

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

**COMPLAINT NO.CC006000000000468**

**Prdeeep Bendre**

.... **Complainant**

**V/s**

**Sharad Chokhani for**

**M/S Shakun Reality Pvt. Ltd.**

.... **Respondents**

**MahaRERA Regn.: P99000001708**

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

Complainant: in person.

Respondent: Mr. Dinesh Rao Adv.

**FINAL ORDER**

**08<sup>th</sup> February 2018.**

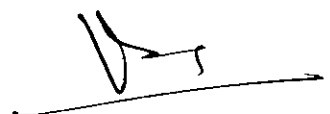
**Pleadings of the parties.**

In this complaint filed under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (RERA), the complainant complains that he booked Flat No. E-705 in Respondents' registered project "SHREE SHAKUN GREENS" situated at Virar. The Respondents agreed to deliver its possession on or before December 2014, but they have failed to deliver it till the date of complaint. He wants to withdraw from the project and therefore claims his amount with interest and/compensation from the respondents.

  
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2. The Respondents have filed their written statement to contend that the complainant booked the flat under Tripartite agreement, under 20:80 scheme. The HDFC Bank deducted Rs.2,57,593/- towards the interest payable till February 2015 and disbursed the remaining amount of Rs.17,42,407/-. Therefore, the respondents contend that they have paid the interest on the loan amount till February 2015. They further contended that they could not complete the project within the agreed period because of the reasons enumerated in Clause 8 of the agreement for sale which are beyond their control. They have further contended that though Vasai Virar Municipal Corporation (VVMC) does not have proper infrastructure to grant fire NOC for "high rise" buildings and therefore though they have applied for Occupation Certificate they have not received it. According to them, the Environment Department has not given consent to operate sewerage treatment plant and therefore environmental clearance is delayed. These reasons are beyond their control. They have further contended that they have received only Rs.23,82,407/- mentioned in the confirmation of accounts marked Annexure 'A' attached to their reply. They have specifically denied that they received Rs.3,20,000/- on 1.4.2014 and Rs.1,28,200/- on 6.6.2014 in cash from the complainant. Therefore, they request to dismiss the complaint.

3. The following points arise for consideration. I record the findings thereon as under: -

A handwritten signature in black ink, consisting of a stylized 'V' followed by a horizontal line and a small flourish.

<b>Points.</b>	<b>Findings.</b>
1. Whether Respondents have failed to deliver the possession of the booked Flat on the agreed date?	: Affirmative.
2. Whether the complainant is entitled to get his amount with interest?	: Affirmative.

### **REASONS**

#### **Legal Provision**

4. Section 18 of RERA provides that if the Promoter fails to give possession of an apartment on the date specified in the agreement for sale then the allottee is entitled to get refund of his amount with interest and/or compensation from the promoter, if the allottee wishes to withdraw from the project.

#### **Delayed Possession**

5. There is no dispute between the parties that the respondents agreed to deliver the possession of the flat booked by the complainant on or before the end of December 2014 but it has not been handed over to the complainant till filing of the complaint. Hence, I hold that the respondents have failed to hand over the possession of the flat on the agreed date.

6. Since the respondents have failed to deliver the possession of the flat on the agreed date, the complainant has exercised his option to withdraw

from the project and demand his amount with interest and/compensation. This right is conferred upon him by section 18 and he cannot be therefore compelled to continue in the project against his will.

**Reasons for Delay possession**

7. The respondents have taken the stand that they could get the clearance from the department of environment because of the delay caused by the Authority. The complainant has brought to my notice that the said department gave the environment clearance by its order dated 17.07.2010 and this order was valid for the period of 5 years. The respondents did not complete the project within this period of 5 years and therefore they cannot take summersault to blame the authority. I find no reason to disagree with the complainant.

8. The respondents have contended that they have constructed a "High rise" building. VVMC approved their plan and therefore they have constructed the building. However, the VVMC has no proper infrastructure required as per the letter of Maharashtra Fire Service Directorate and therefore VVMC is unable to give no objection certificate to its department for granting O.C. It is a fact when VVMC approved the plan for High rise building, it ought to have set up proper infrastructure required under the law to render their services. Fortunately, the Govt. of Maharashtra through its Urban Development Department has issued circular No.TPS-1816/CR/452/16/UD-13 dated 29<sup>th</sup> January 2017 under



the Maharashtra Right to Public Services Act, 2015, thereby the Municipal Corporations and Councils have to provide services regarding the issuance of Occupancy Certificate within 8 days from the receipt of their applications. I hope and trust that VVMC shall render the services within the stipulated time. Be that, as it may.

9. Even if it is taken for granted that the respondents had some reasons which delayed their project and they were beyond their control, they are entitled to get the maximum extension of 3 months if such reasons continue and if they continue further then the respondents may get a period of 3 months more as has been laid down by Section 8 (b) of Maharashtra Ownership Flats Act, 1963 which is still applicable in the State of Maharashtra and Section 88 of RERA also permits it to apply. Even after giving the credit of these six months to the respondents, I find that the project is delayed. These grounds at the most can be taken into consideration as mitigating circumstances to refuse the complainant's claim for compensation.

