

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

**COMPLAINT NO: CC0060000000054694.**

Rahul Harish Ghole  
Shruti Rahul Ghole ... Complainants.

**Versus**

Sanvo Resorts Private Limited ... Respondents.

(Marathon Nexzone Acrux-1)

MahaRERA Regn: P52000000670

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

**Appearance:**

Complainant: In person.

Respondents: Adv. Sonam Mhatre i/b Dhaval  
Vussanji & Associates.

**FINAL ORDER**

**29<sup>th</sup> August 2018.**

The complainants have filed this complaint under Section 18 of Real Estate (Regulation and Development) Act 2016, (RERA) for claiming refund of their amount with interest and compensation. The complainants contend that they booked flat No. 702 in respondents' registered project Marathon Nexzone Acrux-1 situated at Village-Kolkhe, Tal. Panvel, Dist. Raigad. The respondents failed to hand over the possession of the flat on agreed date 31.12.2017. Therefore, the complainants want to withdraw from the project and claim their amount.

2. The respondents have pleaded not guilty and they have filed the reply to contend that they entered into registered agreement for sale with the complainant on 02.09.2015 and agreed to sell the flat no. 702 situated



on the 7<sup>th</sup> floor of the building. They further contend that though they agreed to hand over the possession in December 2017, the agreement provides that 'the developer shall be entitled to reasonable extension of time being the period of 6 months and above the due date thereby aggregating 9 months'. It is also agreed that this period shall be further extended when the Government, public or local authority prevents the developer to fulfil its obligation or any event beyond the reasonable control of the developer. The respondents contend that District Collector, Raigad issued commencement certificate of the building upto 27<sup>th</sup> floor on 20.10.2012. The RCC structure of the said building was ready on or before October 2015. However, on 10.01.2013, the Government of Maharashtra notified NAINA as Special Planning Authority. It required the revision of the layout plan by keeping passage, lift, lobby area free from FSI computation and required slight changes in footprint of sale component. It gave sanction to the amended plan on 17<sup>th</sup> May 2014. Thereafter the respondents sought permission for increasing the height of the building from 27 floors to 33 floors by their letter dated 17.05.2014. NAINA approved it on 09.01.2018. The respondents further contend that though they applied for access permission of NHAI, Panvel on 10.01.2008, it granted it on 16.03.2016. They applied for crossing and laying permission for water pipe on 01.11.2008 and received it on 17.06.2016 only. They applied for water tapping on 14.11.2016. However, the Chief Engineer of MJP granted the permission in June 2017 only. They applied for NOC of the Civil Aviation Department and received the NOC to the extent of 94.50 m AMSL on 23.09.2010, 103 m AMSL on 21.09.2011, 108.35 AMSL on 24.05.2015, 112.35 m AMSL 06.06.2016. Therefore, they contend that these reasons delayed the project which were beyond their control. Hence, they request to dismiss the complaint.

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



## POINTS

1. Whether the respondents failed to hand over the possession of the complainants' booked flat on agreed date?
2. Whether the complainants are entitled to get refund of their amount with interest?

## FINDINGS

Affirmative.

Affirmative.

## REASONS.

### **Failure to hand over the possession on the agreed date.**

4. The respondents have admitted that they agreed to deliver the possession of the flat on or before 31<sup>st</sup> December 2017. However, according to them this period is to be extended by next 9 months as stipulated in agreement for sale which is quoted by them in their reply. On its perusal, I find that the extension of 6 months is only contemplated by the parties and it is difficult to gather why the aggregating period of next 9 months is mentioned therein. Hence, I hold that the agreed date of handing over the possession of the flat is December 2017 + the grace period of 6 months. Thus, the respondents were to hand over the possession of the flat by June 2018. The respondents have not handed over the possession till the date. Hence, the complainant has proved that the respondents have failed to hand over the possession on the agreed date.

### **Reasons of delay:**

5. The respondents contend that the Planning Authority changed in the year 2013 but they have entered into agreement for sale on 02.09.2015 and agreed to deliver the possession of the flat in December 2017. It means that the change of Planning Authority, the requirement of revision of plans etc. was known to the respondents prior to entering into agreement for sale with the complainant. Therefore, they cannot take the disadvantages of these facts. On the contrary, it appears that the respondents proposed to construct 27 floors but due to change of the Planning Authority, they became greedy to construct 33 floors by taking the advantage of the




additional FSI which they get due to revision of the plans. The respondents have referred to the fact that NAINA approved amendment proposed by the respondents on 9<sup>th</sup> January 2018 but it appears that they revised the plan for addition of upper 6 floors. In fact, according to them, the RCC structure upto 27 floors was ready on or before October 2015 and therefore, they promised to hand over the possession of the flat in December 2017.

