

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI
COMPLAINT NO. CC001000000000035

Vinod Amladi

... Complainant.

VERSUS

Puneet Sanklecha

... Respondentss.

Sanklecha Construction Pvt. Ltd.

MahaRERA Regn: - P51600012165

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


Complainant: In person.

Respondentss: Adv. Bhushan Arvind
Bandiwadkar.

Final Order
07th May, 2018

The Complainant agreed to purchase Flat No. B-3, 403 in Respondents' Metrozone Hampston, a registered project situated at Nashik. The respondents failed to deliver its possession on the agreed date viz. 30th June, 2014 with a grace period of 6 months and therefore the complainant claims refund of his amount with interest under Section 18 of the Real Estate (Regulation & Development) Act, 2016 (RERA).

2. The respondents have pleaded not guilty and they have filed their detailed reply. According to them, while registering their project with MahaRERA they have revised the date of possession as 30th September 2018. Smt. Seema Salve filed a complaint against Sanklecha Construction Private Limited bearing Complaint No. CC001000000000037. In that case this Authority interpreted provision of Section 18 read with Rule of 4 Maharashtra Real Estate (Regulation & Development), (Registration of



Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and disclosure on website) Rules, 2017 and extended the time for completion of ongoing project. The respondents further contend that the agreement for sale has been executed as per the provisions of the Maharashtra Ownership Flats Act, 1963 and therefore, on this ground MahaRERA does not have jurisdiction to entertain this complaint.

3. The respondents further contend that the reasons which caused delay in completing the project were beyond their control. They received commencement certificate on 29.08.2011. Thereafter, they applied for Environment Clearance in February 2012 and got it on 06th February 2015. Though their construction was below 20,000 sq. mtrs., it was stopped by the said Authority. Now they have revised the date of possession in accordance with the provisions of MahaRERA. They have completed the construction of complainant's apartment to 48% and therefore, they request to dismiss the complaint.

4. Following points arise for determination. I record the findings thereon as under:

<u>Points</u>	<u>Findings</u>
1. Whether the Authority has jurisdiction to adjudicate upon this dispute?	Affirmative.
2. Whether the respondents have failed to deliver the possession of complainant's booked flat on agreed date?	Affirmative.
3. Whether the project is delayed because of the reasons beyond the control of the respondents?	Negative.
4. Whether respondents are liable to refund Complaint's amount with interest?	Affirmative.



REASONS

Point no.1

5. The Respondents have relied upon the case of Smt. Seema Salve decided by the Hon'ble Chairperson of this Authority holding that the period for completion of the project sought by the promoter should commensurate with reasonable time for its completion and therefore in that case the Hon'ble Chairperson directed the promoter to pay interest to the allottee on his failure to complete the project during the time extended by the Authority. Similar view has been taken by the Hon'ble Chairperson in Siddharth Patravali Versus Vishal Gauri Shankar Damani. It has been carried to Hon'ble Appellate Tribunal in AT 006000000000003. The Hon'ble Appellate Tribunal has set aside the order of the Hon'ble Chairperson by holding that the legal position in respect of future consequences of delay, except natural calamities, is indicated to be no ground to seek extension from the mandated date of handing over possession.

6. The Hon'ble Bombay High Court in Neelkamal Realtors Versus Union of India (W.P. No.2737 of 2017) has held in Para 119 of the Judgement that MahaRERA does not contemplate rewriting of the contract. Promoter is supposed to be conscious of the consequences of getting the project registered. Having sufficient experience in open market, the promoter is expected to have a fair assessment of the time required for completing the project. In view of these observations, I find that only because the respondents' project received the environment clearance in February 2015, they are not entitled to get the extension period to deprive the complainant of his statutory rights conferred by Section 18 of MahaRERA.



7. In the case of Neelkamal Realtors Versus Union of India (W.P. No.2737 of 2017) the Hon'ble Bombay High Court has also made it clear that though agreements for sale have been executed when Maharashtra Ownership Flat Act, 1963 was in force, the Maharashtra Real Estate Regulatory Authority has jurisdiction to entertain the disputes arising out of these matters if they fall under RERA. Moreover, Section 18 of RERA is retroactive and this legal position has been clarified by the Hon'ble Bombay High Court. Hence, there is no substance in the submission of the respondents that this authority does not have jurisdiction to entertain this complaint and decide it.

Point nos.2& 3

8. The complainant has produced the agreement for sale on record wherein in Clause 17 the respondents have agreed to deliver the possession of the booked flat by the end of May 2014 with a grace period of 6 months. When one looks at Section 8 of Maharashtra Ownership Flats Act, 1963, one finds that it provides, if the promoter for reasons beyond his control is unable to give possession of the flat by the date specified, or further agreed date and period of 3 months thereafter or a further period of 3 months if those reasons still exists then in any such case the promoter shall be liable on demand to refund amount already received by him in respect of flat from the date of receipt, if the allottee withdraws from the project. Therefore, even it is taken for granted that the reasons assigned by the respondents delayed project for such period to condone the delay would not be more than 6 months in any case. Complainant has proved that respondents have failed to hand over the possession of a flat on agreed date. I find that the complainant is not entitled to get any compensation because of these reasons and also because the interest to be awarded is compensatory in nature. After giving these concessions to the respondents, I record my findings in negative on point no.2.

