

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

COMPLAINT NO: CC006000000055297

Sudip Pandey

... Complainant.

Versus

Sodhi Builders
(Sodhi Residency)

...Respondents.

MahaRERA Regn: P99000004245

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

Appearance:

Complainant: Adv. Mr. Mahadeo Ghadge.

Respondents: Adv. Mr. A.K. Upadhyay.

FINAL ORDER

25th February 2019.

The complainant contends that he booked flat nos. 101 & 102 in building no. 10 of respondents' registered project 'Sodhi Residency' situated at Boisar. He alleges that the respondents falsely promised to provide gymkhana, school, shopping complex, entertainment hall, temple, club house in brochure but actually provided nothing. Therefore, he withdraws from the project and claims his amount back under Section 12. However, the complainant has not pressed this issue because the registered agreement has subsequently been executed and registered.

2. The complainant restricts his case to Section 18 of RERA by contending that at the time of execution of the agreement for sale dated 27th March 2018, the respondents orally agreed to hand over the possession of the flats within 2-3 months from the date of agreements and left the date of



possession blank in them. However, the respondents failed to hand over the possession as agreed and therefore, the complainant claims refund of his amount with interest as he withdraws from the project.

3. The respondents have pleaded not guilty and they have filed their reply to contend that they agreed to hand over the possession of the flats in scheduled time as declared in the website of MahaRERA. They contend that they have showed the complainant the sample flat in building no. 10 at the time of the execution of the agreement and not the booked flats situated in building no. 11. The possession would be given in December 2018. They paid him the rent from April 2018 for next six months. They deny the receipt of cash component. Therefore, they request to dismiss the complaint.

4. Following points arise for determination and my findings recorded thereon are as under:

POINTS	FINDINGS
1. Whether the respondents have failed to hand over the possession of the flats on the agreed dates?	Affirmative.
2. Whether the complainant is entitled to get refund of his amount with interest?	Affirmative.

REASONS

5. The complainant has produced the documents showing that he booked the flats in October 2013 and the agreements for sale of the flats have been executed on 27.03.2018. The respondents have kept the date of possession blank in both the agreements. Section 13(2) of RERA casts the duty on the promoter to mention the date of possession in the agreement. The respondents have failed to discharge this legal obligation.

6. There is no dispute between the parties that in the month of March 2018, the flats situated in building no. 10 was shown to the complainant. According to the complainant, the respondents misrepresented him that the said building was building no. 11. Later on, he came to know that the said building was building no. 10 and building no. 11 was incomplete. Thereafter, the complainant contends that the respondents agreed to hand over the possession of the flats within 2-3 months i.e. latest by June 2018. The respondents are now estopped from denying the date suggested by the complainant and hence, I hold that the respondents agreed to hand over the possession of the flat by June 2018. In this context, it is necessary to note that the respondents themselves have contended in their reply that they paid the complainant the rent from April 2018. It was for next six months. However, the complainant has denied the receipt thereof and respondents have failed to prove the payment of rent. This fact therefore clearly shows that the respondents also laboured under impression that they were to hand over the possession after agreement in the month of April 2018 or so. Considering these facts of the case, I hold at safer side that the date of the possession was 30th June 2018.

7. The respondents have made an attempt to show that they agreed to hand over the possession of the flats on the date mentioned on the webpage of their project namely December 2018. But even after crossing the said date, the respondents have not handed over the possession of the flats to the complainant.

8. The complainant has produced the statement of payment marked Exh. 'A'. He has contended that he paid Rs. 7,55,000/- on 27.03.2018 in cash. The respondents have disputed this fact. Mr. Kumar Vidyanand also states that the complainant has paid Rs. 7,55,000/- to Mr. Kartar Sodhi and Kamljeet Sodhi at Tahasildar's office in Palghar on 23.03.2018 in his

presence. Therefore, it is necessary to look at the admitted facts. It appears that the complainant advanced the loan of Rs. 45,00,000/- to the respondents. It is the contention of the respondents that the complainant promised to adjust Rs. 7,55,000/- from the loan account. The total value of each flat is Rs.13,77,500/-. However, the complainant brought to my notice the agreements for sale wherein the respondents have acknowledged the receipt of Rs. 13,77,500/- for each flat. It means that the respondents received full consideration of the two flats before they entered into the agreements for sale. Rs. 7,55,000/- alleged to have been paid in cash are included in the consideration amount. Hence, I hold that the respondents have received Rs. 13,77,500/- for each flat.

