

THE MAHARASHTRA REAL ESTATE REGULATORY  
AUTHORITY, MUMBAI

COMPLAINT NO: CC006000000043970

Yash Textile Machines Pvt. Ltd.  
Through Navin Yashpal Sharma ... Complainants.

COMPLAINT NO: CC006000000023943

Rajkumari Sharma ... Complainant.

**Versus**

Sai Ashray Developers Pvt. Ltd ... Respondents.

MahaRERA Regn: P51700005877.

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

**Appearance:**  
Complainant: Adv. Sanjay Puranik.  
Respondents: Adv. Asif Sayed.

**Final Order.**

04<sup>th</sup> December 2018.

The complainants, in their complaints filed under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (in short, RERA), contend that complainant Yash Textile Machines Pvt. Ltd. booked flat no. 202, Q-Wing, and Rajkumari Sharma booked flat no.302, Q- Wing, in respondents registered project Prasadam, situated at Chikloli, Taluka Ambarnath, Dist.Thane. The respondents have issued allotment letters. Respondents orally agreed to hand over possession of the flats on or before 31<sup>st</sup> May 2016. The respondents failed to hand over the possession of the flats on agreed dates but revised possession date is 21<sup>st</sup> December 2020. The complainants do not want to wait until 2020 for possession. Hence, complainants want to withdraw from the



project and claim refund of their amount with interest and / or compensation.

2. The respondents have pleaded not guilty. They have filed the reply wherein they have not denied that they promised to hand over the possession of the complainants' booked flat on or before 31<sup>st</sup> May 2016. They revised the date of possession to 21.12.2020 while registering the project with MahaRERA. They are ready to offer a flat in Dwarka Building of the same project to the complainants for which the occupation certificate is granted. The complainants have refused the offer. Complainants do not have legal ground to withdraw from the project. They have requested to dismiss the complaints.

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 flats on the agreed date?	Affirmative.
2. Whether the complainants are entitled to get refund of their amount with interest?	Affirmative.

#### 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 the monies with interest and/or compensation as the case may be. In these cases, the Complainants have exercised their



right to claim back their monies. The agreements for sale can be oral or written. In these cases, the respondents have agreed to sale the flats to the complainants, issued allotment letters, fixed the price, collected it in part and also promised to hand over the possession on specified date. These facts are sufficient to hold that there was an agreement for sale between the parties. Respondents have not denied that they agreed to hand over the possession of the flats on or before 31.05.2016. The complainants have brought to my notice that the respondents themselves have disclosed while registering the project with MahaRERA that the date of completion was 16.08.2016. In this circumstance, I believe the complainants to hold that the agreed date was 31.05.2016 for handing over the possession of the flats.

5. The respondents contend that they offered alternative flats to the complainants situated in Dwarka Building of the same project for which they have received the occupancy certificate. The respondents want to make temporary arrangement of the complainants in those flats. The complainants do not agree and therefore, the respondents are liable to refund their amount with interest. The rate of interest is also prescribed which is State Bank of India's highest marginal cost of lending rate which is currently 8.5% plus 2%.

#### **Complainants' Entitlement.**

6. Respondents have not disputed the payment mentioned in the payment schedule filed by the complainant marked 'A' in their complaints. Yash Textile Machines claim from the respondents Rs. 23,26,442/- and Rajkumari Sharma claims Rs. 23,61,385/-towards consideration with interest at prescribed rate from the date of



payment till their refund together with Rs. 20,000/- towards the cost of each complaint. In result, the order -

### ORDER

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


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

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

The charge of the amount awarded by this order shall remain on the flats booked by the complainants till complaints' claims are satisfied.

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

Mumbai.  
Date: 04/12/2018.

  
4.12.18  
(B.D. Kapadnis)  
Member & Adjudicating Officer  
MahaRERA, Mumbai.

Ext. A.  
Member.

Complaint No :- CC006000000043970/2018						
Yash Textile Machines Pvt. Ltd. / Flat No. Q-202						
Sr.No	Date	Amount	Purpose	Receipt No. / Dtd.	Receipt No. / Cheque No.	Bank Name
1	02.11.2014	100,000.00	Booking Amount	Nil / 02.12.2014	Ch. No. 013038	Punjab National Bank
2	09.02.2015	612,669.00	Commencement of flat	Nil / 09.02.2015	Ch. No. 002042	HDFC Bank
3	25.09.2015	536,628.00	Installment of Flat	Nil / 25.09.2015	Ch. No. 008079	HDFC Bank
4	27.01.2016	358,184.00	Installment of Flat	Nil / 27.01.2016	Ch. No. 003592	HDFC Bank
5	25.01.2016	357,752.00	Installment of Flat	Nil / 27.01.2016	Ch. No. 003593	HDFC Bank
6	28.11.2016	361,209.00	Installment of Flat	Nil / 02.12.2016	Ch. No. 004672	HDFC Bank
		2,326,442.00				

Received 2018  
Gurpreet Dhawan  
31-10-18

For Yash Textile Machines Pvt. Ltd.  
Director