

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.**

COMPLAINT NO: CC006000000057216.

Satish Chandulal Shah

...Complainant.

Versus

Pradeep Dubey
(Ajayraj Complex)

...Respondent.

MahaRERA Regn: P99000007945.

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

Appearance:

Complainant: In person.

Respondents: Mr. Pradeep Dubey.

**FINAL ORDER
21st February 2018.**

The complainant contends that he booked flat nos. 105 in B-wing, 103 in C-wing of the respondents' registered project 'Ajayraj Complex'. The respondents left the date of possession blank in the agreements for sale of these flats. The complainant booked flat no. 203 in C-wing of the said project and the respondents agreed to hand over its possession on or before 18.01.2019. The complainant further contends that the respondents orally agreed to hand over the possession of the flats on or before August 2018. They have failed to hand over the possession on agreed dates. Hence, the complainant withdraws from the project and claims refund of his amount under Section 18 of RERA.

2. The respondents have pleaded not guilty. They contend that the project could not be completed in time because their director suffered from



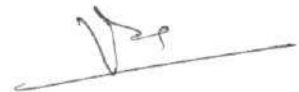
heart attack and the project suffered because of demonetization scheme, GST policy, shortage of building materials and delay in getting the commencement certificate. The construction of the project is affected due to Mumbai Baroda Rail Express. According to them, the agreements have been executed before RERA came into force, therefore, the Authority has no jurisdiction. They further contend that though the agreed date of giving possession of flat no.C-203 is 19.01.2019. It is not possible to hand over the possession of it till December 2020. They deny that they agreed to deliver the possession of the flats in December 2018 as contended by the complainant.

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

POINTS	FINDINGS
1. Whether the respondents agreed to hand over the possession of flat no. B-105 & C-103 on or before 31 st August 2018?	Affirmative.
2. Whether the respondents agreed to hand over the possession of the flat no. C-203 on 18.01.2019?	Affirmative.
3. Whether the respondents are liable to refund the complainant's amount with interest on their failure to hand over the possession of flats on agreed dates?	Affirmative.

REASONS:

4. The complainant has produced the copies of agreements of sale of flat no. B-105 and C-103. The date of possession in these agreements is left blank. It is the legal obligation of the promoter to mention the date of possession in the agreement by virtue of Section 4(1A) (a) (ii) of MOFA and Section 13(2) of RERA. The respondents have not mentioned the date of

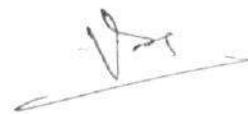


possession of these two flats. The complainant states on oath in his Affidavit that the respondents agreed to hand over the possession of the flats by end of August 2018. In this circumstance, the respondents are estopped from denying the date of possession suggested by the complainant. Hence, I hold that the respondents have agreed to hand over the possession of these two flats by the end of August 2018.

5. The agreement for sale relating to flat no. C-203 clearly shows that within twenty-four months from the date of agreement (dated 19.01.2017) the respondents agreed to hand over the possession of the said flat. Hence, the date of possession of flat no. C-203 is 18.01.2019.

6. It is admitted fact that the respondents have not handed over the possession of the flats on agreed dates.

7. The respondents contend that they could not complete the project in time because of their director suffered from heart attack and project suffered because of the demonetization policy, GST and shortage of building material as well as Bombay-Baroda Rail Track. I do not find these are the sufficient reasons to extend the agreed period of possession. Therefore, I find that the complainant who opts for withdrawing from the project, is entitled to get refund of his amount with interest at prescribed rate from the date of payment till refund under Section 18 of RERA. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 8.55%. The respondents have not disputed the receipts of the payments mentioned in payment statements marked Exh. A, B and C. Therefore, the respondents are liable to refund these amount with interest. The respondents are also liable to pay the complainant Rs. 20,000/- towards the cost of the complaint.



ORDER

The respondents shall pay the complainant the amount mentioned in the payment statement marked Exh. "A, B, & C" from the date of their receipt mentioned therein with simple interest at the rate of Rs. 10.55% per annum till they are refunded.

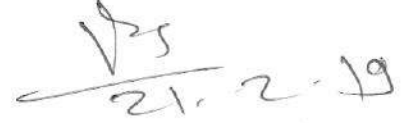
Exh. "A, B, & C" shall form part of the order.

