

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

**COMPLAINT NO: CC006000000055878**

Kejal Bang

... Complainant.

**Versus**

K T Group through its Partners  
(Borivali Sangram CHS Ltd)

... Respondents.

MahaRERA Regn: P51800006904

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

**Appearance:**

Complainant: Adv. Drasti Jani.

Respondent: In person.

**FINAL ORDER**

**18<sup>th</sup> March 2019.**

The complainant contends that she booked flat no.1102 in the building of Borivali Sangram Co-operative Society situated at Village Eksar, Taluka Borivali. The respondents orally agreed to hand over the possession of the said flat within 24 months from the date of first payment made in February 2013. However, while executing the agreement for sale, they did not mention the date of possession, though they were required to mention it as per Section 4 (1) of MOFA. Since the respondents have failed to hand over the possession of the flat on the agreed date, the complainant seeks refund of her amount with interest and/or compensation under Section 18 of RERA.

2. The respondents have pleaded not guilty but they have not filed their reply. Mr. Druva Sheth, the partner of the respondents submits that his another partner is in jail and therefore, he is not able to file the reply.



However, the complaint is filed on 28.08.2018 and respondents came to know about the complaint from that date as it is automatically generated on their webpage/site. The respondents have done nothing during this period of 7 months in the matter and have failed to file the reply. Hence, the complaint proceeds without their reply since it is to be disposed off within the period of 60 days.

3. Mr. Sheth submits in his defence that the complainant is an investor and she is not the allottee and therefore, the complaint may be dismissed.

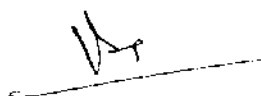
4. Following points arise for determination and I record my findings thereon as under:

POINTS	FINDINGS
1) Whether the respondents agreed to hand over the possession of the flat within 24 months from February 2013?	Affirmative.
2) Whether the complainant is entitled to get refund of her amount with interest on respondents' failure to hand over the possession of the flat on agreed date?	Affirmative.

#### REASONS

5. The respondents have taken the stand that the complaint is not maintainable because the complainant is an investor. I do not agree with them because they have executed the registered agreement for sale of the flat. This document executed by the respondents themselves falsifies their stand. Hence I hold that the complainant being an aggrieved person is entitled to file this complaint under section 31 of RERA.

6. There is no dispute between the parties that the respondents have executed the registered agreement for sale of flat no. 1102 in complainant's favour without mentioning the date of possession therein. The agreement has been executed during MOFA regime. It was the legal obligation of the respondents to mention the date of possession in the agreement as required



by section 4 (1) of MOFA. They have failed to discharge this legal obligation and therefore, they are now estopped from denying the date suggested by the complainant. The complainant has filed an affidavit to state on oath that the respondents agreed to hand over the possession of the flat within 24 months from the first payment made in February 2013. Therefore, I hold that the respondents agreed to hand over the possession of the flat by the end of February 2015.

7. The respondents themselves have mentioned on their webpage the proposed date of completion was 31.08.2016 and they have revised it to 31.05.2019. There is no dispute between the parties that the possession of the flat has not been given on agreed date. Hence, the complainant gets an option under Section 18 of RERA to withdraw from the project and claim refund of her amount with interest.

8. The complainant has drawn my attention to the receipt attached to the agreement for sale passed by the respondent's partner Mr. Sandeep Sheth showing that the complainant paid them Rs. 70,00,000/-. Therefore, the payment of Rs. 70,00,000/- has been proved by the complainant. The complainant can claim the refund of the stamp duty within five years from the date of the agreement (02.04.2016) under Section 47,48 of the Maharashtra Stamp Act from registrar's office on cancellation of it. Hence she cannot claim the stamp duty now. Registration fee of Rs. 30,000/- and document handling fee Rs 1520/- paid on 02.04.2016 are not refundable. Hence, the respondents are liable to reimburse the amount of registration fee and document handling fee. Since the complainant withdraws from the project, she is entitled to get refund of her amount with interest at prescribed rate from the date of payment till its refund. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 8.55%. She is also entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the order.



## ORDER

The respondent shall refund Rs. 70,31,520/- to the complainant with simple interest at the rate of 10.55% per annum from the date of payment mentioned in the receipt till the refund.

The receipt marked Exh.'A' shall form the part of the order.

The respondents shall pay the complainant Rs. 20,000/- towards the cost of the complaint.

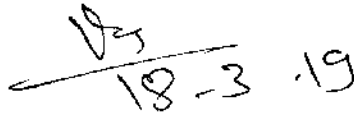
The charge of the amount shall be on the booked flat till the satisfaction of the complainant's claim.

On satisfaction of the claim, complainant shall execute the deed of cancellation of agreement for sale at the cost of respondents.

It is hereby clarified that in the case of non-compliance of the order within five years of the agreement, the complainant will be entitled to get the amount of stamp duty Rs.3,50,000/- from the respondents.

Mumbai.

Date: 18.03.2019.

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


Annexure A

EET A  
Mandor 43**R E C E I P T**

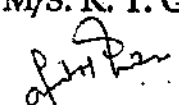
RECEIVED of and from the within named Mrs. Kejal Gaurav Bang a sum of Rs. 70, 00,000/- (Rupees Seventy Lac only) vide following cheques being the amount mentioned within to be paid by her to us.

Sr. No.	Cheque No.	Dated	Amount	Bank and Branch
1	105966	23-02-2013	10,00,000	HDFC Bank, Borivali West
2	RTGS	02-03-2013	7,00,000	HDFC Bank, Borivali West
3	RTGS	02-03-2013	7,00,000	HDFC Bank, Borivali West
4	105970	07-03-2013	3,00,000	HDFC Bank, Borivali West
5	RTGS	11-05-2013	8,00,000	HDFC Bank, Borivali West
6	135576	28-09-2013	8,00,000	HDFC Bank, Borivali West
7	000012	06-04-2015	17,00,000	HDFC Bank, Borivali West
8	000013	19-05-2015	10,00,000	HDFC Bank, Borivali West

Witness

1.   
2. 8

WE SAY RECEIVED  
For M/S. K. T. GROUP

  
Sandeep K Sheth  
(Partner)



वरल-७