

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

COMPLAINT NO: CC0060000000023760

Patrick Monis

... Complainant.

Versus

Unique Shanti Developers LLP
(Unique Signature)

... Respondents.

MahaRERA Regn: P51700003222.


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

Appearance:
Complainant: Adv.Sunilraja Nadar.
Respondents: Adv. Suraj N. Naik.

FINAL ORDER
29th August 2018.

The complainant contends that he booked flat nos. 206 and 207 in respondents' registered project Unique Signature situated at Mira Road. The respondents failed to hand over their possession on agreed date, 31st December 2017. Therefore, the complainant 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 filed their reply to contend that Survey No. 225/1A measuring 11,950 sq.mtr. of village Ghodbunder belonging to one Mr. Bhau Vaiti and others, was transferred by them to Mr. H.P. Joshi by way of agreement for sale. Mr. Joshi in turn, transferred the said property to M/s. Ravi Developers by an agreement for sale on 30.11.1994. Survey no. 88/1/1, Survey No. 89/1, S.No. 89/3 aggregating 87950 sq.mtrs. belonging to Mr. Bhudhya Tare were



transferred to M/s. Ganesh Construction Co. by his heirs and M/s. Ganesh Construction Co. transferred it to M/s. Ravi Developers by an agreement dated 01.05.1995. Out of these two properties M/s. Ravi Developers transferred a portion measuring 2077 sq.mtrs. to M/s. Sanghavi Projects. The partner of Sanghavi projects retired and the respondents became the partner of Sanghavi Projects on 31.03.2015. The layout of the aforesaid properties was approved by the Mira-Bhyander Municipal Corporation and the respondents constructed Unique Signature, Building No -16 on that land. However, one Mangesh Vaiti filed RCS No. 516 of 2015 in the Court of C.J.S.D., Thane against M/s Ravi Developers and Municipal Corporation. The Court granted temporary injunction in favour of Mr. Vaiti and restrained the M/s. Ravi Developers from parting with the possession of Survey No. 225/1A and 225/3, pending the trial. The respondents contend that the Building No. 16 is not covered by the order but the Municipal Corporation did not issue the occupancy certificate because of the said order, though the building is wholly completed. Hence, they request to dismiss the complaint.

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

POINTS	FINDINGS
1. Whether the respondents failed to hand over the possession of the booked flat on agreed date?	Affirmative.
2. Whether the respondents are liable to refund Complainant's amount with interest?	Affirmative.

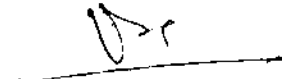
REASONS

5. The complainant has produced the copies of the agreement for sale of flat nos. 206 & 207 wherein the respondents have agreed to deliver the possession of the said flats on 31.12.2017. The respondents have admitted that they have not received the occupancy certificate. So the project is on-

going (incomplete) project in the eye of law. Section 3(2)(i) of Maharashtra Ownership Flats Act, 1963 prevents the promoter from allowing persons to enter into the possession of the flat without occupancy certificate. The respondents therefore, could not hand over the possession of the flat on the agreed date. Hence, I record my findings to the effect that the respondents have failed to hand over the possession of the flats on agreed date.

6. The reasons for delay assigned by the respondents do not appear to be sufficient to absolve them from the liability cast upon them by Section 18 of RERA which provides that on the failure of the promoter to complete the project on the specified date, the allottee gets option to withdraw from the project and claim his refund of his amount with interest and/or compensation. This issue about the pending litigation has also been dealt with by the Hon'ble High Court in Neelkamal Realtors Suburban Pvt. Ltd.- v/s-Union of India - 2017 SCC online Bom-9302 and the pending litigation cannot be an excuse for extension of time. So I find that the respondents are liable to refund the complainant's amount.

7. The complainant has filed schedule of payment annexure-2 which shows the amount paid by the complainant to the respondents towards the consideration of the flat, taxes paid and the expenses incurred by him for obtaining the loans from LIC Housing Finance and Federal Bank. The respondents have defaulted in handing over the possession of the flat on agreed date, hence, they must restore the complainant to his original position by reimbursing the expenses incurred by him. The respondents are liable to pay the amount to the complainant with prescribed interest from the dates of payment till their refund. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 8.5%. The complainant is entitled to get Rs. 10,000/- towards the cost of the complaint. Hence, the order.



ORDER

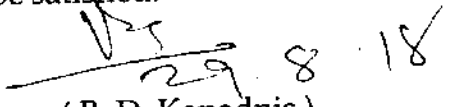
The respondents shall refund the complainant's the amount mentioned in schedule of payment marked Annexure-2 with simple interest @ 10.5% p.a. from the date of payment till their refund. Schedule of payment marked Annexure-2 shall form the part of this order.

The respondents shall pay complainant Rs. 10,000/- towards the cost of the complaint.