6. The respondents have taken the plea that the Highway Authorities permitted to have an access from the Panvel Highway in 2016, though, they applied for it in 2008. They have applied for laying pipeline permission in 2008 but it appears that the respondents did not clarify over proposed plans of Highway widening. Similarly, the permission for MJP water tapping was sought on 14.11.2016. The same is the case regarding the height rise permission. So these reasons of delay do not appear to be genuine. On the contrary, it appears that the respondents in greed of constructing six upper floors delayed the project.

7. Even if it is presumed that the authorities did not grant permission to the respondents on time and all these factors were beyond the control of the respondents, as per Section 8 (b) of the Maharashtra Ownership Flats Act, 1963, the period specified for possession can be extended by 3 + 3 months, it cannot be extended beyond six months. There is delay of more than six months. I find that the respondents have failed to prove that they were prevented by the causes beyond their control which caused the delay in completing the project. The orders of this Authority on which respondents rely are on different facts and therefore they are not applicable to the facts of this case.

**Complainants' entitlement.**

8. Section 18 of RERA provides that on the failure of the promoter to complete the project on the date specified in the agreement, the allottee gets option to withdraw from the project and claim his amount with interest at prescribed rate and/or compensation. The complainants have



opted for withdrawal. The respondents have not disputed the receipt of the money disclosed in payment format marked Exh.'A'. Therefore, the respondents are liable to refund the said amount. The prescribed rate of interest is 2% above the SBI's highest MCLR which is currently 8.5%. The complainants are entitled to get their amount with interest at 10.5% per annum from the date of payment mentioned in Exh. 'A' and they are entitled to get Rs. 20,000/- towards the cost of the complaint also. In the facts and circumstances the complainants are not entitled to get compensation as the interest awarded is compensatory in nature. Hence, the order.

### ORDER

The respondents shall refund the amount mentioned in the payment format marked Exh. 'A' with simple interest at the rate of 10.5% p.a. from the dates of receipt of those amount till they are refunded to the complainants.

The payment format marked Exh. 'A' shall form the part of the order.


The respondents shall pay the complainants Rs. 20,000/- towards the cost of the complainant.

The charge of the ordered amount shall be on the complainants' booked flat, till the satisfaction of their claim.

Complainants shall execute the deed of cancellation of the agreement of sale on satisfaction of their claim, at respondents' cost.

Mumbai.

Date: 29.08.2018.

  
29.8.18  
(B. D. Kapadnis)  
Member & Adjudicating Officer,  
MahaRERA, Mumbai.

## EXHIBIT A

## RAHUL HARISH GHOLE &amp; SHRUTI RAHUL GHOLE

Complaint No. CC00600000054694

Ex. A

## Payment Format

Sr. No.	Date	Amount	Purpose	Receipt No./Cheque No. with Bank Name
1	11/06/2012	1,00,000	Towards Flat Cost	3344 / 000130 / Bank of India
2	12/10/2012	3,74,828	Towards Flat Cost	3494 / 000132 / Bank of India
3	17/12/2012	7,12,241	Towards Flat Cost	3592 / 000133 / Bank of India
4	17/04/2014	4,00,000	Towards Flat Cost	12251 / 307105 / ICICI Bank
5	05/06/2014	74,822	Towards Flat Cost	12796 / RTGS / Bank of India
6	18/10/2014	2,37,414	Towards Flat Cost	15517 / 000163 / Bank of India
7	28/02/2015	2,37,414	Towards Flat Cost	19269 / 000170 / Bank of India
8	16/03/2015	2,37,414	Towards Flat Cost	20331 / RTGS / Bank of India
9	29/06/2015	1,02,961	Towards Flat Cost	23240 / RTGS / ICICI Bank
		1,03,497	Towards Service Tax	
10	08/04/2015	2,59,058	Towards Flat Cost	24016 / RTGS / ICICI Bank
11	31/08/2015	2,59,058	Towards Flat Cost	25073 / 761899 / ICICI Bank
12	25/05/2015	2,37,414	Towards Flat Cost	22198 / RTGS / Bank of India
13	19/09/2015	50,060	Towards Flat Cost	25952 / RTGS / Bank of India
14	11/05/2015	2,59,058	Towards Flat Cost	27934 / RTGS / ICICI Bank
15	10/08/2015	2,59,058	Towards Flat Cost	26463 / RTGS / ICICI Bank
<b>Total</b>		<b>39,04,297</b>		

Complainant Name &amp; Sign

Rahul Harish Ghole &amp; Shruti Rahul Ghole

Respondent Remark

Amt Recd is not  
disputed

Dwarkanath

Respondents Name &amp; Sign

Dwarkanath