

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

**COMPLAINT NO: CC006000000056005.**

Shamsunder Jairamdas Bajaj

... Complainants.

**Versus**

L & T Parel Project LLP  
(Crescent Bay - T4)  
MahaRERA Regn: P51900006593.

... Respondents.

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

**Appearance:**

Complainant: Adv. Sanjay Chaturvedi.

Respondents: Adv. Anosh Sequeira.

**FINAL ORDER**

**6<sup>th</sup> December 2018.**

The complainant Mr. Shamsunder Jairamdas Bajaj, HUF and his wife Mrs. Sharda Shamsunder Bajaj booked flat nos. 2603 and 2604, T-4 of the respondents' registered project 'Crescent Bay' situated at Parel. The respondents agreed to hand over the possession of the flats by September 2017 with grace period of six months. The respondents have failed to hand over the possession as agreed. Therefore, the complaint withdraws from the project and claims refund of his amount with interest and/or compensation under Section 18 of RERA.

2. The respondents have pleaded not guilty. They have contended that the complaint filed by Mr. Shamsunder Bajaj is not maintainable because he is not the allottee of the flats and the complainant suffers from non-joinder of necessary parties. Mr. & Mrs. Bajaj are mere investors and they are not genuine purchasers. Respondents admit that the possession of the



flats was to be handed over by September 2017 with grace period of six months. They have received occupancy certificate on 15<sup>th</sup> March 2018 and offered possession before lapse of agreed date by sending the demand/possession letter on 29.3.2018 to the complainant. Therefore, the respondents contend that they have not failed to hand over the possession of the flat on the agreed date. The complainant was entitled to get the possession of the flats only on making full payment of the dues. The complainant made twelve defaults in making the payment and avoided to pay the interest on delayed payments. Therefore, the complainant is not entitled to claim possession. They further contend that though, the water connection has been confirmed on 04.07.2018 by M.C.G.M., adequate and sufficient water supply of potable water was provided through tankers. They have denied that amenities agreed to be provided, have not been provided. Their defence is that the complainant being the investor is not genuinely interested in taking the possession of flats. When he finds that there is no appreciation in the price, he wants to withdraw from the project to earn more money by way of claiming interest on his investment. Therefore, they request to dismiss the complaint.

3. Following points arise for determination and my findings recorded thereon are as under:

<b>POINTS</b>	<b>FINDINGS</b>
1. Whether the complaint filed by the complainant is maintainable?	Affirmative.
2. Whether the respondents have failed to hand over the possession of the flats on agreed date?	Affirmative.
3. Whether the complainant is entitled to get refund of his amount with interest and/or Compensation?	Yes, he & Mrs. Sharda Bajaj.



## REASONS

### Maintainability of the complaint.

4. The respondents have relied upon the extract of customers' profile bearing names of complainant Mr. Shamsunder J. Bajaj and Mrs. Sharda Shamsunder Bajaj. The information regarding their needs and requirements shows that the nature of purchase is 'investment' and is purportedly signed by customer also. Therefore, the respondents contend that the complaint is an investor. The complainant Mr. Shamsunder Jairmdas Bajaj HUF and Mrs. Sharda S. Bajaj have been shown as the purchasers in the agreements of sale of the booked flats by respondents only. After going through these documents, it becomes clear that the complainant Mr. Shamsunder Bajaj for his Hindu joint family and his wife Mrs. Sharda Bajaj agreed to purchase the flats and therefore, they are 'allottees' as defined by Section 2 (d) of RERA.

5. It is admitted fact that the agreements stand in the name of complainant Shamsunder Jairamdas Bajaj HUF and he has filed the complaint. He orally submits that his wife has consented to file the complaint. Now, the question is whether one of the purchasers can file the complaint. The answer must be in affirmative because section 31 of RERA provides that any aggrieved person can file the complaint for violation or contravention of the provisions of RERA or rules or regulations made thereunder. It is a fact that Mrs. Sharada Bajaj would have been proper party but in the facts and the circumstances of the case, I find that if the reliefs are provided to the complainant and his wife Mrs. Sharda, there would be no legal obstacle in the complainant's way to prosecute this complaint against the respondents. With these observations, I hold that the complaint filed by Mr. Shamsunder Bajaj is maintainable.



**Respondents' failure to hand over the possession on agreed date.**

6. The parties are not at dispute on the point that the respondents agreed to deliver the possession of the flats by September 2017 with grace period of six months. So the outer limit for handing over the possession of the flat was 31.03.2018. The respondents have brought to my notice the fact that the occupation certificate of the Tower-4 has been issued by the Slum Rehabilitation Authority which is Competent Authority, on 15.03.2018 and they by letter dated 29.03.2018 offered the possession. Now, the real question is, whether the Tower in which the flats of the complainant are situated has really been constructed as agreed or not. The occupancy certificate dated 15.03.2018 discloses that it is conditional. The respondents have been directed to comply with conditions of LOI, IOA, amended plans at respective stages. The most crucial thing is certificate under Section 270A of BMC Act has to be obtained and submitted to SRA. The respondents have plainly admitted in their reply that they applied for the water connection on 27.03.2018. P form was issued on 14.06.2018 and the connection was confirmed on 04.07.2018. It means that till 04.07.2018 the building did not have the water connection. In this context completion certificate defined by Section 2(q) of RERA will have to be seen. It provides that completion certificate means the completion certificate or such other certificate, by whatever name called, issued by the Competent Authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications as approved by the Competent Authority under the Local Acts. The occupancy certificate does not disclose the compliance of these requirements. Occupancy certificate defined by Section 2(zf) provides that it should be issued by the Competent Authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity. From this point of view, it becomes clear that though SRA issued the occupancy certificate on 15.03.2018 there was no provision for



permanent water connection till 04.07.2018. Therefore, I hold that the project was incomplete till 04.07.2018.