The charge of the amount payable to the complainant shall be on his booked flat till his claim is satisfied.

The complainant shall execute the deed of cancellation of the agreement for sale when his claim will be satisfied.

Date: 29.08.2018.


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

ANNEXURE 2
Annexure 2

Schedule of Payment									
Amount Towards	Date of Payment	Amount	Cheque No./NEFT	Payment By	Today	No of days	Int @ 18%/day	Total Interest	Total Value
CV + ST	19-Sep-14	50000.00		19 Personal	20-Apr-18	1309	25	32277	82277
CV + ST	19-Sep-14	50000.00		18 Personal	20-Apr-18	1309	25	32277	82277
CV + ST	21-Jun-15	600000.00		20 Personal	20-Apr-18	1034	286	305951	905951
CV + ST	21-Jun-15	500000.00		21 Personal	20-Apr-18	1034	247	254959	754959
CV + ST	17-Sep-15	75000.00	344477	Personal	20-Apr-18	946	37	34989	109989
CV + ST	17-Sep-15	160875.00		32 Personal	20-Apr-18	946	79	75051	235926
CV + ST	17-Sep-15	38850.00		34 Personal	20-Apr-18	946	19	18124	56974
CV + ST	17-Sep-15	433125.00		29 Personal	20-Apr-18	946	214	202062	635187
CV + ST	17-Sep-15	75000.00	344478	Personal	20-Apr-18	946	37	34989	109989
CV + ST	17-Sep-15	160875.00		33 Personal	20-Apr-18	946	79	75051	235926
CV + ST	17-Sep-15	38850.00		35 Personal	20-Apr-18	946	19	18124	56974
CV + ST	17-Sep-15	433125.00		28 Personal	20-Apr-18	946	214	202062	635187
CV + ST	31-Oct-15	3456944.00	866438	UCHFL	20-Apr-18	902	1705	1537724	4994668
CV + ST	31-Oct-15	2857858.00	866439	UCHFL	20-Apr-18	902	1409	1271238	4128096
CV + ST	30-Nov-15	182360.00	869231	UCHFL	20-Apr-18	872	90	78420	280780
CV + ST	4-Dec-15	154901.00	869232	UCHFL	20-Apr-18	868	76	66306	271207
CV + ST	28-Apr-16	1093420.00	14229	UCHFL	20-Apr-18	722	539	389317	1482737
CV + ST	10-Jun-16	100000.00		32 Personal	20-Apr-18	679	49	33485	33485
CV + ST	10-Jun-16	100000.00		37 Personal	20-Apr-18	679	49	33485	33485
CV + ST	15-Jul-16	583547.00	885747	UCHFL	20-Apr-18	644	288	185328	768875
CV + ST	31-Aug-16	840177.00	894231	UCHFL	20-Apr-18	587	414	247357	1087534
CV + ST	30-Sep-16	409485.00	897304	UCHFL	20-Apr-18	567	202	114499	523984
CV + ST	15-Nov-16	546710.00	920236	UCHFL	20-Apr-18	521	270	140467	687177
CV + ST	17-May-17	304186.00		11 Personal	20-Apr-18	338	150	50703	354889
CV + ST	17-May-17	272227.00		46 Personal	20-Apr-18	338	134	45376	317603
CV + ST	17-May-17	272228.00		12 Personal	20-Apr-18	338	134	45376	317604
CV + ST	17-May-17	304186.00		45 Personal	20-Apr-18	338	150	50703	354889
VAT	17-Aug-15	73688.00		27 Personal	20-Apr-18	977	36	35503	109191
VAT	17-Aug-15	62989.00		26 Personal	20-Apr-18	977	31	30349	93338
SDR	18-Oct-15	408000.00	N291150101828272	Personal	20-Apr-18	915	201	184103	592103
SDR	18-Oct-15	472130.00	N291150101828244	Personal	20-Apr-18	915	233	213041	685171
TDS	17-Sep-15	2775.00	AC3785460	Personal	20-Apr-18	946	1	1295	4070
TDS	17-Sep-15	2775.00	AC3785051	Personal	20-Apr-18	946	1	1295	4070
TDS	28-Apr-16	2547.00	AD0748112	Personal	20-Apr-18	722	1	907	3454
TDS	28-Apr-16	2979.00	AD0748926	Personal	20-Apr-18	722	1	1067	4040
TDS	28-Apr-16	2547.00	AD0746992	Personal	20-Apr-18	722	1	907	3454
TDS	28-Apr-16	2980.00	AD0747655	Personal	20-Apr-18	722	1	1061	4041