Point no.4

9. Complainant has proved that the respondents have failed to hand over the booked flat on the agreed date. The complainant exercises his right to withdraw from the project and therefore he is entitled to get refund of his amount mentioned in the details of payment marked Exhibit 'A' which consists of the amount of consideration paid to the respondents and the service tax and VAT. Since the respondents have defaulted in handing over possession of the flat on the agreed date, they are liable to reimburse the complainant all the amount collected from him on account of service tax and VAT. The complainant has claimed Rs.2,66,100/- towards stamp duty and registration charges. In fact, the registration charges are Rs. 31,300/-. He is entitled to get back this amount from the respondents. However, Rs.2,34,800/- have been paid by the complainant in his name towards stamp duty. The complainant is entitled to get back this amount of stamp duty from the concerned authority on cancellation of the agreement for sale. Hence, the complainant cannot claim the amount of stamp duty from the respondents. The complainant has shown the days and amount of interest in schedule 'A'. It needs to be ignored.

10. The complainant is entitled to get the amount of consideration and taxes as well as the registration charges with simple interest at prescribed rate. The prescribed rate of interest is 2% above SBI's highest marginal cost of lending rate which is currently 8.05%. Hence, the complainant is entitled to get simple interest @10.05% from the date of payment of the aforesaid amount till he gets the refund thereof. The complainant is also entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the following order.

ORDER


1. The respondents shall refund the amount mentioned in payment schedule marked Exhibit 'A' except the amount of stamp duty and the interest calculated therein, to the complainant with simple



interest @10.05% p.a. from the date of their receipts/payment till they are refunded.

2. The respondents shall pay the complainant Rs. 20,000/- towards the cost of the complaint.
3. The charge of the aforesaid amount shall be on the complainant's booked flat till the satisfaction of his claim.
4. On satisfaction of his claim the complainant shall execute the Deed of cancellation of agreement for sale and the respondents shall bear the cost of it.

Mumbai
Date: 07.05.2018


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

ANNEXURE A (Revised 21 March 2018)

DETAILS OF PAYMENTS MADE AND REFUND CLAIMED

Payment Date	Purpose	Amount Paid ^{a)}	Receipt Number	Days o/s ^{b)}	Interest Amount ^{c)}	Claim Amount
15-Feb-12	Principal (Booking + Allotment)	7,56,467	201 & 203	2,226	4,84,120	12,40,587
15-Feb-12	Service Tax on above	19,479	202 & 204	2,226	12,466	31,945
7-Apr-12	Stamp Duty	2,34,800	15680	2,174	1,46,756	3,81,556
11-Apr-12	VAT	50,432	988966	2,170	31,463	81,895
30-Apr-12	Registration	31,300	4322	2,151	19,356	50,656
9-May-12	Principal (Plinth)	5,04,311	441 & 443	2,142	3,10,567	8,14,878
9-May-12	Service Tax on above	15,583	442 & 444	2,142	9,596	25,179
10-Oct-12	Principal (1 st Slab part 1)	1,03,090	663	1,988	58,921	1,62,011
1-Mar-13	Principal (1st Slab part 2)	98,637	946 & 949	1,846	52,349	1,50,986
1-Mar-13	Service Tax on above	6,233	947, 948 & 950	1,846	3,308	9,541
2-Aug-16	Principal (2 nd Slab)	2,01,722	2153	596	34,565	2,36,287
2-Aug-16	Service Tax on above	9,078	2152	596	1,556	10,634
5-Oct-16	Principal (3 rd Slab)	2,01,725	2208	532	30,854	2,32,579
5-Oct-16	Service Tax on above	9,078	2209	532	1,388	10,466
23-Nov-16	Principal (4 th Slab)	2,01,728	2223	483	28,012	2,29,740
23-Nov-16	Service Tax on above	9,077	2224	483	1,260	10,337
15-Dec-16	Principal (5 th Slab)	2,01,724	2239	461	26,736	2,28,460
15-Dec-16	Service Tax on above	9,078	2240	461	1,203	10,281
	Total of above	26,63,542			12,54,478	39,18,020

SUMMARY BY TYPE OF PAYMENT

Principal	22,69,404		10,26,125	32,95,529
Service Tax	77,606		30,778	1,08,384
Stamp Duty/Registration	2,66,100		1,66,112	4,32,212
VAT	50,432		31,463	81,895
Total of above	26,63,542		12,54,478	39,18,020
Stamp Duty	2,34,800		1,46,756	3,81,556
Total Excluding Stamp Duty	24,28,742		11,07,723	35,36,465

Notes:

a) All amounts paid via cheques

b) Days outstanding calculated from Payment Date until:

21-Mar-18

c) Simple interest is highest SBI MCLR of 8.35% plus 2% =

10.3500%

Submitted to RERA on 23 Mar 2018
Usha Anand