

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC00600000055960

Kamlesh B. Ahire ... Complainants .

Sangita Kamlesh Ahire

Versus

M/s. Sai Ashray Developers Pvt. Ltd. ... Respondents.

MahaRERA Regn: P51700008671

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

Appearance:

Complainants: Adv. Somnath Singh.
Respondents: Adv. Syed Asif.

Final Order

26th November 2018.

The complainants in their complaint filed under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (in short, RERA), contend that he booked flat no. 504, wing T of respondents' registered project Prasadam, situated at Chikloli, Taluka Ambernath, Dist. Thane. The respondents agreed to hand over possession of the flat on or before 31st May 2017. However, the respondents have failed to deliver the possession on the agreed date. Hence, complainants withdraw from the project and claim refund of their amount with interest and / or compensation.



2. The respondents have pleaded not guilty but they admitted that they agreed to deliver the fit out possession of the complainants' booked flat on or before 31st August 2016 with the grace period of 9 months. In other words, they agreed to deliver possession by May 2017. They while registering the project with MahaRERA revised the date of possession to 19.07.2021. They could not complete the project in time due to less rain fall in 2016 and water having less salinity was not available for construction work. There was decline in the economy due to demonetisation and introduction of G.S.T. The contractors delayed the work. These reasons causing delay were beyond their control and hence they are entitled to get reasonable extension of time. They contend that MahaRERA has no jurisdiction to entertain the complaint because the agreement for sale has been executed before RERA came into force. They gave alternative offers to the complainants but the complainants refused to accept them only because they are interested in money. They contend that the consideration is Rs. 26,25,000/-, out of it complainants paid them Rs. 12,23,067/- towards consideration. They have refused to refund the amount of stamp duty, registration charges, insurance premium & taxes paid by the complainants. Therefore, they have requested to dismiss the complaint.

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

POINTS	FINDINGS
a) Whether the respondents have failed to deliver the possession of the booked flat on the agreed date?	Affirmative.
b) Whether the complainants are entitled to get refund of their amount with interest?	Affirmative.



REASONS

Relevant law on Jurisdiction and refund:

4. The respondent's learned advocate submits that the agreement of sale has been executed during the Maharashtra Ownership of Flats (Regulation of promotion of Construction, Sale, Management and Transfer) Act 1963 (for short, MOFA) regime. RERA came into effect from 1st May, 2017 and it is prospective. The date of possession mentioned in registration certificate is not crossed and therefore there is no breach of any provision of RERA. Hence, MahaRERA has no jurisdiction to entertain the complaint.

5. I find, the cause of action for claiming possession after the lapse of the agreed date of possession becomes a recurring cause of action. The claimants' right to claim their money back or to claim possession continues from June 2017 till the date of filing of the complaint. If the cause of action survives after coming into force of RERA, MahaRERA gets jurisdiction over all the disputes pertaining to the eligible real estate projects requiring registration u/s. 3 of RERA. The on-going projects bring with them the legacy of rights and liabilities created under the statutes of the land in general and The Indian Contract Act and MOFA in particular. Section 79 of RERA bars the jurisdiction of the civil court from entertaining any suit or proceeding in respect of any matter which the Authority, Adjudicating Officer or Appellate Tribunal is empowered by or under RERA to determine. Hence, the Authority gets the jurisdiction over such matters which the civil court had. The Authority can take cognizance of the agreements executed under MOFA also and is equally competent to grant the relief relating to it. This view gets the support from Section 88 of RERA which provides that its provisions shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. MOFA has not been repealed. In this context, section 71(1) of RERA can be looked into. It provides that for the purpose of adjudicating compensation

u/s. 12,14,18 & 19 of RERA, an Adjudicating Officer can be appointed by the Authority. Its proviso provides that any person whose complaint in respect of matters covered by sections 12, 14, 18, 19 of RERA is pending before the Consumer Disputes Redressal forum, State Consumer Disputes Redressal Commission or National Consumer Dispute Redressal Commission **on or before the commencement of RERA**, he may, with the permission of the said forum withdraw the complaint pending before it and file it before the Adjudicating Officer under RERA. The provision therefore, indicates that sections 12, 14, 18, 19 RERA are retroactive. The right to claim return of amounts paid by the allottee to the promoter is preserved by Section 18 of the Act. I get support from Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India Writ petition 2737 of 2017 filed at ordinary original jurisdiction of Bombay High Court decided by the Division Bench.

Moreover, relevant part of section 18 of RERA reads,

'18. Return of amount and compensation-

(1) If the promoter fails to complete or is unable to give possession of an apartment plot or building, -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;

On plain reading of the provision it becomes clear that date of completion referred to in the provision means the date specified in the agreement. The word "therein" refers to the "agreement" and not the date of completion revised by the promoter unilaterally while registering the project. Hence I find myself unable to accept the submission of respondent's learned advocate that as till the date of completion mentioned in registration certificate is not crossed, the Authority has no jurisdiction. Considering all these aspects, I find that the Authority has jurisdiction to entertain the complaint as the complainants' right

to claim back their money in the case of withdrawal from the project still subsists under RERA.

