

**THE MAHARASHTRA REAL ESTATE REGULATORY  
AUTHORITY, MUMBAI.  
COMPLAINT NO: CC006000000023521.**

Sachin Titkare

... Complainant.

**Versus**

M/s. Sai Ashray Developers Pvt.Ltd.

...Respondents.

MahaRERA Regn: P51700008671

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

**Appearance:**

Complainant: In Person.

Respondents: Absent.


**ORDER**

**24<sup>th</sup> December 2019.**

The complainant appears with the purshis that his claim is fully satisfied. The compliance of the order be noted.

Mumbai.

Date: 24.12.2019.

  
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24-12-19  
(B. D. Kapadnis)  
Member II, MahaRERA,  
Mumbai.

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

COMPLAINT NO: CC006000000023521

Sachin Titkare

... Complainant.

Versus

\*M/s. Sai Ashray Developers Pvt. Ltd.

... Respondents.

(\* corrected as per order passed on 16.06.2018)

MahaRERA Regn: P51700008671

**Coram:** Shri B.D. Kapadnis,

Hon'ble Member & Adjudicating Officer.

**Appearance:**

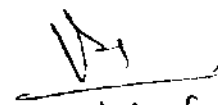
Complainant: Present in person

Respondents: Adv.Miss Christine Rewrie.

Final Order

06<sup>th</sup> June 2018.

The complainant in his complaint filed under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (in short, RERA), contends that he booked flat no. T-305, Triveni building in respondents registered project Prasadam, situated at Chikloli, Taluka Ambernath, Dist. Thane. The respondents entered into an agreement with the complainant and agreed to hand over possession of the flat on or before 30<sup>th</sup> June 2017. However, the respondents have failed to deliver the possession on the agreed date. Hence,

  
16.6.18

complainant withdraws from the project and claims refund of his amount with interest and / or compensation.

2. The respondents have pleaded not guilty but they have filed the reply wherein they admitted that they agreed to deliver the flat out possession of the complainants' booked flat on or before 31<sup>st</sup> August 2016 with the grace period of 9 months. In other words, they agreed to deliver possession by May 2017. They while registering the project with MahaRERA revised the date of possession to 19.07.2021. They could not complete the project in time due to less rain fall in 2016 and water having less salinity was not available for construction work. There was decline in the economy due to demonetisation and introduction of G.S.T. The contractors delayed the work. These reasons causing delay were beyond their control and hence they are entitled to get reasonable extension of time. They contend that MahaRERA has no jurisdiction to entertain this complaint because the agreement for sale has been executed before RERA came into force. They gave alternative offers to the complainant but the complainant refused to accept them only because he is interested in money. They contend that the consideration is Rs. 25,95,000/-, out of it complainant paid them Rs. 13,24,125/- towards consideration. They have refused to refund the amount of stamp duty, registration charges, insurance premium & taxes paid by the complainant. Therefore, they have requested to dismiss the complaint.

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

#### POINTS

#### FINDINGS

- a) Whether the respondents have failed to deliver the possession of the booked flat on the agreed date?

Affirmative.



b) Whether the complainant is entitled to

Affirmative.

get refund of his amount with interest?

### REASONS

#### Relevant law on Jurisdiction and refund:

4. The respondent's learned advocate submits that the agreement of sale has been executed during the Maharashtra Ownership of Flats (Regulation of promotion of Construction, Sale, Management and Transfer) Act 1963 (for short, MOFA) regime. RERA came into effect from 1<sup>st</sup> May, 2017 and it is prospective. She further submits that the date of possession mentioned in registration certificate is not crossed and therefore there is no breach of any provision of RERA. Hence, MahaRERA has no jurisdiction to entertain this complaint.

