by them regarding the abandonment of the services of the contractors, financial difficulties faced by them and their internal disputes.



The allottees do not have any concern with their matters and therefore, I do not hold that these grounds delayed the project and they were beyond the control of the promoters. Hon'ble Bombay High Court in Neelkamal Realtors Suburban Pvt. Ltd. - v/s- Union of India, Writ Petition No. 2737 of 2017 has elaborately dealt with the issue regarding delayed projects because of the reasons beyond the control of the promoters. It is observed that the promoter is expected to have fair assessment of time required for completing the project having sufficient experience in the market. Moreover, the respondents have contended the difficulties faced by them in completing the project which in my opinion can be considered as the mitigating circumstances under Section 72 of RERA at the most, if the Authority prefers to award compensation.

7. The complainants want to withdraw from the project as the respondents have failed to deliver the possession of the row houses booked by them on agreed dates. They have exercised their right to withdraw from the project which is conferred upon them by Section 18 of RERA.

Entitlement of the complainants:

8. The complainants have filed their statements showing the payment of amount made by them to the respondents. The complainants are entitled to get back the amount of consideration paid by them to the respondents along with the ancillary expenses such as the registration charges. They are not entitled to get the amount spent by them on stamp duty because the same has been paid in their names. They can get its refund on cancellation of agreements for sale. The complainants have filed these complaints jointly. They are entitled to get Rs. 20,000/- for each complaint.

9. The complainants are entitled to get the above mentioned amount with interest at the rate of 10.05% from the date of their payment to the respondents or to the Government, as the case may be. The respondents are not liable to pay the compensation for mental agony and harassment claimed by the complainants because the interest is quite sufficient to cover




these grounds. Moreover, the interest is compensatory in nature. Similarly, complainants are not entitled to get the amount of house rent or loss of rent because they are getting the interest on the amount paid by them to respondents. They are not entitled to get bank interest claimed by them separately. Hence, the following order.

ORDER

1. The respondents shall pay the complainants amount mentioned in their statements attached to this order.
1. The respondents shall pay the interest on the aforesaid amount at the rate of 10.05% from the date of their payment to respondents or Govt., as the case may be.
2. The respondents shall pay Rs. 20,000/- towards the cost of each complaint.
3. The charge of the aforesaid amount shall be on the flats booked by the complainants till its repayment.
4. Complainants shall execute the deed of cancellation of the agreements for sale, at respondents' cost on satisfaction of their claims.

Mumbai.
Date: 30.05.2018.


30 5 18
(B.D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.

ALLOTEE:
SUHAS BHOGALE
Unit: A- 287

PAYMENT DETAILS
PROJECT: SATHYA NAGAR - Boisar
Complaint No.- CC006000000002012 (REFUND)

Group 3
Cramp 3
Sameer Datta
Name

Sr No.	Date	Amount Paid	Description / Purpose	Receipt No / Cheque No. with Bank Name
1	6-Jun-10	15,000	Booking Amount	Receipt No. 1799
2	1-Jul-10	85,000	Allotment	Receipt No. 2021
3	3-Sep-10	81,000	1st instalment	Receipt No. 2610
4	9-Nov-10	930	2nd instalment	Receipt No. 3369
5	9-Nov-10	51,980	3rd instalment	Receipt No. 3369
6	11-Jul-11	5,198	MVAT Tax	Receipt No. 5404
7	12-Jan-11	6,100	Registration	Agreement for Sale
Total amount		Rs 245,208		

Complainant Name & Sign



Respondents Remark-

Respondents Name & Sign

ALLOTEE:

Prashant Mishra

Unit: A- 310

PAYMENT DETAILS**PROJECT: SATHYA NAGAR - Boisar****Complaint No.- CC006000000002012 (REFUND)**

Sr No.	Date	Amount Paid	Description / Purpose	Receipt No / Cheque No. with Bank Name
1	21-Oct-10	15,000	Booking Amount	Amounts mentioned on Agreement
2	21-Oct-10	85,000	Allotment	Amounts mentioned on Agreement
3	16-Mar-11	96,175	1st instalment	Receipt No. 4437
4	10-May-11	112,100	2nd instalment	Receipt No. 6594
5	2-May-11	5,605	MVAT Tax	Receipt No. 4841
6	29-Nov-10	6,470	Registration	Agreement for Sale
Total amount		Rs 320,350		

