

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

**COMPLAINT NO: CC006000000057516**

Pooja Mehta  
Abhishek Kumar

... Complainants.

**Versus**

Skyline Construction Co.  
(Bldg. on sub plot D CTS no. 101/B)

... Respondents.

MahaRERA Regn: -P51800007873

**Coram:** Shri B.D. Kapadnis,  
Hon'ble Member II.

**Appearance:**

Complainants: Adv. Harsh Beheni.

Respondents: Adv. Ms. Bela Bhatt.

**Final Order.**

2<sup>nd</sup> January 2020

The Complainants have been seeking refund of their 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 1602 C wing, of their registered project 'Bldg. on sub plot D CTS no. 101/B' situated at Goregaon, on agreed date of possession, 31 December 2015.

2. The respondents have pleaded not guilty and filed their reply to contend that the complaint is not in Form-B as laid down by Rule 7 of Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Form of Complaint and Appeal) Rule 2017. Some other allottees of the project have been claiming similar relief before the Bombay High Court in Spl. Civil suit (L) no. 425 of

  
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2017 which is pending. They deny that the date of possession was agreed upon as alleged. According to 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 in their 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:

<b>Points.</b>	<b>Findings.</b>
1. Whether the respondents have failed to : complete the flat as per the terms of agreement for sale?	Negative.
2. Whether the complainants are entitled to : get refund of their amount with interest ?	Negative.



## **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 complete the apartment as per the terms of the agreement for sale or on the date specified therein. It gives the option to allottee to withdraw from the project.

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 complainants do not press for compensation.

### **Maintainability of complaint:**


6. On plain reading of section 18 of RERA, it becomes clear that the liability of the promoter arises only when he fails to complete the apartment as per the terms of the agreement for sale or on the date specified therein. Therefore, the agreed date of possession is very material to decide the issue. The complainants contend that the respondents agreed to handover the possession of their flats by December 2015. When their learned advocate was asked to prove the fact, he admits that the complainants do not have any document to prove it.

7. The learned advocate of the complainants relies upon the orders passed by this Authority in the complaints filed by the allottees of the same project. He relies upon Vrajesh Hirjee Vs. Skyline Construction Company (CC006000000057101) and Mayank Chemiplast Pvt. Ltd. filed against same promoter (CC006000000012667) wherein this Authority has recorded its finding that the date of possession was left blank in the agreements for sale. In this case there is no agreement for sale. He relies on Manish Modi Vs. Skyline Construction Company (CC006000000055583) in that case the complainant produced respondents' letter issued in May 2016 promising



that the possession would be handed over by December 2017 but no such letter is produced by the complainants in this case to ascertain the agreed date of possession. The agreements/contracts bind the parties thereto. They act in persona. Hence, the complainants cannot take the advantage of the findings recorded by this Authority in the cases of different individuals. The complainants will have to prove their own case and they have to stand on their own legs to succeed in their matter. Unfortunately, though repeatedly the learned advocate was reminded of this fact, he did not pay any heed to it. Found in this situation I find no other alternative but to hold that the complainants have failed to prove that the respondents agreed to handover the possession of their flats by the end of December 2015. Since, agreed date of possession or completion of the flats has not been proved, section 18 of RERA will not come into play. Hence, the complaint is dismissed with cost.

Mumbai  
Date: 02.01.2020

  
2.1.2020  
(B.D. KAPADNIS)  
Member II,  
MahaRERA, Mumbai.