5. I find, the cause of action for claiming possession after the lapse of the agreed date of possession becomes a recurring cause of action. The claimants' right to claim their money back or to claim possession continues from June 2017 till the date of filing of this complaint. If the cause of action survives after coming into force of RERA, MahaRERA gets jurisdiction over all the disputes pertaining to the eligible real estate projects requiring registration u/s. 3. The on-going projects bring with them the legacy of rights and liabilities created under the statutes of the land in general and The Indian Contract Act and MOFA in particular. Section 79 of RERA bars the jurisdiction of the civil court from entertaining any suit or proceeding in respect of any matter which the Authority, Adjudicating Officer or Appellate Tribunal is empowered by or under RERA to determine. Hence, the Authority gets the jurisdiction over such matters which the civil court had. The Authority can take cognizance of the agreements executed under MOFA also and is equally competent to grant the relief relating to it. This view gets the support from Section 88 of RERA which



provides that its provisions shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. MOFA has not been repealed. In this context, section 71(1) of RERA can be looked into. It provides that for the purpose of adjudicating compensation u/ ss. 12,14,18 & 19 of RERA, an Adjudicating Officer can be appointed by the Authority. Its proviso provides that any person whose complaint in respect of matters covered by sections 12, 14, 18, 19 of RERA is pending before the Consumer Disputes Redressal forum, State Consumer Disputes Redressal Commission or National Consumer Dispute Redressal Commission **on or before the commencement of RERA**, he may, with the permission of the said forum withdraw the complaint pending before it and file it before the Adjudicating Officer under RERA. This provision therefore, indicates that sections 12, 14, 18, 19 RERA are retroactive. The right to claim return of amounts paid by the allottee to the promoter is preserved by Section 18 of the Act. I get support from Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union Of India Writ petition 2737 of 2017 filed at ordinary original jurisdiction of Bombay High Court recently decided by the Division Bench.

Moreover, relevant part of section 18 of RERA reads,

**'18. Return of amount and compensation-**

(1) If the promoter fails to complete or is unable to give possession of an apartment plot or building, -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;

On plain reading of this provision it becomes clear that date of completion referred to in this provision means the date specified in the agreement. The word "therein" refers to the "agreement" and not the date of completion revised by the promoter unilaterally while registering the project. Hence I find myself unable to accept the submission of respondent's learned advocate that



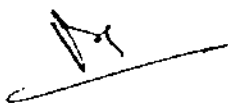
as till the date of completion mentioned in registration certificate is not crossed, this Authority has no jurisdiction. Considering all these aspects, I find that the Authority has jurisdiction to entertain this complaint as the complainants' right to claim back their money in the case of withdrawal from the project still subsists under RERA.

6. Section 18 of RERA gives two options to the allottee, when the Promoter fails to give the possession of the apartment on the date specified in the agreement. The first option is to continue with the project and claim interest on his investment. Second option is to withdraw from the project and demand for refund of the monies paid by him to the Promoter with interest and compensation as the case may be. In this case the Complainant has exercised his right to claim back his monies. Hence only because the complainant has refused to accept the offers of the respondents, he cannot be deprived of his right to claim refund of his amount with interest.

#### **Delayed Possession.**

7. The respondents have not disputed the fact that they agreed to deliver the possession of the flat on or before August 2016 however, there was grace period of nine months. It is fact that even after lapse of grace period they have not delivered the possession of the flat to the complainant. Complainant has proved that the respondent has failed to deliver the possession on the agreed date.

8. The respondents have referred to shortage of water for construction in the year 2016, decline of economy, demonetisation and levy of G.S.T. as the reasons which delayed their projects and these reasons were beyond their control. I find it very difficult to hold that these reasons were really sufficient to delay their project. Even if very lenient view is shown to accept these reasons,



the claim of the complainant regarding compensation can be refused on these grounds at the most.

### **Complainant's Entitlement.**

9. Respondents have disputed the payment mentioned in the payment schedule filed by the complainant marked 'A' for identification whereby he claims Rs. 13,85,246/- from the respondents. It is inclusive of Rs. 44,276/- paid towards service tax. Respondents have contended that they have received only Rs. 14,10,166/- inclusive of VAT amounting to Rs. 25,950/- and service tax amounting to Rs. 60,091/-. They received only Rs. 13,24,125/- as the consideration of the flat. Hence it is necessary to deal with this issue.

