THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY MUMBAI.

COMPLAINT NO: **CC0060000000044024**

Roger D'silva ... Complainants.

Versus

Vidhi Realtors ...Respondents.
(Gaurav Discovery)

MahaRERA Regn: **P51800007949**

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

Appearance:
Complainant: Adv. Godfrey W. Pimenta.
Respondents: Adv. Mr. Agrawal.

FINAL ORDER
7th June 2018.

The complainant complains that he booked flat no. 103 in respondents registered project Gaurav Discovery situated at Malwani, Malad. The respondents agreed to deliver its possession on or before 31st December 2015 but they failed to deliver it on the agreed date. Now, complainant wants to withdraw from the project and therefore, claims his amount with interest and or compensation under Section 18 of Real Estate (Regulation and Development) Act, 2016(RERA).

2. The respondents have pleaded not guilty but they have not filed their reply.

3. Heard both the sides.

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

	POINTS	FINDINGS
1.	Whether the respondents failed to deliver the possession of the booked flat on the agreed date?	Affirmative.
2.	Whether the respondents are liable to pay the complainant his amount with interest?	Affirmative.

REASONS

5. The complainant has filed a registered agreement for sale dated 22.11.2013 and also filed an affidavit to show that the respondents agreed to deliver the possession of the flat on or before December 2015. This affidavit is not challenged by the respondents. It is admitted fact that the respondents have not delivered the possession of the flat till the date of the complaint. Therefore, I hold that the respondents have failed to hand over the possession of the flat on the agreed date.

6. Section 18 (1)(a) of RERA provides that if the promoter fails to deliver the possession on the specified date for delivering the possession mentioned in the agreement, the allottee has option to withdraw from the project and claim his amount with interest. The complainant has exercised the option of withdrawing from the project. Therefore, it is liability of the respondents to refund his amount with interest. The rules framed under RERA prescribe the rate of interest which is 2% above the SBI's highest MCLR which is currently 8.05%. Thus, the respondents are liable to pay the interest at the rate of 10.05% on the amount of the complainant from the date of receipt. The complainant has filed the payment format marked Exh. 'A'. The complainant is not entitled to claim the amount of Rs. 3,13,800/- paid towards stamp duty because on cancellation of agreement for sale, the complainant can get refund of the stamp duty from the concerned Authority as the stamp duty is paid in his name. Similarly, he is not entitled to get the amount of TDS Rs. 31,998/- and Rs. 1,225/- deducted

on 02.01.2015 and Rs. 1,225/- paid on 30.03.2015, because it is the Income Tax which the allottee has to bear, it being a tax on his income.

7. The complainant is therefore entitled to get only the amount of consideration paid by him to the respondents. He is entitled to get reimbursement of amount paid towards service tax and the registration charges of the agreement for sale because he had to part with these amount only because he entered into the contract with the respondents and now on non-performance of the said contract the respondents are liable to reimburse these amount.

8. The complainant has also claimed the interest and part of loan repaid to the Bank. When he is getting the interest at prescribed rate on his amount, he is not entitled to get the interest paid by him on the loan amount as well as the instalment of loan paid to the Bank separately. With these observations, I find that the complainant is entitled to get only the amount of consideration of the flat, the charges of registration and sale tax amount. He is also entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the following order.

ORDER

The respondents shall pay the complainant the amount mentioned in payment format marked Exh. A at Sr. Nos. 1 to 6, 8 to 12, 14,15,17,18 & 20 to 21 only.

The payment format marked Exh. A shall form the part of the order.

The respondents shall pay aforesaid amount with simple interest at the rate of 10.05% per annum from the respective dates of their payment mentioned in payment format till they are refunded.

The respondents shall pay the complainant Rs. 20,000/- towards the cost of the complaint.

The charge of the aforesaid amount shall be on the booked flat of the complainant till the satisfaction of his claim.

The complainant on satisfaction of his claim, shall execute the deed of cancellation of the agreement for sale and the respondents shall bear its cost.

7. 6. 18

Mumbai.

Date: 07.06.2018.

