

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

COMPLAINT NO: CC006000000044391.

Mr. Nandkishor Shivaji Mane.

... Complainant.

Versus

Mr. Dharmesh Jain.

M/s. Nirmal Developers.

...Respondents.

MahaRERA Regn: P51800011870.

(Nirmal Olympia)

Coram: Shri B.D. Kapadnis,
Member-II.

Appearance:

Complainant: Adv. Mr Vishal Hegde.

Respondents: Adv. Mr. Tushar Kadam a/w
Ms. Vaishali Mohite.

FINAL ORDER

02nd September, 2020

The complainant contends that he booked flat no. 1805 in B Wing of the respondents' registered project 'Nirmal Olympia' situated at Mulund (West) for Rs. Rs. 76,47,770/-. The respondents issued allotment letter dated 16.03.2014. The complainant has paid the respondents Rs. 18,08,000/- which is more than 20% of the total consideration of the flat. Despite this fact, the respondents did not execute the agreement for sale. They promised to handover the possession of the flat by December 2017 but they did not handover it on the agreed date. The construction did not make any progress and therefore the complainant gave the application dated 18.02.2017 for cancellation of his booking. The respondents did not respond and repay his money, on the contrary, on 24.11.2017 they sent a letter to the complainant



saying that they were tying up with M/s. Shapoorji Pallonji and they gave the option to the complainant to withdraw from the project within 15 days from the date of letter if he does not consent for the new agreement / tie-up. In this circumstance, the complainant claims refund of his amount with interest. He does not press for compensation.

2. The respondents have pleaded not guilty and they have filed the application raising the objection about maintainability of the complaint by contending that the complainant is not an allottee. Moreover, he has cancelled the booking on 18.02.2017 i.e. before the RERA came into force and therefore, the respondents have not committed any breach of any of the provisions of RERA. Hence, this Authority has no jurisdiction to entertain this complaint. The complainant's claim is also barred by limitation. Hence, they request to dismiss the complaint.

3. Today I have heard the parties on virtual platform.

4. The respondents have issued allotment letter of the flat on 16.03.2014. They have also accepted Rs. 18,08,000/- towards the consideration of the flat and therefore, I find that the complainant is an allottee in respect of the flat allotted to him.

5. The respondents' Ld. Advocate Mr. Kadam brings to my notice complainant's letter of cancellation of the booking dated 18.02.2017 to contend that the cause of action has arisen in the case before RERA came into force and therefore, this complaint is not maintainable. Though the complainant has filed application on 18.02.2017, the respondents have not acted upon it. They have not refunded his amount. They have not accepted the offer of cancellation. On the contrary, they have written a letter dated 24.11.2017 asking the complainant either to consent for their tie-up with M/s. Shapoorji

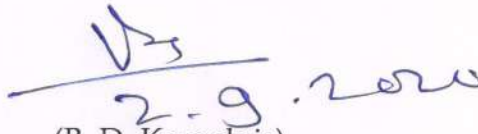


by the respondents was December 2017. Since they have failed to handover the possession of the flat on this date, complainant is entitled to claim the refund of his amount with interest at prescribed rate under section 18 of RERA. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently at 7% p.a. The complainant is also entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, following are the order.

ORDER

- A. The respondents shall refund the amount of Rs. 18,08,000/- to the complainant with simple interest at the rate of 9% p.a. from the date of receipt of the amount till the refund.
- B. The respondents shall also pay the complainant Rs. 20,000/- towards the cost of the complaint.
- C. The charge of the aforesaid amount shall be on the booked flat of the complainant till the satisfaction of his claim.
- D. The payment shall be subject to the period of moratorium specified by this Authority from time to time.

Date: 02.09.2020.


(B. D. Kapadnis)
Member-II,
MahaRERA, Mumbai.