The charge of the complainant's claim shall be on the booked flats till his satisfaction.

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

Mumbai.

Date: 21.02.2019.



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

221-A
Member A

Name of the Complainant- Mr Satish Shah

Complaint No-CC006000000057216

Flat 103, C Wing

Sr.No	Date	Amount	Purpose	Cheque No with Bank Name
1	27/11/2012	21,000	Installment for flat 103,C Wing Ajay Raj Complex	544753 State Bank of India
2	05/12/2012	2,12,000	Installment for flat 103,C Wing Ajay Raj Complex	011620 Bank of India
3	23/04/2013	2,00,000	Installment for flat 103,C Wing Ajay Raj Complex	011685 Bank of India
4	02/05/2013	2,50,000	Installment for flat 103,C Wing Ajay Raj Complex	011687 Bank of India
5	10/05/2013	1,39,815	Installment for flat 103,C Wing Ajay Raj Complex	CASH
6	10/05/2013	27,185	Installment for flat 103,C Wing Ajay Raj Complex	008575 Bank of India
7	17/08/2013	1,56,250	Installment for flat 103,C Wing Ajay Raj Complex	CASH

Complainant Name & Sign

Satish - C-Shah

Shah SC

Respondent's Remark-

Payment not Disputed

Pradeep Dubey
20/2/2019

Respondent's name& sign

Complaint No-CC006000000057216

Name of the Complainant- Mr Satish Shah

Flat no 105, Building-4

Member II

Sr.No	Date	Amount	Purpose	Cheque No with Bank Name
1	29/11/2012	1,00,000	Installment for flat 105 Building-4 Ajay Raj Complex	503085 UCO Bank
2	15/12/2012	1,00,000	Installment for flat 105 Building-4 Ajay Raj Complex	011623 Bank of India
3	04/01/2013	1,07,500	Installment for flat 105 Building-4 Ajay Raj Complex	011637 Bank of India
4	19/03/2013	5,00,000	Installment for flat 105 Building-4 Ajay Raj Complex	503063 UCO Bank
5	08/05/2013	2,50,000	Installment for flat 105 Building-4 Ajay Raj Complex	011689 Bank of India
6	08/02/2017	50,000	Installment for flat 105 Building-4 Ajay Raj Complex	119994 Bank of India
7	20/02/2017	50,000	Installment for flat 105 Building-4 Ajay Raj Complex	119998 Bank of India
8	02/03/2017	1,00,000	Installment for flat 105 Building-4 Ajay Raj Complex	182307 Bank of India

Complainant Name & Sign

Satish. C. Shah
Shah S.C.

Respondent's Remark-

Payment not Disputed
[Signature]

Respondent's name & sign

Pradeep - D Wasey
20/2/2019

Exh C
12

Member II

Complaint No-CC006000000057216

Name of the Complainant- Mr Satish Shah

flat 203, Phase-2

Sr.No	Date	Amount	Purpose	Cheque No with Bank Name
1	07/11/2012	1,58,496	Installment for flat 203 Phase-2 Ajay Raj Complex	011608 Bank of India
2	11/11/2012	21,000	Installment for flat 203 Phase-2 Ajay Raj Complex	011614 Bank of India
3	11/11/2012	21,000	Installment for flat 203 Phase-2 Ajay Raj Complex	011615 Bank of India
4	12/11/2012	1,58,854	Installment for flat 203 Phase-2 Ajay Raj Complex	011610 Bank of India
5	26/11/2012	31,832	Installment for flat 203 Phase-2 Ajay Raj Complex	011621 Bank of India
6	26/11/2012	28,172	Installment for flat 203 Phase-2 Ajay Raj Complex	011622 Bank of India
7	21/03/2013	2,00,000	Installment for flat 203 Phase-2 Ajay Raj Complex	503095 UCO Bank
8	06/04/2013	3,00,000	Installment for flat 203 Phase-2 Ajay Raj Complex	503097 UCO Bank
9	23/04/2013	60,000	Installment for flat 203 Phase-2 Ajay Raj Complex	CASH
10	02/05/2013	50,000	Installment for flat 203 Phase-2 Ajay Raj Complex	011686 Bank of India

Complainant Name & Sign

Satish. C. Shah
Shah SC

Respondent's Remark-

Payment not
Disputed

Udh

Respondent's name & sign

20/2/2019
Pradeep. Dubey