

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

COMPLAINT NO: CC00600000000293

Nishant Ravindra Mundhare ... Complainant.

Versus

Yash Enterprises- Partners ... Respondents.
Narendra Patel, Suresh Patel, Dilip
Patel, Aksha Promoter, Zirkullah
Chowdhary.

MahaRERA Regn: -P52100012608.

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

Appearance:

Complainant: A. M. Mamidwar Adv.
Respondents: In person.

Final Order.

14th February 2018

Pleadings of parties.

The complainant booked a Flat No. C-301 in respondents' registered project Tulip Homes situated at Chakan Dist. Pune. The parties have executed agreement for sale on 30.03.2016. The respondents agreed to hand over the possession of the flat within 5 months from the date of agreement. It means that they agreed to deliver the possession of the flat by 30th August 2016. However, they have failed to deliver the possession of the flat on the agreed date. The complainant wants to withdraw from the project. He claims his amount with interest u/s. 18 of The Real Estate (Regulatory & Development) Act, 2016 (for short, RERA).

2. The respondents have appeared initially and thereafter they have started to remain absent. Hence their plea could not be recorded. Ultimately, I have passed the order on 05.02.2018 that the matter shall proceed ex-parte against the respondents.

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 flat on the agreed date?	Affirmative.
2. Whether the complainant is entitled to get refund of his amount with interest?	Affirmative.

REASONS.

Delayed Possession.

4. The complainant has produced agreement for sale dated 30 March, 2016 showing that the respondents agreed to deliver possession of the flat booked by him within 5 months from the date of agreement. However, the respondents have not delivered the possession of the flat till the date of complaint. Hence I hold that the complainant has proved that the respondents have failed to deliver the possession of the flat on agreed date.

5. The respondents though not have filed their explanation; they have relied upon the order passed by this Authority in complaint no. CC006000000000221 Mukul Kumar Vs Yash Enterprises which relates to the same project. In this case this Authority directed the respondents to hand over the possession of the flat booked by Mr. Mukul kumar before 31st March, 2018, failing which, directed the respondents to pay him interest from 1st April, 2018 till the actual date of possession, on his entire amount with interest. This case is different than the case on hand because in Mukul's case, Mr. Mukul wants to continue in the project whereas in this case complainant Mr. Nishant wants withdraw from the project. Hence the ruling given in Mukul's case is not applicable to the case of the complainant.

Legal Provision:

6. Section 18 of RERA provides that if promoter fails to complete or is unable to give possession of an apartment on the date specified in the agreement and the allottee withdraws from the project, then he is entitled to get refund of his amount with interest from the date of its payment.



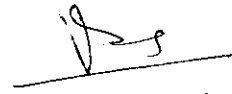
Entitlement of the Complainant.

7. The complainant has mentioned in his application captioned as 'additional claim' that he paid Rs. 1,00,000/- on 25.10.2016, Rs. 15,00,000/- on 06.05.2016 towards the consideration of the flat. In addition to these sums, he paid Rs. 22,530/- on 30.03.2016 towards registration charges of the agreement for sale. The complainant is entitled to get them back. The stamp duty has been paid in his name. Hence on cancellation of the agreement for sale, he will be able to claim refund of stamp duty from concerned Authority.

8. Since the respondents have failed to deliver possession of the flat on the agreed date, the complainant, therefore, is entitled to get the interest at the prescribed rate which is of State Bank of India's highest marginal cost of lending rate, it is currently 8.05% + 2%. This interest is compensatory in nature. Hence, I do not find it necessary to award compensation separately because the ends of justice will be served if the interest at the prescribed rate is awarded. However, the complainant is entitled to get Rs. 20,000/- towards the cost of complaint. Hence, the following order.

ORDER.

1. Respondents shall pay the complainant the amount mentioned in para no. 7 of this order with simple interest @ 10.05% from the date of their receipt till their repayment.
2. The respondents shall pay complainant Rs. 20,000/- towards the cost of their complaint.
3. The charge of the aforesaid amount shall be on the flat booked by the complainant till its repayment.
4. On satisfaction of his claim, the complainant shall execute the deed of cancellation of the agreement of sale, at respondents' cost.


14.2.18

(B.D. KAPADNIS)

Member & Adjudicating Officer,
MahaRERA, Mumbai.

Mumbai
Date: 14.02.2018