

THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000044389

Mahendra Pratap Singh ... Complainant.

Versus

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

MahaRERA Regn: P51700011742

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

Appearance:

Complainant: Adv. Somnath Sinha.

Respondents: Adv. Miss Saira Mirzankar.

Final Order

26th September 2018.

The complainant, in his complaint filed under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (in short, RERA), contends that he booked flat no. 605, K-Wing, Phase-II, in respondents registered project Prasadam, situated at Chikloli, Taluka Ambarnath, Dist. Thane. The respondents entered into an agreement with the complainant and agreed to hand over possession of the flat on or before 31st May 2016. However, the respondents have failed to deliver the possession on the agreed date. Hence, complainant withdraws from the project and claims refund of his amount with interest and / or compensation.



2. The respondents have pleaded not guilty but they have filed the reply wherein they admitted that they agreed to deliver the flat out possession of the complainants' booked flat on or before 31st May 2016 with the grace period of 9 months. In other words, they agreed to deliver possession by February 2017. They revised the date of possession to 19.07.2021 while registering the project with MahaRERA. They could not complete the project in time due to less rain fall in 2016 and non-availability of water having less salinity 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 this complaint because the agreement for sale has been executed before RERA came into force. They gave alternative offers to the complainant but the complainant refused to accept them only because he is interested in money. They contend that the consideration is Rs. 37,68,450/-, out of it complainant paid them Rs. 26,63,057/- towards consideration and Rs. 73,221/- towards service tax in aggregate Rs. 27,33,278/-. They have refused to refund the amount of taxes paid by the complainant. Therefore, they have requested to dismiss the complaint.

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

POINTS	FINDINGS
1) Whether the respondents have failed to deliver the possession of the booked flat on the agreed date?	Affirmative.



- 2) Whether the complainant is entitled to Affirmative.
get refund of his amount with interest?

REASONS

Relevant law:

4. Section 18 of RERA provides, if the promoter fails to complete or is unable to give possession of an apartment plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; if the allottee withdraws from the project, promoter becomes liable to refund of the monies with interest and compensation as the case may be. In this case the Complainant has exercised his right to claim back him monies.

Delayed Possession.

5. The respondents have not disputed the fact that they agreed to deliver the possession of the flat on or before February 2017 including the grace period. It is a fact that even after lapse of grace period they have not delivered the possession of the flat to the complainant. Complainant has proved that the respondent has failed to deliver the possession on the agreed date.

6. 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 a very lenient view is shown to accept these reasons as genuine, extension beyond the period of six months cannot be

given to the promoter u/s. 8(b) of Maharashtra Ownership Flat Act.

Complainant's Entitlement.

7. Respondents have disputed the payment mentioned in the payment schedule filed by the complainant marked 'A' for identification whereby he claims from the respondents Rs. 27,33,278/- towards consideration and Rs. 37,685/- paid towards VAT. Respondents contend that received only Rs. 26,63,057/- as the consideration of the flat. Hence it is necessary to deal with this issue.

8. Since the complainant is withdrawing from the project he is entitled to get back the amount paid by him towards consideration of the flat. He is entitled to get reimbursement of the amount paid towards the service tax or VAT. The respondents have defaulted in handing over the possession of the flat on agreed date. Hence, they have incurred liability to refund the amount of consideration and taxes mentioned by the complainant in Exh.'A'. Therefore, I hold that the complainant is entitled to get refund of all the amount mentioned in Exh.'A'.

9. Section 18 of RERA entitles the complainant 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 complainant is 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 together with Rs.20,000/- towards the cost of the complaint. In result, the order –

ORDER

Respondents shall pay complainant the amount mentioned in Exh.'A' 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 the part of the order.

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

The charge of the amount awarded by this order shall remain on the flat booked by the complainant till complaint's claim is satisfied.

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

Mumbai.
Date: 26/09/2018.


26.9.18
(B.D. Kapadnis)
Member & Adjudicating Officer
MahaRERA, Mumbai.

Expt. A

Project Name : Prasadam, Ambernath					
Mr. Mahendra Pratap Singh					
Flat No. K 605					
Sr No.	Date	Amount	Purpose	Paid By	Receipt No/Cheque No with bank name
1	2-Mar-15	100000	EARNEST MONEY (SELF)	Complainant	000042/HDFC Bank
2	11-Apr-15	117560	BALANCE OF 1ST 5% (SELF)	Complainant	000046/HDFC Bank
3	15-Dec-16	196902	2nd 5% SHARE (SELF)	Complainant	021696/Dena Bank
4	29-Sep-15	1167786	ON COMPLETION OF PLINTH (1ST INSTALLMENT)	Complainant's Banker PNBHFL	984795/PNBHFL
5	21-Oct-15	443193	ON COMPLETION OF 1ST SLAB (2ND INSTALLMENT)	Complainant's Banker PNBHFL	138194/PNBHFL
6	28-Dec-15	314033	ON COMPLETION OF 3RD SLAB (3RD INSTALLMENT)	Complainant's Banker PNBHFL	139673/PNBHFL
7	26-Dec-16	393804	ON COMPLETION OF 5TH SLAB (4TH INSTALLMENT)	Complainant's Banker PNBHFL	718755/PNBHFL
	TOTAL	2733278			
8	16-Apr-15	37685	VAT CHARGES	Complainant	005038/DENA BANK

MP Singh