

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

COMPLAINT NO: CC00600000023368.

Karanveer Singh Sachdev.

... Complainant.

Versus

Siddhitech Homes Pvt.Ltd.
Hemant Mohan Agarwal
DHFL Property Services Ltd.
Kanayalal Vidhani 2
(Siddhi City-Phase-IV)

...Respondents.

MahaRERA Regn: P51700001597.

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

Appearance:

Complainant: Adv. Shoaib Memon.

Respondent No.1 & 2 : Adv. Subit

Chakrabarti i/b Vidhii Partners.

Respondent No. 3 : Adv. Bhakti Jugal.

FINAL ORDER

5th December 2018.

The complainant has filed this complaint to seek the relief of execution and registration of the agreement for sale and to claim compensation on his investment for delayed possession under Section 13 and 18 respectively of Real Estate (Regulation and Development) Act, 2016.

2. The complainant contends that he came to know from late Kanayalal Vidhani (Respondent no. 4 deleted on his death) that the respondent no. 1 & 2 were constructing a complex known as Siddhi City and the respondent no. 3 were appointed as sole selling agent of it. The complainant through late Vidhani approached Mr. B.K. Mathur, respondent no. 3 and negotiated



the cost of each flat which was fixed to Rs. 6,14,240/- and therefore, the complainant agreed to purchase flat nos. 601, 602, 603, 701, 702, 703, & 704 in building no. 2, Gopal Land Siddhi City Phase-IV, Badlapur (East). The complainant paid 90% of the consideration of the said flats amounting to Rs. 36,85,500/- and only 10% amounting to Rs. 6,14,250/- remained to be paid at the time of possession. The respondent no. 1 issued Memorandum of Understanding dated 20.09.2011 and acknowledged the receipt of the advance and also mentioned therein that only Rs. 6,14,250/- were the balance amount. The respondent no. 1 specifically contended that the possession of the flats would be given within eighteen months from the receipt of the said letter dated 20.09.2011 subject to availability of material on time and subject to natural calamities. The respondent no. 2 by his letter dated 21.09.2011 confirms the booking of the flats. Respondent no. 3 by their letter dated 24.09.2012 addressed to the complaint, confirmed that since the complainant paid 90% payment towards the cost of the flats remaining 10% would have be paid at the time of possession. It is the grievance of the complainant that despite 90% payment of the consideration and though he repeatedly remanded the respondent nos. 1 & 2 for executing the agreement for sale of the booked flats, they avoided the same. He further contends that as per Memorandum of Understanding dated 20.09.2011, the possession of the flats was to be handed over within 18 months from the receipt of the letter by the complainant. The respondents have failed to hand over the possession of the flats as agreed and therefore, he is entitled to claim interest on his investment for every month of delay under Section 18 of RERA as he wants to continue in the project.

3. The respondents have pleaded not guilty. The respondent no. 1 have filed their separate replies. However, they have contended that around July/August 2011, the respondent no. 1 entered into understanding with



respondent no. 3 to identify group of investors to invest into respondent no.1's Siddhi City project, particularly its 'S' wing and Phase-IV. The flats which were to be allotted at discounted rate approximately Rs. 1575/- to Rs. 1600/- per sq.ft. excluding stamp duty, registration charges and other charges. The respondent no. 3 identified certain groups of investors who were interested to invest in 56 flats in Phase-IV and 28 flats in 'S' Wing total 84 flats, for total consideration of Rs. 8,80,60,000/- working out to be Rs. 10,48,333/- per flat which would be exclusive of stamp duty, registration charges and other charges to be borne by respondent no. 3 or the allottee at the time of execution of agreement for sale. Rs. 51,000/- per flat were to be paid to the respondent no. 1 & 2 at the time of possession. The respondent no.1 received Rs. 3,66,72,000/- out of 8,80,60,000/-.