10. Since the complainant is withdrawing from the project he is entitled to get back the amount paid by him towards consideration of the flat. He is entitled to get reimbursement of the amount paid towards the service tax or VAT and registration charges of the agreement for sale. It appears that the stamp duty is paid in the name of the complainant. On cancellation of the said agreement he is entitled to claim refund of stamp duty from the concerned Authority. So from this point of view when I look at Exh.'A' filed by the complainant, I find that he has claimed Rs. 44,276/- towards the service tax paid by him. The other amount are paid by him to the respondents towards consideration of the flat. However, he has not included Rs. 28,200/- paid by him towards registration fee. The receipt dated 15.10.2015 is produced by him. The respondents could not demonstrate as to which amount they have not received from the amounts mentioned by the complainant in Exh.'A". Therefore, I hold that the complainant is entitled to get refund of all the amount mentioned in Exh.'A' as well as Rs. 28,200/- paid by him towards registration charges of the agreement for sale.



11. Section 18 of RERA entitles the complainant to get above amount with interest at prescribed rate. Rule 18 of Maharashtra Real Estate (Regulation & Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest & Disclosures on Website) rules, 2017 provides that the prescribed rate shall be the State Bank of India highest marginal cost of lending rate which is currently 8.05% plus 2%. Therefore, the complainant is entitled to get the above amount with simple interest at the rate of 10.05% from the respective dates of their payment till they are refunded by the respondents.

In result, the order -

### ORDER

Respondents shall pay complainant the amount mentioned in Exh. 'A' and the registration charges Rs. 28,200/- with simple interest at the rate of 10.05% p.a. from the respective dates of their payments till they are refunded.

Respondents shall pay complainant the Rs. 25,000/- towards the cost of the complaint.

The charge of the amount awarded by this order shall remain on the flat booked by the complainant till complaint's claim is satisfied.

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

Mumbai.

Date: 06.06.2018.

  
(B.D. Kapadnis)

Member & Adjudicating Officer  
MahaRERA, Mumbai.



Complaint No. CC 0060000000 23521

Ext-A

Dr  
member

Payment Format

Sr.No.	Date	Amount	Purpose	Reciept No./Cheque No. with Bank Name
1	29/07/2015	23000/-	Initial Booking Amount	chq. no : 36
2	18/08/2015	1,08,048/-	Down Payment	chq no : 38
3	11/02/2016	8,57,257/-	Payment to Builder	DD No. 588488
4	11/02/2016	44,276/-	Service Tax	DD No : 588489
5	08/03/2016	41524/-	Payment to Builder	NEFT: BARBH16068504055
6	19/11/2016	3,11,141/-	Payment to Builder	DD No :- 589113
7				
8				
9				
10				

Total :- 13,85,246/-  
Complainant Name & Sign  
Mr. Sachin Giteare



Respondents Remark-

Respondents name & Sign

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

COMPLAINT NO: CC006000000023521.

Sachin Titkare

... Complainant.

**Versus**

Sai Ashray Developers Pvt Ltd  
(Prasadam Phase-V)

... Respondents.

MahaRERA Regn: P51700008671

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

**Appearance:** Complainants: In person.  
Respondents: Adv. Asif Sayed.

**ORDER**

17<sup>th</sup> December 2018.

This matter has come before me for issuance of the warrant against the respondents on account of non-compliance of final order passed therein on 06.06.2018.

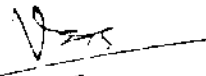
2. The learned advocate of respondents has brought to my notice the judgement passed by Appellate Tribunal in AT006/10536 dated 05.12.2018. The Hon'ble Tribunal has allowed the allottee to withdraw 40% of the amount deposited by the Respondents and permitted the respondents to pay the balance amount within 10 months from the date of order.

3. In view of this order of the Appellate Tribunal, the complainant is entitled to withdraw 40% of the amount deposited by the Promoter.

4. If the respondents fail to comply with the order of the Appellate Tribunal, the complainant will move this Authority thereafter to recover the amount.

Mumbai.

Date: 17.12.2018.

  
( B. D. Kapadnis ) 17-12-18  
Member & Adjudicating Officer,  
MahaRERA, Mumbai.