7. The respondents have relied upon the possession demand letter dated 29.03.2018. According to the complainant, it has been received by him after 31.03.2018. The letter clearly mentions that on payment of all the dues, the possession would be scheduled between 1<sup>st</sup> & 31<sup>st</sup> May. It means that the complainant was not entitled to receive the possession on 31.03.2018, even after making payment of entire dues. This fact also indicates that though the respondents have issued the possession demand letter on 29.03.2018, they were not able to hand over the possession of the flats before 1<sup>st</sup> May 2018. The complaint also relies upon respondents' letter dated 20.11.2018 informing that Club (Phase-II), Tennis Court (1), Badminton Court (1) and swimming pool (podium level) were not constructed. Therefore, according to the respondents themselves all the agreed amenities have not been provided. Therefore, I hold that the complainant has proved that the respondents have failed to complete the tower and booked flats in accordance with the terms of the agreement for sale and they have failed to hand over the possession of the flats on the agreed date.

**Complainant's entitlement.**

8. Section 18 of RERA confers the right on the allottee to withdraw from the project and claim refund of his amount with interest and/or compensation on the promoters' failure to give possession on the agreed date or when he fails to complete the apartment in accordance with the terms of the agreement for sale. The complainant has exercised his right to withdraw from the project and claim refund of his amount with interest.



9. The respondents have not disputed the receipt of the amount paid by the complainant and his wife reflected in the payment format marked Exh. 'A' except the amount of Rs. 20,222/- alleged to have been paid by the complainant towards TDS in the context of flat no. 2604. The complainant has not proved the documentary proof to prove that the disputed TDS of Rs. 20,222/- had been paid/credited in respondents' account by producing TDS certificates. On the contrary, the letter of Mr.Sanjay Chaturvedi, the complainant's advocate dated 28.11.2018 addressed to the respondents shows his willingness to deduct the same amount from final refund and correct the statement and the corrected statement is produced by the respondents. Hence complainant cannot claim Rs. 20,222/-

10. The respondents have contended that they are not liable to pay the amount of stamp duty and registration charges as well as taxes paid to the government. The respondents have made default in handing over the possession of the flat on the agreed date and therefore the right to claim all the amounts spent in the context of sale transaction has accrued to the complainant. The respondents are bound to reimburse all the amount spent by the allottee in respect of the purchase of the booked flats by applying the principle of 'restitution'. The amount of TDS goes in the account of the respondents and if it is over paid or wrongly paid the respondents can claim its refund. Since the complaint has been withdrawing from the project he has not availed of the services of respondents and therefore the respondents will have to bear the amount of service tax and VAT as well as non-refundable registration charges. The agreements have been executed in the month of December 2015, therefore on cancellation of the agreements for sale, the complainant in whose name the stamp duty has been paid can claim it within the period of five years from the date of the agreement. If the respondents fail to satisfy the complainant's claim within five years of the agreement, then as per the



provisions of Section 47 & 48 of the Maharashtra Stamp Act, the complainant would not be able to apply for the refund of stamp duty and in that circumstance the respondents will have to reimburse it. Therefore, the complainant is not entitled to get the amount of stamp duty at this stage.

11. The complainant is entitled to get refund of his amount with interest at prescribed rate. It is 2% above SBI's highest MCLR which is currently 8.5%. The complainant is also entitled get Rs. 20,000/- towards the cost of the complaint.

12. The learned advocate of the complainant has brought to my notice that in clause 15.3 of the agreements the respondents have agreed to give sum of Rs. 1,00,000/- by way of genuine pre-estimated agreed liquidated damages if the developer does not give possession of the flats on or before time stipulated in clause 15.1 of the agreement. The complainant is entitled to get Rs. 1,00,000/- for each flat as agreed by the parties because the respondent have failed to hand over the possession of the flats on agreed date. Hence, the following order.

### ORDER

The respondents shall refund to the complainant and his wife Sharda S. Bajaj the amount mentioned in the payment format marked Exh. 'A' except Rs. 22,220/- with simple interest at the rate of 10.5% per annum from the date of their receipt/payment till refund.

The Exh. 'A' shall form part of the order.

The respondents shall pay Rs. 2,00,000/- by way of genuine pre estimated agreed liquidated damages and Rs. 20,000/- towards the cost of the complaint.



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

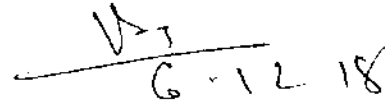
On satisfaction of the claim, the complainant and his wife Sharda S. Bajaj shall execute the Deeds of Cancellation of agreement for sale.

The respondents shall bear their cost.

It is hereby clarified that in case, the respondents' failure to satisfy the claim of the complainant and his wife within five years from the date of agreements for sale, they shall refund the amount of stamp duty of both the agreements of sale also.

Mumbai.

Date: 06.12.2018.

  
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(B. D. Kapadnis)

Member & Adjudicating Officer,  
MahaRERA, Mumbai.