TDS	13-Jun-16	500.00	AD2117500	Personal	20-Apr-18	676	0	167	667
TDS	14-Jun-16	500.00	AD2137785	Personal	20-Apr-18	675	0	166	666
TDS	13-Jun-16	500.00	AD2116892	Personal	20-Apr-18	676	0	167	667
TDS	14-Jun-16	500.00	AD2138474	Personal	20-Apr-18	675	0	166	666
TDS	17-Nov-16	973.00	AD5654810	Personal	20-Apr-18	519	0	249	1222
TDS	17-Nov-16	759.00	AD5654681	Personal	20-Apr-18	519	0	194	953
TDS	17-Nov-16	759.00	AD5655101	Personal	20-Apr-18	519	0	194	953
TDS	17-Nov-16	937.00	AD5654272	Personal	20-Apr-18	519	0	240	1177
TDS	28-May-17	2787.00	AE1081706	Personal	20-Apr-18	327	1	449	3236
TDS	28-May-17	2698.00	AE1081710	Personal	20-Apr-18	327	1	435	3133
TDS	28-May-17	2520.00	AE1081780	Personal	20-Apr-18	327	1	406	2926
TDS	28-May-17	2965.00	AE1081754	Personal	20-Apr-18	327	1	478	3443
TDS	17-Sep-15	4375.00	AC3782203	Personal	20-Apr-18	946	2	2041	6416
TDS	17-Sep-15	4375.00	AC3782472	Personal	20-Apr-18	946	2	2041	6416
TDS	15-Jul-16	3780.00	AD0747655	Personal	20-Apr-18	644	2	1200	4980
TDS	15-Jul-16	3780.00	AD3315270	Personal	20-Apr-18	644	2	1200	4980
TDS	23-Jun-15	6000.00	AC1757070	Personal	20-Apr-18	1032	3	3054	9054
TDS	23-Jun-15	5000.00	AC1757626	Personal	20-Apr-18	1032	2	2545	7545
TDS	3-Nov-15	15064.00	AC5352675	Personal	20-Apr-18	899	7	6679	21743
TDS	3-Nov-15	18197.00	AC5352126	Personal	20-Apr-18	899	9	8068	26265
TDS	3-Nov-15	15064.00	AC5351345	Personal	20-Apr-18	899	7	6679	21743
TDS	3-Nov-15	18197.00	AC5350531	Personal	20-Apr-18	899	9	8068	26265
TDS	15-Jul-16	4422.00	AD3316235	Personal	20-Apr-18	644	2	1404	5826
TDS	15-Jul-16	4422.00	AD3314290	Personal	20-Apr-18	644	2	1404	5826
TDS	23-Jun-15	500.00	AC1757346	Personal	20-Apr-18	1032	0	254	754
TDS	23-Jun-15	500.00	AC1756613	Personal	20-Apr-18	1032	0	254	754
UCHFL Stampduty	1-Dec-15	15000.00		Personal	20-Apr-18	871	7	6443	21443
UCHFL Stampduty	3-Dec-15	5000.00	A/C Debit	Personal	20-Apr-18	869	2	2143	7143
UCHFL Processing Fees	29-Oct-15	30500.00	A/C Debit	Personal	20-Apr-18	904	15	13597	44097
UCHFL Valuation	13-Oct-15	5700.00	A/C Debit	Personal	20-Apr-18	920	3	2586	8286
UCHFL Loan Agreement	7-Dec-15	5000.00	A/C Debit	Personal	20-Apr-18	865	2	2133	7133
UCHFL Notice of Intimation	7-Dec-15	3500.00	A/C Debit	Personal	20-Apr-18	865	2	1493	4993
Federal Bank Valuation	28-Nov-17	2832.00	A/C Debit	Personal	20-Apr-18	143	1	200	3032
Federal Bank SRO Charges	27-Nov-17	3500.00	A/C Debit	Personal	20-Apr-18	144	2	249	3749
Federal Bank Legal Charges	27-Nov-17	10520.00	A/C Debit	Personal	20-Apr-18	144	5	747	11267
Federal Bank Notary	27-Nov-17	750.00	A/C Debit	Personal	20-Apr-18	144	0	53	803
Federal Bank Stamp Paper	23-Nov-17	100.00	A/C Debit	Personal	20-Apr-18	148	0	7	107
Federal Bank Stampduty	20-Nov-17	23000.00	A/C Debit	Personal	20-Apr-18	151	11	1713	24713
Federal Bank Insurance	17-Oct-17	3265.00	A/C Debit	Personal	20-Apr-18	185	2	298	3563
Federal Bank Notary	11-Oct-17	450.00	A/C Debit	Personal	20-Apr-18	191	0	42	492
Federal Bank Stamp Paper	28-Sep-17	2400.00	A/C Debit	Personal	20-Apr-18	204	1	241	2641
		15,358,930						6,125,371	21,484,301

Not disputed
Surya Jank
Adv For Respondent

M. M. M.

T. Jank