

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY, MUMBAI.

COMPLAINT NO.CC006000000056702

Vijay Solanki Complainant.
V/s
Sharad Chokhani for
M/S Shree Shakun Reality Pvt. Ltd Respondents.

MahaRERA Regn.: P99000001708

Coram: Shri BD. Kapadnis
Member & Adjudicating Officer.
Appearance: Complainant: in person.
Respondents: Sonam S. Adv.

FINAL ORDER

30th January 2019.

Pleadings of the parties.

In this complaint filed under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (RERA), the complainant complains that he booked Flat No. E-505 in Respondents' registered project "SHREE SHAKUN GREENS" situated at Virar. The Respondents agreed to deliver its possession on or before December 2014, but they have failed to deliver it till the date of complaint. He wants to withdraw from the project and therefore he claims his amount with interest and/ compensation from the respondents.

2. The Respondents have filed their written statement to admit that they have failed to hand over possession of the flat on the agreed date. They further contend that though Vasai Virar Municipal Corporation (VVMC) does not



have proper infrastructure to grant fire NOC for "high rise" buildings and therefore though they have applied for Occupation Certificate they have not received it. According to them, the Environment Department has not given consent to operate sewerage treatment plant and therefore environmental clearance is delayed. These reasons are beyond their control. The complainant booked the flat under Tripartite agreement, under 20:80 scheme. HDFC Bank disbursed Rs. 22,92,294/-. Out of it the respondents paid Rs. 1,75,900/- towards stamp duty, Rs. 29,295/- towards VAT and Rs. 72,540/- towards service tax on behalf of the complainant. Therefore, respondents effectively received Rs. 20,14,559/- They deny the receipt of Rs. 1,40,000/- in cash in the month of January 2014. They have further contended that they have received only Rs.23,47,560/- mentioned in the confirmation of accounts marked Annexure 'A' attached to their reply. They paid Rs. 31,500/- towards rent to the complainant for the period September 2016 to March 2017. The complainant was willing to continue in the project till March 2017. The project is completed and they are in the process of obtaining occupation certificate. Hence, they request to dismiss the complaint.

3. Following points arise for consideration. I record the findings thereon as under: -

Points	Findings.
1. Whether Respondents have failed to deliver the possession of the booked flat on the agreed date?	- Affirmative.
2. Whether the complainant is entitled to get his amount with interest?	- Affirmative



REASONS

Legal Provision

4. Section 18 of RERA provides that if the Promoter fails to give possession of an apartment on the date specified in the agreement for sale then the allottee is entitled to get refund of his amount with interest and/ or compensation from the promoter, if the allottee wishes to withdraw from the project.

Delayed Possession.

5. There is no dispute between the parties that the respondents agreed to deliver the possession of the flat booked by the complainant on or before the end of December 2014 but it has not been handed over to the complainant till filing of the complaint. Hence, I hold that the respondents have failed to hand over the possession of the flat on the agreed date.

6. Since the respondents have failed to deliver the possession of the flat on the agreed date, the complainant has exercised his option to withdraw from the project and demand his amount with interest and/ compensation. This right is conferred upon him by section 18 and he cannot be therefore compelled to continue in the project against his will.

Reasons for Delay possession

7. The respondents have contended that they have constructed a "High rise" building. VVMC approved their plan and therefore they have constructed the building. However, the WMC has no proper infrastructure required as per the letter of Maharashtra Fire Service Directorate and therefore VVMC is unable to give no objection certificate to its department for granting O.C. It is a fact when VVMC approved the plan for High rise building, it ought to have



set up proper infrastructure required under the law to render their services. Fortunately, the Govt. of Maharashtra through its Urban Development Department has issued circular No.TPS.1816/CR/452/16/UD-13 dated 29th January 2017 under the Maharashtra Right to Public Services Act, 2015, thereby the Municipal Corporations and Councils have to provide services regarding the issuance of Occupancy Certificate within 8 days from the receipt of their applications. The respondents have completed the project and they are in process of obtaining occupation certificate. Be that, as it may.

8. Even if it is taken for granted that the respondents had some reasons which delayed their project and they were beyond their control, they are entitled to get the maximum extension of 3 months if such reasons exist and if they continue further then the respondents may get a period of 3 months more as has been laid down by Section 8 (b) of Maharashtra Ownership Flats Act, 1963 which is still applicable in the State of Maharashtra and Section 88 of RERA also permits it to apply. Even after giving the credit of these six months to the respondents, I find that the project is delayed. These grounds at the most can be taken into consideration as mitigating circumstances to refuse the complainant's claim for compensation and therefore the prayer for compensation is refused.