Complainant Name & SignPRASHANTKUMARNMISHRA
Prashant kumar**Respondents Remark-****Respondents Name & Sign**

ALLOTEE:
Ahmed Sayyed
Unit: A- 322

PAYMENT DETAILS
PROJECT: SATHYA NAGAR - Boisar
Complaint No.- CC006000000002012 (REFUND)

Maier

Sr No.	Date	Amount Paid	Description / Purpose	Receipt No / Cheque No. with Bank Name
1	19-Mar-11	15,000	Booking Amount	Receipt No. 4459
2	26-Apr-11	85,000	Allotment	Cheque acknowledgement from Conglome. Also amount mentioned on agreement schedule.
3	13-Jan-12	25,400	1st instalment	Receipt No. 5793
4	15-Jan-13	115,612	2nd instalment	<u>Paid to Conglome from DHFL Bank Loan</u> Cheque 183887(12-12-2013), Amount - 77,923
5	17-Aug-11	5,784	MVAT Tax	Receipt No. 5537
6	6-Jun-11	6,690	Registration	Agreement for Sale
Total amount		Rs 253,486		

Complainant Name & Sign

Ahmed

Respondents Remark-

Respondents Name & Sign

W. Davis

Sr No.	Date	Amount Paid	Description / Purpose	Receipt No / Cheque No. with Bank Name
1	30-Oct-10	15,000	Booking Amount	Receipt No. 3205
2	1-Dec-10	85,000	Allotment	Receipt No. 3651
3	25-May-11	50,000	1st instalment	Receipt No. 5060
4	17-Jun-11	46,175	2nd instalment	Receipt No. 5255
5	29-Jul-11	56,050	3rd instalment	Receipt No. 5470
6	1-Jun-14	56,050	4th instalment	Receipt No. 6630
7	25-May-11	5,605	MVAT Tax	Receipt No. 5061
8	20-Dec-10	6,470	Registration	Agreement for Sale
Total amount		Rs 320,350		
Complainant Name & Sign				
KAPIL DEV Q. JAINIK <i>K. Jainik</i>				
Respondents Remark-				
Respondents Name & Sign				

ALLOTEE:

Bonhishikha Majumdar

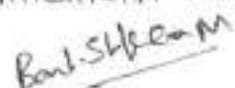
Unit: A- 326

PAYMENT DETAILS**PROJECT: SATHYA NAGAR - Boisar****Complaint No.- CC006000000002012 (REFUND)**

Sr No.	Date	Amount Paid	Description / Purpose	Receipt No / Cheque No. with Bank Name
1	18-Jun-10	15,000	Booking Amount	Receipt No. 1903
2	17-Jul-10	68,800	Allotment	Receipt No. 2168
3	30-Oct-10	98,130	1st instalment	Bank Statement
4	2-Oct-14	103,960	2nd instalment	Receipt No. 6717
5	6-Sep-10	6,060	Registration	Agreement for Sale
Total amount		Rs 291,950		

Complainant Name & Sign

BONHISHIKHA MAJUMDAR

**Respondents Remark-****Respondents Name & Sign**

ALLOTEE:
Ramakant Nerurkar
Unit: A- 333

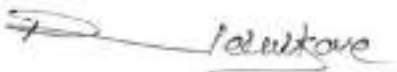
PAYMENT DETAILS
PROJECT: SATHYA NAGAR - Boisar
Complaint No.- CC006000000002012 (REFUND)



Sr No.	Date	Amount Paid	Description / Purpose	Receipt No / Cheque No. with Bank Name
1	6-Jun-10	15,000	Booking	Receipt No. 1784
2	21-Jun-10	85,000	Allotment	Receipt No. 1946
3	29-Jul-10	81,930	1st instalment	Receipt No. 2275
4	3-Sep-10	51,981	2nd instalment	Receipt No. 2609
5	2-Nov-10	51,980	3rd instalment	Receipt No. 3259
6	17-May-10	5,198	MVAT Tax	Receipt No. 5002
7	9-Aug-10	6,080	Registration	Agreement for Sale
Total amount		Rs 297,109		

