

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.

COMPLAINT NO: CC006000000057101

Vrajesh Hirjee ... Complainant.

Versus

Skyline Construction Co. ... Respondents.
(RNA Exotica)

MahaRERA Regn: -P51800007873

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

Appearance:

Complainant: S. Bhimani.

Respondents: Adv. Subit Chakrabarti.

Final Order.

21th February 2019.

The Complainant has been seeking refund of his amount with interest under Section 18 of the Real Estate (Regulation and Development) Act, 2016(RERA) because the respondents failed to hand over the possession of flat no. C-2804 of their registered project RNA Exotica situated at Goregaon on agreed date 31.12.2015.

2. The respondents have pleaded not guilty and have filed their reply to contend that the complaint is not maintainable because there is no agreed date of possession mentioned in the agreement. They deny that agreed date of possession is 31.12.2015. They further contend that other allottees of the project have filed Suit No, 425 of 2017 in Bombay High Court and the construction work is being monitored by the High Court as per the order passed by it and the project is to be completed by 31st October 2019. Therefore, the complaint is premature and is not maintainable. They



further contend that 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 in their reply. On 24.11.2010 they applied for Environmental Clearance and got it on 28th 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 in August 2017 for amended building plan in which five upper floors have been reduced. Therefore, they submit that the reasons for delay are beyond their control. According to them, the earlier complaint bearing no. CC006/57100 seeking the same reliefs has been disposed off by this Authority when the complainant withdrew it. Hence, they request to dismiss the complaint.

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

Points.	Findings.
1. Whether the respondents have failed to hand over the possession of the flat on agreed date?	Affirmative.
2. Whether the complainant is entitled to get refund of his amount with interest?	Affirmative.



REASONS.


Relevant provision:

4. Section 18 of RERA provides that allottee can claim refund of his amount with interest and/or compensation if the promoter fails to hand over the possession of the flat on agreed date. It gives the option to allottee to withdraw from the project. In view of this provision, the Complainant has exercised his right to withdraw from the project and he claims refund of his amount with interest.

Respondents' inability to hand over the possession of a flat on agreed date.

5. Parties have entered into agreement for sale but there is no mention of the date of possession. To prove the agreed date, the complainant has filed the affidavit wherein he contends that the respondents agreed to hand over possession of the flat in the year 2013 and thereafter in 2015 and thereafter in the year 2017. In order to corroborate his evidence, the complainant has relied upon the simple mortgage deed dated 30.03.2011 executed by the respondents in favour of their banker, Axis Bank. The respondents mentioned therein that the project would be completed in all respect by September 2012. Another simple mortgage deed dated 05.04.2013 executed by the respondents in favour of their banker, Axis Bank, the respondents mentioned therein that the project would be completed in all respect by 31.03.2016. Lastly, the complainant relies on the webpage of the project showing that the proposed date of the completion of the project was 31.12.2017. This therefore, shows that the respondents went on changing the dates.

6. Respondents' advocate has relied upon *Grasim Industries Ltd. -v/s- Agrawal Steel* (2010) 1 SCC 83. In this case the Supreme Court has observed,



“In our opinion when a person signs a document, there is a presumption, unless there is proof of force or fraud, that he has read the document properly and understood it and only then he has affixed his signatures thereon, otherwise no signature on a document can ever be accepted. In particular, businessmen, being careful people (since their money is involved) would have ordinarily read and understood a document before signing it”.

7. The learned advocate of the respondents therefore submits that the date of possession is kept blank with the consent of the parties and no date of possession was agreed upon. I do not agree with him because section 4 (1A) (ii) of MOFA provides that before accepting advance payment or deposit more than 20% of the sale price the promoter is liable to enter into written agreement for sale and mention in it the date by which the possession of the flat is to be handed over to the purchaser. Section 13(2) of RERA also casts the similar liability. Hence, the respondents cannot take disadvantage of their own wrong. In fact, they have contravened section 4 of MOFA and section 13 of RERA. Hence, the case on which the respondents' learned advocate relies upon will not come to his help because the facts of the reported case and the case on hand are different. In this context, it is necessary to rely upon Fortune Infrastructure-v/s-Travor D'lima (2018) 5 SCC 442 wherein the Hon'ble Supreme Court has held that when no date of possession is mentioned in the agreement, the promoter is expected to hand over the possession within reasonable time and the period of three years is held to be reasonable time. In this case, the complainant has booked the flat in the year 2011 and within reasonable time of three years the respondents were liable to hand over the possession of his flat i.e. by December 2014 but the complainant contends that the agreed date of possession was December 2015. So I hold that the respondents agreed to hand over the possession of the flat by December

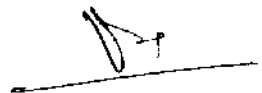


2015. Admittedly, till the date the respondents have not handed over the possession of the flat to the complainant. The complainant found in this circumstance, withdraws from the project and claims refund of his amount with interest under section 18 of RERA. In view of this finding I do not agree with respondents' learned Advocate when he submits that since the High Court has directed the respondents to complete the project by 31.10.2019 therefore the complaint is premature.

Delayed possession complainant's claim.

8. The respondents have mentioned various reasons in their reply which caused delay in completing the project. Even if it is taken for granted that they are the genuine reasons which are beyond the control of the respondents, the respondents cannot claim the extension of more than six months of the date of possession in view of Section 8 (b) of Maharashtra Ownership Flats Act. Hence, the respondents are liable to refund the complainants amount with interest at prescribed rate.