Entitlement of Complainant

9. The Complainant has filed his statement showing the amount paid by him to the respondents. The respondents have also filed statement of confirmation along with their reply. I have heard both the parties on this issue. I find that there is no dispute between the parties about the loan amount and amount paid in cash. Therefore, the payment of these amount has been proved by the complainant.

10. According to the complainant the Bank disbursed Rs.26,00,000/- on 23.01.2014 from his loan account. The Bank deducted the EMIs which were payable by the respondents and paid the balance amount.



11. The Complainant contends that he paid Rs. 1,40,000/- in cash in the month of April 2014. According to him, the respondents insisted upon him to pay the said money in cash before entering into agreement for sale. He withdrew the said amount by three cheques and paid it to the respondents. In order to support this, he has filed the Affidavit to that effect. Hence, I hold that the complainant has proved that he paid Rs. 1,40,000/- to the respondents in cash.

12. The complainant further contends that he paid Rs. 29,400/- towards registration charges and this fact has also not been disputed by the respondents. The complainant claims Rs. 5,962/- paid on stamp duty and Rs. 11,236/- paid towards Bank processing fees on 21.01.2014 and 24.12.2013 respectively. The respondents have committed default in delivering the possession of the flat on the agreed date and thereby they have incurred liability to refund the amount paid to them by the complainant. Not only this, the respondents have also incurred liability to reimburse the complainant all the amount which he had to pay/ spend connecting to the transaction of purchase of the flat. He is not at fault and therefore he cannot be made to sustain these losses. Hence I hold that the complainant is entitled to recover all the amount, the payment of which has been mentioned in the payment statement marked Exh.A. Complainant is also entitled to get Rs, 20,000/ towards the cost of this complaint.

13. Section 18 of RERA confers right to allottee to recover the amount with interest at prescribed rate. The rules framed by the State of Maharashtra have prescribed rate of interest is 2% above the State Bank of India's highest marginal cost of lending rate which is presently 8.55%. Thus, the complainant is entitled to get simple interest @ 10.55% on the aforesaid amount from the date of their respective payments till they are repaid by the respondents. However, they are entitled to get set off of the rent amount Rs. 31,500/ and the EMIs of loan paid by them.



ORDER

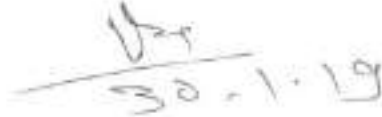
A. The respondent shall pay the complainant the amount mentioned in payment statement marked Exh. A which shall form the part of this order with simple interest @ 10.55% p.a. from the date of their payment till the refund.

B. Respondents are entitled to get set off of the rent amount Rs. 31,500/ and the EMIs of loan paid by them.

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

D. The charge of the above amount shall be on the complainant's booked flat till his claim is satisfied.

E. The complainant shall execute the deed of cancellation of the agreement for sale on respondents' cost on satisfaction of his claim.



(B. D. Kapadnis)

(Member & Adjudicating Officer)

MahaRERA, Mumbai

Mumbai

Date:30.01.2019.

Date	Particulars	Amount (Rs.)	Mode of payment	Attached Documents
06-11-2013	Down Payment Part 1	100001	Cheque No.261300	Down Payment(A).jpg
18-11-2013	Down Payment Part 2	233000	Cheque No.261301	Down Payment(B).jpg
24-01-2014	Other Charges Part 1	49,000	Cheque No.261307 withdrawn by cheque and gave it to Sharad Chokhani as per his request	Other Charges 1 & 2.jpg
27-01-2014	Other Charges Part 2	49,000	Cheque No.261308 withdrawn by cheque and gave it to Sharad Chokhani as per his request	Other Charges 1 & 2.jpg
29-01-2014	Other Charges Part 3	42,000	Cheque No.261309 withdrawn by cheque and gave it to Sharad Chokhani as per his request	Other Charges 3.jpg
24-12-2013	Bank Processing Fees	11,216	Cheque No.261303	Bank Charges.jpg
16-01-2014	Registration Fees	29,400	Online Ref No: 1165942212	Registration(A).jpg & Registration(B).jpg
21-01-2014	Bank Stamp Duty	5,962	DD-ISSUED Draft No.424490 Ref No:-1057409731	Bank Charges.jpg
24-01-2014	Home Loan From HDFC	2600000	Out of which, HDFC issued cheque no.980575 of Rs.22,91,254 in favour of SHREE SHAKUN REALTY PVT LTD, 2600000 A/C-0136484119, CITI BANK, FORT after deducting interest of 25 months as per tripartite agreement	HDFC Disbursement.jpg & STMT_AC_610617257_Apr 2018-Dec 2018.pdf
Total			3119599	


 Member