

COMPLAINT NO: CC006000000012667

## Versus

1

185

them, they could not complete the project because it is under rehabilitation scheme and they have to face many hurdles in evacuating the encroachers, face the litigations and problems in obtaining the various sanctions and permissions mentioned there in reply. On 24.11.2010 they applied for Environmental Clearance and got it on 28<sup>th</sup> November 2012. They applied to the Airport Authority of India for height clearance on 04.11.2011. The said Authority gave its height clearance to the extent of 119.96 mtrs. above mean sea level and therefore, they had to file the Appeal on 12.02.2014 before the Appellate Committee of Ministry of Civil Aviation. On 27.08.2015 the said Authority revised the height and granted NOC. Therefore, they had reduced the height of the building by 5 residential floors and had to seek the amended approval from MMRDA. They have also referred to some issues regarding occupants who encroached in the building no R-210 during the period from 2015 to 2017. They got approval from MMRDA on August 2017 for amended building in which five upper floors have been reduced. Therefore, they submit that the reasons for delay are beyond their control. Hence, they request to reject the complaint.


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

Points.	Findings.
1. Whether the respondents have failed to : deliver the possession of the flat on the agreed date?	Affirmative.
2. Whether the complainants are entitled to : get refund of their amount with interest?	Affirmative.

#### REASONS.

##### Relevant provision:

4. The Section 18 of RERA provides that allottee can claim refund of his amount with interest and/or compensation if the promoter fails to deliver the possession of the apartment on the date specified in the agreement. It



gives the option to allottee to withdraw from the project. In view of this provision, the complainants have exercised their right to withdraw from the project and they claim refund of their amount with interest.

5. Section 18 of RERA allows the allottee to collect his amount with simple interest at prescribed rate which is 2% above the MCLR of SBI. The current rate of MCLR of SBI is 8.05%. Thus, the complainants are entitled to get simple interest at the rate of 10.05% p.a. on their amount from the date of its receipt by the respondents till its refund.

**Maintainability of complaint & delayed possession:**

6. The respondents have taken a very technical stand that the complaint is not in B-form as laid down by Rule 7. It is necessary to note that the complaints are to be filed online and the software developed by MahaRERA provides only one form to file the complaint either before the Authority or before the Adjudicating Officer. Therefore, I do not give any weightage to the technical objection taken by the respondents.

7. The respondents contend that in the agreement for sale the date of possession is not mentioned in its clause no. 9, therefore, they have contended that the parties do not agree upon any date of possession. The agreement has been executed on 27<sup>th</sup> August 2013 and it is governed by the provisions of Maharashtra Ownership Flats Act, 1963. Section 4 of the said Act makes it mandatory for the promoter to enter into written agreement for sale before he receives more than 20% of the consideration. Clause 1(a)(ii) of section 4 provides that the agreement must contain the date by which the possession of the flat is to be handed over to the purchaser. The agreement is one sided agreement executed by the parties by filling the blanks of the type written form and the date of possession appearing in Clause 9 is left blank. It was the responsibility of the promoter to mention the date of possession in the agreement. The promoter omitted to mention the date and therefore he cannot take undue advantage of his own wrong.



to say that the date of possession has not been mentioned and therefore, there is no agreed date of possession. In fact, it amounts to unfair practice for which the promoter must be ashamed of. Since the promoter made the allottee to part with the amount of consideration without specifying the date of delivery of possession, he is estopped by Section 115 of Indian Evidence Act from denying the date mentioned by the complainant. The respondents have relied upon some cases decided by the Authority holding that in the absence of the documents showing the date of possession or in the absence of the contention regarding the date of possession in the complaint, section 18 is not attracted. This principle is not applicable to this case as the complainant has the registered agreement for sale coupled with their statement that the respondents agreed to deliver possession of the flat on or before 31.12.2017. Therefore, I hold that the respondents agreed to deliver possession of the flat on or before 31.12.2017. Therefore, I hold that the agreed date of possession was 31.12.2017. Admittedly, the respondents have not delivered the possession of the flat on the agreed date, hence I hold that Section 18 of the Act is applicable and the complainants have proved that the respondents have failed to deliver the possession of their booked flat on the agreed date.

**Reasons for delay.**

8. The respondents have relied upon the events from the year 2003 whereas they have entered into the agreement for sale on 27.08.2013. Hence all incidents which had taken place prior to the date of agreement were within the knowledge of the respondents. Despite it, they have agreed to deliver the possession of the flat on 31.12.2017. It appears that all the requisite permissions and approvals were not in their hands when they promised the complainants to deliver the possession of the flats on or before 31.12.2017. If they have committed any mistake in assessing the period of completion of the project, they cannot blame the complainants. Even if it is taken for granted that they were prevented from the



completion of project in time due to reasons beyond their control, Section 8(b) of the Maharashtra Ownership Flats Act 1963 permits the extension of 3+3 months at the most. Therefore, even after accepting the case of the respondents that the reasons which delayed the project were beyond their control, they cannot get extension of more than six months. The complainants are withdrawing from the project and therefore, I take the help of Section 8 of the said Act to hold that now the respondents are liable to refund the amount received by them from the complainants with interest from the date of the receipt of the amount. This provision is analogous to section 18 of the RERA.

9. The respondents have taken the stand that the relief regarding the interest on continuation and the relief of refund on withdrawal from the project have been sought by the complainants. It is basic principle of Civil Law that alternative reliefs can be claimed. Now the complainants want to withdraw from the project and therefore, they are claiming the refund. Hence, I do not find any illegality in this context. The respondents have taken the plea that the complainants have not cancelled the agreement before filing the complaint. I do not find it necessary to cancel the agreement by issuing the notice to the promoter before filing the complaint under Section 18 of RERA. Therefore, all these contentions taken by the respondents have no merits.