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

Annexure A

Name of Complainant: ROGER ALVITO DSILVA

Complaint No: CC006000000044024

Payment Format

Sr No	Date	Amount	Purpose	Receipt No	Cheque No with Bank Name
1.	23/03/2012	2,00,000	Booking	PRA00487	427482 dt 23/03/2012 IDBI BK Andheri west
2.	12/04/2012	10,54,729	Instalment	BED00497	389538 dt 12/04/2012 Citizen Credit Bk Amboli Andheri West
3.	12/04/2012	32,372	Service Tax	BED00498	427483 dt 12/04/2012 IDBI Bank Andheri West
4.	22/11/2013	7,754	Service Tax	MAN02572	003183 dt 22/11/2013 IDBI Bank Andheri West
5.	23/10/2013	87,817	Service Tax	PRA02337	003182 dt 23/10/2013 IDBI Bank Andheri West
6.	23/10/2013	62,737	VAT	PRA02336	003181 dt 23/10/2013 IDBI Bank Andheri West
7.	25/10/2013	3,13,800	Stamp Duty	MH00062077 8201314S	014984 dt 25/10/2013 IDBI Bank Andheri West
8.	25/10/2013	30,000	Registration	MH00062077 8201314S	014984 dt 25/10/2013 IDBI Bank Andheri West
9.	15/02/2014	5,816	Service Tax	MAN02887	427488 dt 15/02/2014 IDBI Bank Andheri West
10.	02/01/2015	3,99,000	Instalment	20150100019	626498 dt 02/01/2015 DCB Bank
11.	02/01/2015	4,03,000	Instalment	20150100020	568292 dt 02/01/2015 Bank of India Andheri West
12.	02/01/2015	184,918	Instalment	20150100021	014990 dt 02/01/2015 IDBI Bk Andheri West
13.	02/01/2015	31,998	TDS	20150100187	026540 dt 02/01/2015 IDBI Bank Andheri West
14.	17/03/2015	7,754	Service Tax	20150300206	427486 dt 17/03/2015 IDBI Bank Andheri West
15.	17/03/2015	23,04,847	Instalment	20150300226	17/03/2015 RTGS
16.	30/03/2015	1,255	TDS	20150300370	427485 dt 30/03/2015 IDBI Bank Andheri West
17.	23/04/2015	3,877	Service Tax	20150400151	117549 dt 23/04/2015 IDBI Bank Andheri West
18.	23/04/2015	1,24,217	Instalment	20150400227	23/04/2015 RTGS

19.	15/05/2015	1,255	TDS		15/05/2015
20.	15/05/2017	1,86,327	Installment	20170500120	15/05/2017 RTGS
21.	15/05/2017	8,469	Service Tax	20150400121	RTGS
22.	Sub Total	54,51,942			
BANK INTEREST—SBI and Bank of Baroda					
23.	31/Mar/15	10088	SBI- INTEREST ON LOAN	Bank Statement	SBI- INTEREST ON LOAN
24.	7/May/15	19322	SBI- INTEREST ON LOAN	Bank Statement	SBI- INTEREST ON LOAN
25.	8/Jun/15	20662	SBI- INTEREST ON LOAN	Bank Statement	SBI- INTEREST ON LOAN
26.	8/Jul/15	19775	SBI- INTEREST ON LOAN	Bank Statement	SBI- INTEREST ON LOAN
27.	7/Aug/15	20358	SBI- INTEREST ON LOAN	Bank Statement	SBI- INTEREST ON LOAN
28.	8/Sep/15	20354	SBI- INTEREST ON LOAN	Bank Statement	SBI- INTEREST ON LOAN
29.	7/Oct/15	19704	SBI- INTEREST ON LOAN	Bank Statement	SBI- INTEREST ON LOAN
30.	7/Nov/15	19634	SBI- INTEREST ON LOAN	Bank Statement	SBI- INTEREST ON LOAN
31.	8/Dec/15	18897	SBI- INTEREST ON LOAN	Bank Statement	SBI- INTEREST ON LOAN
32.	7/Jan/16	19530	SBI- INTEREST ON LOAN	Bank Statement	SBI- INTEREST ON LOAN
33.	8/Feb/16	19526	SBI- INTEREST ON LOAN	Bank Statement	SBI- INTEREST ON LOAN
34.	9/Mar/16	18273	SBI- INTEREST ON LOAN	Bank Statement	SBI- INTEREST ON LOAN
35.	7/Apr/16	19534	SBI- INTEREST ON LOAN	Bank Statement	SBI- INTEREST ON LOAN
36.	6/May/16	18776	SBI- INTEREST ON LOAN	Bank Statement	SBI- INTEREST ON LOAN
37.	7/Jun/16	19263	SBI- INTEREST ON LOAN	Bank Statement	SBI- INTEREST ON LOAN
38.	7/Jul/16	18523	SBI- INTEREST ON LOAN	Bank Statement	SBI- INTEREST ON LOAN
39.	6/Aug/16	18989	SBI- INTEREST ON LOAN	Bank Statement	SBI- INTEREST ON LOAN
40.	7/Sep/16	18853	SBI- INTEREST ON LOAN	Bank Statement	SBI- INTEREST ON LOAN
41.	6/Oct/16	18123	SBI- INTEREST ON LOAN	Bank Statement	SBI- INTEREST ON LOAN
42.	7/Nov/16	18573	SBI- INTEREST ON LOAN	Bank Statement	SBI- INTEREST ON LOAN