

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

COMPLAINT NO: CC006000000043992

Mrs. Renu Mohta. ... Complainants.
Mr. Asheesh Mohta.

Versus

Godrej Landmark Re-Developers Pvt. Ltd. ... Respondents.

COMPLAINT NO: CC006000000043993

Mrs. Meenakshi Mohta. ... Complainants.
Mr. Anurag Mohta.

Versus

Godrej Landmark Re-Developers Pvt. Ltd. ... Respondents.
(Godrej Central)

MahaRERA Regn: -P51800001107

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

Appearance:

Complainants: Adv. Neha Mehta.

Respondents: Adv. Sumit Shukla i/b
DSK Legal.

Final Order.

11th September 2018

The complainants have filed these complaints under Section 12 &
18 of the Real Estate (Regulation and Development) Act, 2016 (RERA).

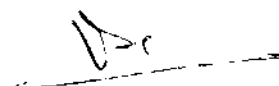


2. The complainants plead the following facts:

Name of complainants	Booked flat nos. in respondents' project	Agreed date of possession.	Amount paid & claimed.
Mrs. Renu Mohta. Mr. Asheesh Mohta.	501, Tower-F, Godrej Central, Chembur.	30.09.2018	Rs. 1,97,65,996/-
Mrs. Meenakshi Mohta. Mr. Anurag Mohta.	503, Tower-F, Godrej Central, Chembur.	30.09.2018	Rs. 1,63,21,347/-

The complainants contend that the respondents mentioned the date of possession referred to above in allotment letters, however, now they suggest to hand over the possession of the flats by September 2019. It is not agreeable to them. Hence, they want to withdraw from the project and claim their amount with interest under Section 18 of RERA. In alternative, they contend that they booked the flats on respondents' false statement that they shall hand over the possession of the flats by the end of September 2018 and now they suggest to give it in September 2019. They want to withdraw from the project and claim their amount with interest and or compensation under Section 12 of RERA.

3. The respondents have pleaded not guilty. They have filed their explanations to contend that the complainants' claims under Section 18 of the Act are not maintainable because there is no agreement for sale. The complaints are premature because the complainants themselves have contended that the agreed date of possession is 30.09.2018 which has not lapsed. The complainants avoided to enter into the agreements for sale, though they were repeatedly remanded by the respondents. The



project is completed to 80% and therefore, the further extended period of one year is commensurate with the work already completed. The taxes and the amount of TDS have been paid to the Government and therefore, they are not liable to refund them to the complainants. Hence, they request to dismiss the complaint.

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

Points.	Findings.
1. Whether complainants can claim their amount with interest under Section 18 of the Act?	Negative.
2. Whether the complainants are entitled to get refund of their amount with interest under Section 12 of RERA on account of change of date of possession?	Affirmative.

REASONS.

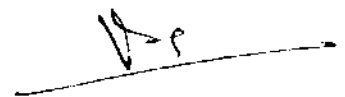
5. The respondents have issued only the allotment letters. The three Judge Bench of the Supreme Court hold in Hansa V. Gandhi- V/s - Deep Shankar Roy AIR 2013(SC)2853 that the allotment letter cannot be treated as agreement for sale but there can be oral agreement for sale also. In fact, if the allotment letter contains all the terms and conditions having sufficient clarity disclosing the fact that the parties agreed to sell and purchase the property, it can be treated as agreement for sale. The allotment letters contain all such terms and conditions and hence I hold that there is agreement for sale. However, the date of possession mentioned in these letters is 30th September 2018 which has not yet lapsed. Section 18 of RERA allows the allottee to claim refund of his amount with interest from the promoter, only when promoter either fails to complete the construction of the flat in accordance with the terms and conditions of the agreement for sale or fails to deliver the possession on



the date specified therein. Therefore, Section 18 of RERA is not attracted in these cases. Hence, the complainants cannot get refund of their amount under this section.