**Entitlement of complainants.**

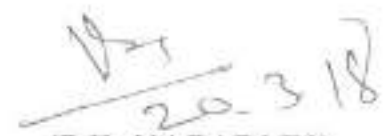
10. The complainants have produced the statement of amount showing the amount paid by them which is marked Exh.'A'. I find that Rs. 5,71,000/- have been paid by the complainants on stamp duty in their name. The complainants are entitled to get its refund on cancellation of the agreement for sale. The statement shows the amount paid by the complainant towards the consideration of the flat, taxes and registration duty. Since the respondents have failed to deliver the possession of the booked flat on the agreed date, respondents are liable to refund all the

amount of consideration and reimburse all the other ancillary expenses appearing in the statement, except the amount of stamp duty. As I said above, the respondents are liable to pay interest on amount of consideration from the date of their receipt and on the amount paid on the taxes and registration charges from the dates of their payment to Govt. The prescribed rate of interest is now 10.05 %. The respondents are liable to pay the simple interest at this rate together with Rs. 20,000/- towards the cost of the complaint. Hence, the following order.

### ORDER.

1. Respondents shall refund the complainant the amount mentioned in Exh.'A' except the amount of stamp duty.
2. The Exh. 'A' shall form the part of this order.
3. The respondents shall pay the consideration amount shown in the Exh.'A' with simple interest at the rate of 10.05% per annum from the date of receipt and reimburse the other amount with the said rate of interest from the date of their payment to the Government Agency, till all are repaid.
4. The respondents shall pay the complainants Rs. 20,000/- towards the cost of complaint.
5. The charge of the aforesaid amount shall be on the flat booked by the complainants till its repayment.
6. Complainants shall execute the deed of cancellation of the agreement for sale, at respondents' cost on satisfaction of their claim.

Mumbai  
Date: 20.03.2018

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

**Statement of Accounts RNA Exotica**

*Ext-A*  
*Member*

Installments				
SR.NO.	CHEQUE NO.	DATE	AMOUNT	Purpose
1	288063	21-06-2010	500000	Booking Amount
2	297967	20-08-2010	2260375	Booking Amount
3	917671	12-10-2011	455027	Booking + On Completion of 1st Basement
4	917772	14-11-2011	441660	On Completion of 2nd Basement
5	918299	19-05-2012	441660	On Casting of 3rd slab
6	918435	06-07-2012	441660	On Casting of 6th slab
7	918706	10-10-2012	441660	On Casting of 9th slab
8	919785	11-11-2013	437079	On Casting of 12th slab
9	920063	24-02-2014	436143	On Casting of 15th slab
10	920460	29-07-2014	437241	On Casting of 18th slab
11	920685	30-10-2014	437242	On Casting of 21th slab
12	921686	10-10-2015	437242	On Casting of 24th slab
13	921890	12-12-2015	437242	On Casting of 27th slab
14	922092	05-3-2016	437242	On Completion of 30th slab
	Total {A}		8041473	

Service Tax				
SR.NO.	CHEQUE NO.	DATE	AMOUNT	Purpose
1	329270	02-12-2010	55928	Service Tax on the Agreement Value
2	329271	02-12-2010	1440	Service Tax on the Agreement Value
3	917671	12-10-2011	11717	Service Tax On Completion of 1st Basement
4	917773	14-11-2011	11373	Service Tax On Completion of 2nd Basement
5	918300	19-05-2012	11373	Service Tax On Casting of 3rd slab
6	918436	06-07-2012	13647	Service Tax On Casting of 6th slab
7	918707	10-10-2012	13647	Service Tax On Casting of 9th slab
8	919786	11-11-2013	16377	Service Tax On Casting of 12th slab
9	920064	24-02-2014	16173	Service Tax On Casting of 15th slab
10	920461	29-07-2014	16214	Service Tax On Casting of 18th slab
11	920692	31-10-2014	16377	Service Tax On Casting of 21th slab
12	921687	10-10-2015	18550	Service Tax On Casting of 24th slab
13	921891	12-12-2015	19212	Service Tax + swachh Bharat Cess On Casting of 27th slab
14	922093	05-03-2016	19212	Service Tax + swachh Bharat Cess On Completion of 30th slab
	Total {B}		241240	



TDS				
SR.NO.	CHEQUE NO.	DATE	AMOUNT	Purpose
1	Deposited	11-11-2013	4,581	TDS On Casting of 12th slab
2	Deposited	13-11-2013	1,153	TDS On Casting of 12th slab
3	382142	01-03-2014	4,569	TDS On Casting of 15th slab
4	382155	04-08-2014	4,581	TDS On Casting of 18th slab
5	382161	03-11-2014	4,417	TDS On Casting of 21th slab
6	382177	31-10-2015	4,417	TDS On Casting of 24th slab
7	382183	16-12-2015	4,417	TDS On Casting of 27th slab
8	382189	15-03-2016	4,417	TDS On Casting of 30th slab
	Total {C}		32,552	

VAT				
SR.NO.	CHEQUE NO.	DATE	AMOUNT	Purpose
1	919510	23-08-2013	114065	1 % VAT
	Total {D}		114,065	

Stamp Duty				
SR.NO.	CHEQUE NO.	DATE	AMOUNT	Purpose
1	279557	16-08-2013	571000	Stamp Duty (Given in favour of BOI Share Holding Ltd)
	Total {E}		571,000	

Registration				
SR.NO.	CHEQUE NO.	DATE	AMOUNT	Purpose
1	919581	12-09-2013	30000	Registration
	Total {F}		30,000	

	Grand Total	9,030,334	Total we have to take
	(A+B+C+D+E+F)		