#### **Entitlement of Complainant**

10. The Complainant has filed his statement showing the amount paid by him to the respondents. The respondents have also filed statement of confirmation along with their reply. I have heard both the parties on this issue. I find that there is no dispute between the parties that the complainant paid Rs.1,00,000/- on 23.10.13, Rs.4,00,000/- on 18.11.2013.



Therefore, the payment of these amount has been proved by the complainant.

11. According to the complainant the respondents received Rs.19,75,000/- on 20.12.2013 from his loan account. On this point the respondents have contended that HDFC Bank sanctioned a loan of Rs.20,00,000/- under Tripartite Agreement. While disbursing this loan Bank collected Rs.2,57,593/- towards the interest payable till February 2015 and disbursed only Rs.17,42,407/-. In view of this fact I hold that Rs. 20,00,000/- have been disbursed from the loan account of the complainant. Respondents can be absolved from paying interest on this amount till February 2015.

12. The Complainant contended that he paid Rs.3,20,000/- on 1<sup>st</sup> April, 2014 and Rs.1,28,200/- on 07.06.2014 in cash. According to him, the respondents insisted upon him to pay the said money in cash before entering into agreement for sale. The Respondents took undertaking from him for payment of said amount and also took two cheques of the said amount from him by promising that on payment of cash, they shall destroy the undertaking and the cheques. When the complainant complied with their demand they executed the agreement for sale. On payment of said amount in cash on the above mentioned dates, the respondents destroyed the undertaking given by the complainant and his cheques. He has filed his affidavit and the affidavit of his wife stating that these amount were paid

to the respondents in their office. Mr. Sachin Chokhani has also filed his affidavit to deny these cash payments. So there is oral evidence which contradicts the evidence of each other. In order to support his contention, the complainant has relied upon photostat copies of the cheques given by him. Since the original cheques were given to the respondents and according to complainant they have been torn off by the respondents on receipt of cash, I find it necessary to rely upon the photostat copies of the cheques. The cheque dated 1.4.2014 is of Rs.3,20,000/- and the cheque dated 01.06.2014 is of Rs.1,28,200/-. These cheques are payable to respondents. The cheques have been issued by the HDFC Bank as the account number of the complainant appears to have been generated by the Bank system including the name of the complainant. In addition to this, the complainant has also relied upon his Bank statement showing that Rs.2,45,000/- and Rs.1,28,200/- had been withdrawn by him from his savings account during those days. He further clarifies that he borrowed Rs. 75,000/- from his relatives to pay the respondents Rs.4,48,200/- in cash. So the oral evidence of the complainant is corroborated by the oral evidence of his wife Smt. Smita and documentary evidence to which I have referred to above. Hence, I accept complainant's evidence to hold that he paid Rs.3,20,000/- on 1.4.2014 and Rs.1,28,200/- on 7.6.2014 to the respondents.

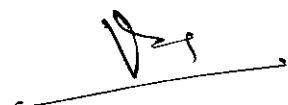
13. The complainant contends that he paid Rs.1,40,000/- on 1<sup>st</sup> June 2014 towards legal charges, electric meter, water deposit, society formation,



development charges mentioned in clause 14 of the agreement. The respondents admitted that they received these amount.

14. The complainant further contends that he paid Rs. 25,100/- towards registration charges and this fact has also not been disputed by the respondents. The respondents have committed default in delivering the possession of the flat on the agreed date and thereby they have incurred liability to refund the amount paid to them by the complainant. Not only this, the respondents have also incurred liability to reimburse the complainant all the amount which he had to pay/spend connecting to the transaction of purchase of the flat. He is not at fault and therefore he cannot be made to sustain these losses. Hence I hold that the complainant is entitled to recover all the amount, the payment of which has been proved by him as discussed above. Complainant is also entitled to get Rs. 20,000/- towards the cost of this complaint.

15. Section 18 of RERA confers right to allottee to recover the amount with interest at prescribed rate. The rules framed by the State of Maharashtra have prescribed rate of interest is equal to State Bank of India's highest marginal cost of lending rate which is presently 8.05% plus 2%. Thus, the complainant is entitled to get simple interest @ 10.05% on the aforesaid amount from the date of their respective payments till they are repaid by the respondents. However, they shall pay the simple interest at the rate of 10.05% on loan amount from March 2015.

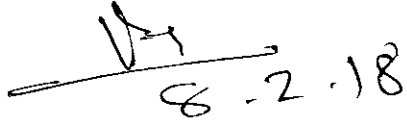




## ORDER

1. The respondent shall pay the complainant the amount mentioned in paras 10 to 14 of this order with interest as mentioned in para 15 of this order.
2. The charge of the above amount shall be on the complainant's booked flat till his claim is satisfied.
3. The complainant shall execute the deed of cancellation of the agreement for sale on respondents cost on satisfaction of his claim.

Mumbai  
Date: 08.02.2018.

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