4. The respondents further contend that the complainant has falsely contended that he paid 90% of the value of the seven flats amounting to Rs. 36,85,500/- and only 10% on it amounting to Rs. 6,14,250/- are to be paid at the time of possession. According to them, this rate of Rs. 945 per sq.ft. is inconceivable because in August/September 2011 market rate was Rs. 1800 to Rs. 2,000 per sq. ft. Moreover, the price of each flat at the time of the agreement entered into by the respondent no 1 and 3 was fixed at Rs. 10,48,333/- excluding stamp duty, registration and other charges. Therefore, they deny that they agreed to sell the flats at the rate of Rs. 6,14,250/-.

5. The respondents have contended that the complaint is not maintainable under Section 31 of RERA because the complainant is an investor and he is not allottee. The complainant has filed a complaint at belated stage. The complainant has issued legal notice on 14th May 2015 and the cause of action for taking action under MOFA arose when the legal notice on 14th May 2015 was issued. RERA is prospective in operation and



therefore, it cannot operate retrospectively for granting the relief claimed by the complainant. They request to dismiss the complaint

6. I have heard the advocates of the parties and perused the documents placed by them on record. Following points arise for consideration and I record my findings thereon as under: -

POINTS	FINDINGS
1. Whether MahaRERA has jurisdiction to entertain the complaint?	Affirmative.
2. Whether the respondent no. 1 & 2 have failed to execute the agreement for sale of the flats even after receiving more than 10% of the consideration and thereby contravened Section 13 of RERA?	Affirmative.
3. Whether the respondent no. 1&2 are liable to pay interest on complainant's investment on their failure to hand over the possession of the flats on agreed date for every month of default under Section 18 of RERA?	Affirmative.

REASONS

Jurisdiction.

7. The parties are not at dispute that the complainant has paid the respondent no. 1 Rs. 7,00,000/- on 24.08.2011 and Rs. 29,85,500/- on 14.09.2011 towards the purchase of the flats as mentioned in the payment format marked Exh. '1'. The respondents have not produced any document to show that the complaint is of investor. The respondent no. 1 & 2 while registering the project has not mentioned that the complainant is one of the investors in their project while registering the project with MahaRERA. The respondent no. 1 by Memorandum of Understanding dated 20.09.2011

confirmed that they received the amount of consideration in advance and only Rs. 6,14,250/- remained to be paid. The respondent no. 3 also informed the complainant by their letter dated 21.09.2011 that above numbered seven flats have been booked by the complainant and only Rs. 6,14,250/- remained to be paid. Facts disclosed by the documents leaves no doubt in my mind that the complainant is the buyer of the flats who comes under the definition of 'allottee' defined by Section 2 (d) of RERA. Therefore, I find that since there is dispute between the allottee and the respondents no. 1 & 2, the promoters of the project, this Authority has jurisdiction to adjudicate upon this complaint especially when the complainant has been seeking the reliefs under Section 13 and 18 of RERA for their violation/contravention.

8. The respondents have contended that the transaction has taken place in the year 2011. Thereafter the complainant issued legal notice on 14.05.2015 to the respondents disclosing his intention to take action against them according to law. Hence, the learned advocates of the respondents submit that the complainant has not filed complaint within limitation as the cause of action to file the complaint has arisen in the year 2015 itself. The project has been registered by the respondent no. 1 & 2 with MahaRERA. It has brought with it legacy of the rights and liabilities of the parties involved therein. Only point this Authority has to consider is, whether the cause of action survives after coming into force of RERA into operation on 01.05.2017 or not. It is fact that even after the notice issued in the year 2015, the respondents have not provided the relief claimed by the complainant. The complainant's right to seek direction against respondent no. 1 & 2 for execution of the agreement for sale on payment of more than 10% of the total consideration remains in force. Section 18 thereof also confers right on the complainant to claim interest on his investment on respondent no. 1 & 2's failure to hand over the possession of the flats on



the agreed date till receiving the same. Therefore, I find that there is no force in the objection taken by the respondents.

9. The respondents submit that RERA operates prospectively as has been held by the Hon'ble Bombay High Court in the case of Neelkamal Realtors Suburban Pvt. Ltd. - v/s - Union of India. However, they have forgotten to read Para-89 of the judgement where the Hon'ble High Court has held that legislative power to make law with retrospective effect is well settled and in Para-122 the Hon'ble High Court in the context of Section 3, 6, 8 & 18 have held that they may to some extent have retroactive or quasi retroactive effect. Therefore, I find that the complaint is not bad-in-law on these grounds. To conclude I hold that this Authority has jurisdiction to entertain the complaint.