6. The complainants claim refund of their amount with interest under Section 12 of the Act which permits the allottee to claim the amount with interest and compensation when the allottee makes an advance or deposits money depending upon promoter's any false or incorrect statement provided the allottee sustains loss or damage by reasons of incorrect or false statement. The complainants have produced the allotment letters issued by the respondents disclosing their commitment to hand over the possession of the flats on or before 30th September 2018. The respondents have admitted that they are not able to hand over the possession on 30.09.2018 as mentioned in the allotment letters. They want to complete the project by September 2019. Therefore, the complainants have proved that they advanced money on respondents' representation that they would get the possession on 30.09.2018 and this representation has been proved to be false or incorrect. Waiting for further period of 12 months is not agreeable to the complainants as they have invested huge amount. These facts are sufficient to hold that they have sustained the loss/damages. Section 12 of RERA provides that allottees can claim refund of their amount with interest and/or compensation if the promoter makes false or incorrect statement. It gives the option to allottees to withdraw from the project also. In view of this provision, the complainants have exercised their right to withdraw from the project and claim refund of their amount with interest.

7. Section 12 of RERA allows the allottees to collect their amount with simple interest at prescribed rate, which is 2% above the highest MCLR of SBI. The current rate of MCLR of SBI is 8.5%. Thus, the complainants



are entitled to get simple interest at the rate of 10.5% on their amount from the date of their receipt by the respondents till their refund.

8. The complainants have filed their statements of payment marked Exh.A in their complaints and the receipt of those amount have been admitted by the respondents. Therefore, complainants are entitled to get these amount from the respondents with interest at the rate of 10.5% from the date of their payments till they are refunded. They are also entitled to get Rs. 20,000/- towards the cost of the complaints. Hence, following order.

ORDER

1. The respondents shall pay the complainants the amount mentioned in statements of payment marked Exh.A with interest at the rate of 10.5% from the respective dates of payment to the respondents till their refund.
2. The respondents shall pay Rs. 20,000/- to the complainants of each case towards the cost of their complaint.
3. The charge of the aforesaid amount shall be on the flats booked by the complainants till satisfaction of their claims.



(B.D. KAPADNIS)

Member & Adjudicating officer,
MahaRERA, Mumbai.

Mumbai.
Date: 11.09.2018.

CC006/43992

STATEMENT OF PAYMENT MADE BY THE COMPLAINANT FLAT 501

MRS RENU MOHTA				
Flat: GCT0F0501				
Details of payment made				
Paid on	Paid Rs.	Less TDS	Gross Amount	Purpose
15.02.2014	30,00,000		30,00,000	Towards consideration of GCT0F0501
19.03.2014	7,58,247	36,537	7,94,784	Towards consideration of GCT0F0501
02.08.2014	5,38,284	5,233	5,43,517	Towards consideration of GCT0F0501
05.12.2014	21,48,265	20,885	21,69,150	Towards consideration of GCT0F0501
26.02.2015	21,48,264	20,885	21,69,149	Towards consideration of GCT0F0501
01.06.2015	21,48,264	20,885	21,69,149	Towards consideration of GCT0F0501
17.09.2015	21,58,974	20,885	21,79,859	Towards consideration of GCT0F0501
01.01.2016	21,62,239	20,885	21,83,124	Towards consideration of GCT0F0501
02.05.2016	21,62,239	20,885	21,83,124	Towards consideration of GCT0F0501
11.08.2016	21,65,504	20,885	21,86,389	Towards consideration of GCT0F0501
06.07.2017	1,87,751		1,87,751	Towards consideration of GCT0F0501
	1,95,78,031	1,87,965	1,97,65,996	
15.01.2018	10,89,300	Cheque to "Maha Govt. Statutory E_Payment" towards Registration purpose		
	2,06,67,331			
			2,08,55,296	

R R R

Dr

12.7.18

Neha Mehta
Advocate for the
Complainant.

We confirm receipt
of sums as above.
Pchudra
Adv. for Respondent
5/9/18