9. Respondents advocate brings to my notice paragraph 127 of Neelkamal Realtors Suburban Pvt. Ltd.-v/s-Union of India (Writ Petition No. 2737 of 2013, Original Side) and submits that Hon'ble Bombay High Court observed that the requirement to pay interest under section 18 is not penal since it is compensatory in nature due to delay suffered by the purchasers. Even assuming that the interest is penal in nature levy of interest is not retrospective but it is only based on antecedent facts; it operates prospectively. In my opinion, this observation cannot be read out of context. The Hon'ble High Court has considered the issue of interest payable under section 18 of RERA in para-119 onwards. It observes that the date mentioned in the agreement for sale for handing over the possession is material date. In para-120 the Hon'ble High Court observes that if the promoter defaults to hand over the possession to the allottee in



agreed time limit then the allottee shall reasonably expect some compensation from the promoter. In para-121 the Court has considered the retroactive and retrospective effect of sections 12,14,18, 19 and considered the scope of section 71 of RERA in para-123 to 126. After going through this part of the judgement there remains no doubt that the Hon'ble High Court has held in clear terms that interest to be awarded under section 18 is not penal in nature but it is compensatory. This view is reiterated in para-261. The Hon'ble High Court has also referred to section 8 of MOFA where on promoter's failure in giving possession in accordance with the terms of the agreement for sale, he is liable to refund the amount already received by him together with simple interest at the rate of 9% per annum from the date he receives the same till the date the amount and interest thereon is refunded. Section 88 of RERA does not bar MOFA. Hence, I find that the adjudicating officer can award the interest from the date of default in addition to the compensation. Moreover, explanation (ii) of Section 2 (za) of RERA clearly provides that the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date of refund . Respondents have not disputed the receipt of Rs. 1,06,89,176/-. Hence I hold that the interest is payable from the date of the receipt of the amount.

10. Respondents have not disputed the amount mentioned in the payment statement marked Exh 'A' except the amount of Rs. 1,11,249/- paid towards TDS. The complainant has produced the TDS certificate showing that Rs.55,196/- have been credited to the respondents' account. Hence I find that the respondents are bound to repay Rs. 55,196/- and not Rs. 1,11,249/- as shown in the statement marked Exh."A" under this head.

11. The agreement for sale has been executed on 10th July 2012. On cancellation of the agreement stamp duty can be claimed within five years from the date of the agreement as provided by section 47 and 48 of the




Maharashtra Stamp Act. Now, the complainant is not entitled to get it back. Therefore, the complainant is entitled to get reimbursement of Rs. 6,65,500/- paid towards the stamp duty and registration charges also.

12. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 8.55%. The complainant is entitled to get interest from the date of the payment till the refund at the rate of 10.55% per annum. The respondents are liable to pay Rs. 30,000/- towards the cost of the complaint. Hence, the following order.

ORDER.

1. The respondents shall pay the complainant amount shown in the Exh.'A' except the TDS amount and shall pay stamp duty amounting to Rs. 6,65,500/- and registration charges.
2. The respondents shall reimburse the complainant the TDS amount Rs. 55,196/- paid on 03.12.2013.
3. The respondents shall pay the aforesaid amount with simple interest at the rate of 10.55% per annum from the date of receipt till their repayment.
4. The Exh. 'A' shall form the part of this order.
5. The respondents shall pay the Complainant Rs. 30,000/- towards the cost of complaint.
6. The charge of the aforesaid amount shall be on the complainant's booked flat till satisfaction of Complainant's claim.
7. The complainant shall execute the deed of cancellation on satisfaction of his claim at respondents' cost.


(B.D. KAPADNIS)

Member & Adjudicating Officer,
MahaRERA, Mumbai.

Mumbai
Date: 21.02.2019.

Part A
Member

NAME OF THE COMPLAINANT

COMPLAINT NO. CC 00600000057101



SR. NO.	DATE	AMOUNT	PORPOSE	RECEIPT NO./CHEQUE NO. WITH BANK NAME
1	4/21/2011	500,000	RNA	CH. NO.182993 STANDERD CHARTERD BANK
2	6/21/2011	2,826,414	RNA	CH. NO.261307 STANDARD CHARTARD BANK
3	6/21/2011	85,655	RNA	CH. NO.261308 STANDARD CHARTARD BANK
4	11/1/2011	545,932	RNA	CH. NO.261314 STANDARD CHARTARD BANK
5	12/1/2011	545,932	RNA	CH. NO.261320 STANDARD CHARTARD BANK
6	4/11/2012	548,673	RNA	CH. NO. 45 STANDARD CHARTARD BANK
7	5/26/2012	545,930	RNA	CH. NO.49 STANDARD CHARTARD BANK
8	7/7/2012	133,057	RNA	CH. NO. 52 STANDARD CHARTARD BANK
9	9/4/2012	548,672	RNA	CH. NO. 60 STANDARD CHARTARD BANK
10	11/12/2013	546,441	RNA	CH. NO. 192 STANDARD CHARTARD BANK
11	3/3/2014	546,441	RNA	CH. NO. 199 STANDARD CHARTARD BANK
12	8/6/2014	546,441	RNA	Online STANDARD CHARTARD BANK
13	11/8/2014	546,638	RNA	Online STANDARD CHARTARD BANK
14	10/21/2015	549,255	RNA	Online ICICI BANK LTD.
16	12/7/2015	550,056	RNA	Online STANDARD CHARTARD BANK
17	3/15/2016	550,056	RNA	Online STANDARD CHARTARD BANK
18	1/8/2018	573,583	RNA	Online STANDARD CHARTARD BANK
		111,259		TDS
TOTAL		<u>10,800,435</u>		

COMPLAINANT NAME & SIGNATURE

[Handwritten Signature]

RAJESH HIRJEE

RESPONDENT REMARK

ON instructions
Except TDS
amounts
Rs. 1,06,89,176/-
recrd. as per
records

[Handwritten Signature]

Adv for resp.

RESPONDENTS NAME & SIGNATURE