Complainant's entitlement on failure to deliver possession on agreed date.

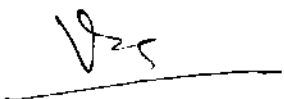
10. The respondents have not denied the Memorandum of Understanding issued by the respondent no. 1 in complainant's favour dated 20.09.2011 marked Exh. 'C' of the complaint wherein the respondent no. 1 have specifically mentioned that the seven booked flats numbered therein would be given in 18 months from the receipt of the letter subject to the availability of material on time and subject to natural calamities. There is no case of the respondents that the building material was not available on time or there was any natural calamity. The agreement for sale can be oral agreement. Fortunately, here in this case there are many documents which disclose that the respondent no. 1 collected money as consideration for the seven booked flats and also confirmed that the possession thereof would be given within 18 months from the receipt of letter dated 20.09.2011. Hence, I find that the date is specified in the agreement for handing over the possession of the flat. Admittedly the

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respondent no. 1 and 2 have not handed over the possession of the flat within 18 months from the MOU. In this circumstance, the complainant exercises his right conferred upon him by Section 18 of RERA to claim interest on his investment for every month of delay till getting the possession of the flats.

11. The respondents therefore, were bound to hand over the possession of the flats on or before 19.03.2013. The payment is made prior thereto. Hence, the complainant is entitled to get interest on his amount at prescribed rate from 19.03.2013. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 8.5%.

12. The payment of Rs. 7,00,000/- dated 24.08.2011 and Rs. 29,85,500/- dated 14.09.2011 admitted by the respondent no. 1 & 2 is more than 10% of the total consideration of the flats. Therefore, the respondents are bound to execute the agreement for sale of the seven booked flats in complainant's favour as per the mandate of Section 13 of RERA. The respondents have attempted to contend that the price of each flat was Rs. 10,48,333/-. The complainant claims that the price of each flat is Rs. 6,14,250/- only. For this purpose, it is necessary to look at MOU dated 20.09.2011 issued by the respondent no. 1 & 2 themselves claiming that the balance of Rs. 6,14,250/- were due to them from the complainant. It is also mentioned therein that Rs. 51,000/- per flat at the time of possession was to be paid against society charges, electricity deposit, stamp duty, registration charges, service tax and other government charges and they are to be borne by the allottee. The respondent no. 3 by their letter dated 21.09.2011 marked Exh. 'D' of the complaint have confirmed the fact that only Rs. 6,14,250/- were due to the developer, the respondent no.1& 2. After taking into consideration the documents of respondents themselves, I hold that the complainant has proved that the price of each flat is only Rs.6,14,250/-.



13. The respondent no. 1 & 2 are therefore, liable to execute the agreement for sale of flat nos. 601, 602, 603, 701, 702, 703, & 704 in building no. 2, Gopal Land Siddhi City Phase-IV, Badlapur (East) by mentioning the above mentioned price of the flats, the agreed date of possession namely 19.03.2013 and other terms and conditions embodied in the MOU dated 20.09.2011, in the form of agreement for sale provided by the Authority within a month from this order. The complainant has to bear the cost of the agreements for sale. Hence, the following order.

ORDER

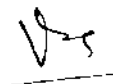
The respondent no. 1 & 2 shall execute and register the agreements for sale of flat nos. 601, 602, 603, 701, 702, 703, & 704 in building no. 2, Gopal Land Siddhi City Phase-IV, Badlapur (East) by mentioning the above mentioned price of the flats, the agreed date of possession namely 19.03.2013 and other terms and conditions embodied in the MOU dated 20.09.2011, in the form of agreement for sale provided by the Authority within a month from this order in complainant's favour at his cost.

The respondent no. 1 & 2 shall pay interest on Rs. 36,85,500/- from 19.03.2013 till handing over the possession.

The respondent no. 1 & 2 shall pay the complainant Rs. 20,000/- towards the cost of the complaint.

Mumbai.

Date: 05.12.2018.


5.12.18
(B. D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.