

COMPLAINT NO: CC006000000001894

## Versus

**MahaRERA Regn: -P52000007537**

**Appearance:**

Complainants: In person.

Respondents: Shri Makarand Raut, Adv.

### Final Order.

28th February 2018

The complainant has filed this complaint under Section 18 of Real Estate (Regulation and Redevelopment) Act, 2016 (for short, RERA) for getting refund of her amount with interest and/or compensation on account of the respondents' failure to hand over possession of her booked flat No. 203, Block No. 3 of Viviana situated at Dhamote, Tal. Karjat, Dist. Raigad on agreed date 15<sup>th</sup> December 2015.

2. The respondents have pleaded not guilty and they have filed their reply to contend that in the year 2014-15 there were several complaints against illegal sand mining from creeks and rivers in Raigad District. Therefore, National Green Tribunal banned the sand mining in coastal region. In the year 2016 the ban was lifted when the State Government assured that the mining shall not damage eco-system. Even thereafter there was no supply of the sand for one and half years. Therefore, they could not

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complete the project in time. According to them, the complainant has admitted in Para-8 (c) of the agreement that in case of non-availability of the building material the promoters shall be entitled to reasonable extension of time. They further contend that if they would be directed to refund the complainant's amount, they are ready to refund Rs. 15,65,244/- within 120 days of the year in four equal instalments. According to them, they paid Rs. 85,000/- to the complainant for the purpose of paying stamp duty and registration charges but the complainant did not repay though she agreed to refund it within 30 days. Therefore, the amount of Rs. 85,000/- may be given set off.


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

<b>Points.</b>	<b>Findings.</b>
1. Whether the respondents have failed to : deliver the possession of the flat on the agreed date?	Affirmative.
2. Whether the complainant is entitled to : get refund of her amount with interest?	Affirmative.

### **REASONS.**

#### **Delayed Possession.**

4. The respondents have not disputed the fact that they agreed to deliver the possession on 15.12.2015 but they could not give possession because of the shortage of sand in Raigad district. It was possible for them to procure it from other places. Moreover, if one looks at Section 8 of Maharashtra Ownership Flats Act, 1963, one finds that the date of possession can be extended for three months and thereafter for further period of three months, if the promoter for reasons beyond his control was unable to give possession of the flat on the date specified in the agreement.

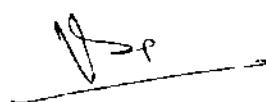


Respondents have failed to deliver the possession of the flat on the agreed date or during the next six months thereafter also. Hence, I hold that the complainant has proved that the respondents have failed to deliver the possession of the flat as agreed.

**Entitlement of the Complainant.**

5. The complainant has taken the decision to withdraw from the project and she has exercised her right which has been conferred upon her by Section 18 of RERA. Hence, she is entitled to get back her amount with the prescribed rate of interest. The complainant has filed the statement of expenses incurred by her on the booked flat. It shows that she paid the respondents Rs. 11,000/- on 04.02.2015, Rs. 40,000/- on 12.03.2015. The respondents collected Rs. 09,68,973/- and Rs. 06,38,098/- from the loan account of the complainant on 29.05.2015. She had to pay Rs. 42,100/- and Rs. 42,000/- towards insurance on 29.05.2016. The complainant paid Rs. 4,000/- on 15.05.2015 towards service tax, Rs. 9,462/- on 30.05.2015 towards processing fee of the Bank loan, Rs. 3,500/- towards stamp duty for registration of loan agreement on 30.05.2015, Rs. 3,500/- towards the mortgage property franking charges on 28.05.2015. the complainant is entitled to get back all these amount from the respondents with interest at the rate of 10.05% from the date of their respective receipts as they have defaulted to hand over the possession of the flat as agreed. The complainant is also entitled to get Rs. 20,000/- towards the cost of the complaint. Stamp duty of agreement of sale has been paid in the name of complainant. She can get its refund from the office of sub-registrar. Hence she cannot claim this amount. Since the complainant is going to get the interest which is compensatory in nature, she is not entitled to get the amount of rent claimed by her.


6. The respondents have contended that they gave loan of Rs. 85,000/- to the complainant for the purpose of paying stamp duty and registration charges. The copy of the receipt dated 05.05.2015 has been produced by



them to show that the complainant has acknowledged the receipt of Rs. 85,000/- and agreed to repay it within 30 days. Mr. Rajendra Sawant has filed Affidavit in reply to contend that the complainant has not re-paid this amount. The complainant submits that she re-paid it but she has not produced documentary evidence to prove it. Hence, I hold that the respondents are entitled to get set off, of the said amount from the amount which is due to the complainant. Hence, the order.

#### ORDER.

1. Respondents shall refund the complainant the amount mentioned in Para - 5 of the order with simple interest @ 10.05% from the date of their receipt till their repayment.
2. Respondents are entitled to get set off, of Rs. 85,000/- against the amount which is due to the complainant
3. The charge of the aforesaid amount shall be on the flat booked by the complainant till its repayment.
4. Complainant shall execute the deed of cancellation of the agreement for sale, at respondents' cost on satisfaction of her claim.

  
28.2.18

(B.D. KAPADNIS)

Member & Adjudicating Officer,  
MahaRERA, Mumbai.

Mumbai  
Date: 28.02.2018