Complainant Name & Sign

R. V. Nerurkar



Respondents Remark-

Respondents Name & Sign

ALLOTEE:
Swapnil Nerurkar
Unit: A- 334

PAYMENT DETAILS
PROJECT: SATHYA NAGAR - Boisar
Complaint No.- CC006000000002012 (REFUND)

[Signature]

Sr No.	Date	Amount Paid	Description / Purpose	Receipt No / Cheque No. with Bank Name
1	7-Sep-10	15,000	Booking Amount	Receipt No. 2638
2	5-Oct-10	85,000	Allotment	Receipt No. 2851
3	27-Jul-12	58,890	1st instalment	Receipt No. 5985
4	9-Dec-12	100,000	2nd instalment	Receipt No. 6049
5			3rd instalment	
6	17-May-11	5,198	MVAT Tax	Receipt No. 5002
7	3-Jan-11	6,060	Registration	Agreement for Sale
Total amount		Rs 270,148		

Complainant Name & Sign

Swapnil R. Nerurkar
Swapnil
Nerurkar

Respondents Remark-

Respondents Name & Sign

ALLOTEE:
Sameer Dave
Unit: A- 341

PAYMENT DETAILS
PROJECT: SATHYA NAGAR - Boisar
Complaint No.- CC006000000002012 (REFUND)

[Signature]

Sr No.	Date	Amount Paid	Description / Purpose	Receipt No / Cheque No. with Bank Name
1	18-Oct-10	15,000	Booking Amount	Receipt No. 3050
2	12-Nov-10	85,000	Allotment	Receipt No. 3400
3	14-Oct-10	102,423	1st instalment	Receipt No. 5684
4	14-Oct-10	47,577	2nd instalment	Receipt No. 5684
5	4-Jul-11	20,500	3rd instalment	Receipt No. 5385
6	3-May-11	5,605	MVAT Tax	Receipt No. 4860
7	24-Nov-10	6,470	Registration	Agreement for Sale
Total amount		Rs 282,575		

276,105 (6,470)

Complainant Name & Sign

Sameer B Dave
[Signature]

Respondents Remark-

Respondents Name & Sign

ALLOTEE:

Shyamkumar Sharma

Unit: A- 382

PAYMENT DETAILS**PROJECT: SATHYA NAGAR - Boisar****Complaint No.- CC006000000002012 (REFUND)**

Sr No.	Date	Amount Paid	Description / Purpose	Receipt No / Cheque No. with Bank Name
1	28-Mar-10	10,000	Booking Amount	Receipt No. 889
2	1-Apr-10	58,599	Allotment	Receipt No. 1064
3	13-May-10	45,733	1st instalment	Receipt No. 1521
4	7-Jul-10	45,733	2nd instalment	Receipt No. 2059
5	6-Sep-10	45,733	3rd instalment	Receipt No. 2625
6	11-Nov-10	45,733	4th instalment	Receipt No. 3390
7	29-Dec-10	45,733	5th instalment	Receipt No. 3897
8	18-Feb-11	45,733	6th instalment	Receipt No. 4283
9	10-Apr-11	45,733	7th instalment	Receipt No. 4550
10	27-Apr-11	4,573	MVAT Tax	Receipt No. 4702
11	14-May-10	5,460	Registration	Agreement for Sale
Total amount		Rs 398,763		

Complainant Name & Sign SHYAM KUMAR SHARMA

Respondents Remark-

Respondents Name & Sign

ALLOTEE:

Ramlal Kumawat

Unit: A- 395

PAYMENT DETAILS**PROJECT: SATHYA NAGAR - Boisar****Complaint No.- CC006000000002012 (REFUND)**

Sr No.	Date	Amount Paid	Description / Purpose	Receipt No / Cheque No. with Bank Name
1	6-Dec-10	15,000	Booking Amount	Receipt No. 3661
2	25-Dec-10	85,000	Allotment	Cheque acknowledgement from Conglome. Also amount mentioned on agreement
3	15-Jan-13	102,423	1st instalment	Receipt No. 6057
4	15-Jan-13	13,577	2nd instalment	Receipt No. 6057
5		28,350	2nd instalment	Receipt No.
6	31-May-11	5,784	MVAT Tax	Receipt No. 5127
7	7-Jan-11	6,650	Registration	Agreement for Sale
Total amount		Rs 256,784		

RAMLAL KUMAWAT
Complainant Name & Sign

Respondents Remark-

Respondents Name & Sign