9. The respondents deny their liability to refund the amount of Rs. 80,000/- paid towards development charges, Rs. 90,000/- towards GST and Rs. 98,000/- towards the service charges, allegedly paid in cash on 23.03.2018. The complainant states on oath that he paid the amount in cash. The respondents have disputed the payment of these amount and therefore, the complainant has filed his affidavit and affidavit of his witness Kumar Vidyanand. Kumar Vidyanand states that the complainant has paid Rs. 2,68,600/- to Mr. Kamaljeet Sodhi at complainant's house on 23.03.2018 in his presence. I am inclined to believe this witness because the complainant has proved that he has paid Rs. 7,55,000/- in cash on 23.03.2018 when the agreements were executed. It shows that the respondents have cultivated the habit of accepting payment in cash without issuing the receipt. Therefore, I hold that the amount of Rs. 2,68,600/- has been proved by the complainant.

10. The complainant withdraws from the project. Therefore, he is entitled to get refund of consideration, the amount of taxes and the amount of registration charges also. The complainant is entitled to get his amount

with simple interest at prescribed rate. The prescribed rate of interest is 2% above the SBI's highest MCLR which is currently 8.55%.

11. It appears from the receipts issued by the sub registrar's office that Rs. 1,09,200/- as the stamp duty, Rs. 18,200/- for registration fee and Rs. 1,920/- for handling the documents for each flat have been paid in the name of the complainant. The complainant is entitled to get refund of his stamp duty on cancellation of the agreement for sale within five years from the execution thereof by virtue of Section 47 & 48 of the Maharashtra Stamp Duty Act. However, he is entitled to get reimbursement of registration fee and fee for handling the documents. The complainant is also entitled to get Rs. 20,000/- towards the cost of the complaint. Hence the order.

ORDER

The respondents shall refund the amount mentioned in the payment statement marked Exh. 'A' except the stamp duty amount of Rs. 2,18,400/-

Exh. 'A' shall form the part of the order.

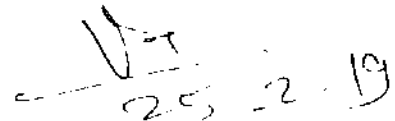
The respondents shall repay the aforesaid amount with simple interest @ 10.55% from the date of the payment till refund together with Rs. 20,000/- towards the cost of the complaint.

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

The complainant, on satisfaction of his claim shall execute the deed of cancellation in respondents' favour at their cost.

Mumbai.

Date: 25.02.2019.



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

FOR TWO FLATS(Each flat cost Rs 13,77,500/-):-

Money given to Sodhiji Before Registration

Date	Bank	Cheque No	Amount	Purpose
10/10/2013	ICICI	026917	5,00,000	flat payment
10/10/2013	ICICI	026918	3,00,000	flat payment
07/12/2013	HSBC	028037	80,000	flat payment
01/01/2014	HSBC	028038	80,000	flat payment
01/03/2014	HSBC	028039	80,000	flat payment
01/04/2014	HSBC	044738	2,40,000	flat payment
02/09/2014	HSBC	044740	2,40,000	flat payment
27/12/2014	ICICI	26926	4,80,000	flat payment
27/03/2018	CASH		7,55,000	Balance payment for flats

Total:-27,55,000(Twenty Seven Lacs Fifty Five Thousand only)

Money given to Sodhiji for registration of 2 flats

Date	Cheque/ref.No	Bank	Amount	Purpose
23/03/2018	000082496579	Kotak	2,44,800	Stamp Duty/Registration
26/03/2018	IMPS	Kotak	10,000	Stamp Duty/Registration
23/03/2018	Cash		80,000	Development charges
23/03/2018	Cash		90,600	GST
23/03/2018	Cash		98,000	Service tax

Total:-5,23,400(Five lacs Twenty three thousand Four hundred only)

Kamuljeet Singh
13.02.19

Subodh
12/02/2019
DANDEY

Except Cash Payment
amount is not deposited