6. Section 18 of RERA gives two options to the allottee, when the Promoter fails to give the possession of the apartment on the date specified in the agreement. The first option is to continue with the project and claim interest on their investment. Second option is to withdraw from the project and demand for refund of the monies paid by him to the Promoter with interest and compensation as the case may be. In this case the Complainants have exercised their right to claim back their monies. Hence only because the complainants have refused to accept the offers of the respondents, they cannot be deprived of their right to claim refund of their amount with interest.

Delayed Possession.

7. The respondents have not disputed the fact that they agreed to deliver the possession of the flat on or before August 2016 however, there was grace period of nine months. It is fact that even after lapse of grace period they have not delivered the possession of the flat to the complainants. Complainants have proved that the respondents have failed to deliver the possession on the agreed date.

8. The respondents have referred to shortage of water for construction in the year 2016, decline of economy, demonetisation and levy of G.S.T. as the reasons which delayed their projects and these reasons were beyond their control. I find it very difficult to hold that these reasons were really sufficient to delay their project. Even if very lenient view is shown to accept these reasons, the claim of the complainants regarding compensation can be refused on these grounds at the most.



Complainants 's Entitlement.

9. Respondents have disputed the payment mentioned in the payment schedule filed by the complainants marked 'A' for identification whereby they claim Rs. 12,49,317/- from the respondents. It is inclusive of Rs. 26,250/- paid towards VAT. Respondents have admitted that they have received it by putting endorsement of Exh. A.

10. Since the complainants are withdrawing from the project they are entitled to get back the amount paid by him towards consideration of the flat. They are entitled to get reimbursement of the amount paid towards VAT and registration charges of the agreement for sale. It appears that the stamp duty is paid in the name of the complainants. On cancellation of the said agreement they are entitled to claim refund of stamp duty from the concerned Authority. So from this point of view when I look at Exh.'A' filed by the complainants, I find that they have claimed Rs. 26,250/- towards VAT paid by them. The other amount is paid by him to the respondents towards consideration of the flat. However, they have not included registration fee. Therefore, I hold that the complainants are entitled to get refund of all the amount mentioned in Exh.'A' as well registration charges of the agreement for sale.

11. Section 18 of RERA entitles the complainants to get above amount with interest at prescribed rate. Rule 18 of Maharashtra Real Estate (Regulation & Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest & Disclosures on Website) rules,2017 provides that the prescribed rate shall be the State Bank of India highest marginal cost of lending rate which is currently 8.5% plus 2%. Therefore, the complainants are entitled to get the above amount with simple interest at the rate of 10.5% from the respective dates of their payment till they are refunded by the respondents.

In result, the order -



ORDER

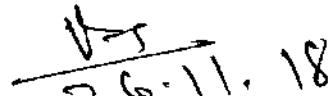
Respondents shall pay complainants the amount mentioned in Exh.'A' and the registration charges with simple interest at the rate of 10.5% p.a. from the respective dates of their payments till they are refunded.

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

Respondents shall pay complainants the Rs. 25,000/- towards the cost of the complaint.

The charge of the amount awarded by the order shall remain on the flat booked by the complainants till complaints' claim is satisfied.

The complainants shall execute the deed of cancellation of agreement of sale at respondents' cost on satisfaction of their claim.


B.D. Kapadnis

Mumbai.

Date: 26.11.2018.

Member & Adjudicating Officer

MahaRERA, Mumbai.

PROJECT NAME IS :- PRASADAM , CHIKHOLI , AMBARNATH , DIST THANE

MR KAMLESH D. AHIRE & SANGITA KAMLESH AHIRE

**FLAT NO 504 , 5TH FLOOR T BLDG PRASADAM PHASE II , NEXT TO GOLDEN PUNJAB
HOTEL AMBARNATH EAST**

SL NO.	DATE	AMOUNT	PURPOSE	PAID BY	RECEIPT NO/ CHQUE NO WITH BANK NAME
1	14/04/2015	105000	EARNEST MONEY (SELF)	Complainant	115774 / IDBI BANK BADLAPUR
2	30-06-2015	30306	BALANCE OF 1 ST 5% (SELF)	Complainant	101671 / THE ABHINAV SAHKARI BANK LTD BADLAPUR
3	29-10-2015	150000	2 ND 5% SHARE	Complainant	201832 / IDBI BANK
4	13-10-2015	211250	ON COMPLETION OF PLINTH	Complainants banker DHFL	36839347 / DHFL BANK
5	09-11-2015	500000	ON COMPLITION OF 1 ST SLAB	Complainants banker DHFL	36860247 / DHFL BANK
6	16-11-2016	226511	DEMAND FOR 2 ND SLAB	Complainants banker DHFL	40431975 / DHFL BANK
	TOTAL	1223067			
7	16-10-2015	26250	VAT PAYMENT	Complainant	115777 / IDBI BANK
	GRAND TOTAL	1249317			

*Mr. Steven
26/11/2015*

Amount
Somnath Dinkar (Adv
for Complainant)
26/11/18

Rec'd Net Value → 1183876 → Admitted
Agreement

The receipt of payment is acknowledged

→ 26250 → VAT → Disputed
→ 39,191 → Service Tax → Disputed

Adv. S.A. 26/11/2018
Sayed Asif
A. Adarsh
26/11/18