

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

**COMPLAINT NO: CC006000000078600**

Rajesh Kumar Poddar.

... Complainant.

**Versus**

Acme Housing India Private Ltd.  
(Alpinia)

... Respondents

MahaRERA Regn: P51700000778

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

**Appearance:**

Complainant: Adv. Kumar Tolani .

Respondents: Adv.Mr. Abir Patel.

**Final Order**

**14<sup>th</sup> October 2019.**

The complainant contends that he booked flat no. 1104 in respondents' registered project 'Alpinia' situated at Chitalsar, Manpada, District - Thane. The respondents agreed to hand over the possession on or before 30<sup>th</sup> December 2017 with grace period of six months. The respondents have failed to hand over the possession of the flat on agreed date and therefore, the complainant seeks interest on his investment for delayed possession under Section 18 of RERA.

2. The respondents plead not guilty and they have filed the reply wherein they contend that after 10 months of agreed date of possession the complaint is filed. They deny that the complainant's offer of cancellation of the allotment was accepted by them. The respondents further contend that they are entitled to get extension of reasonable

  
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period in terms of Clause 9(ii) of the agreement. They further contend that they had to seek the permission for cutting 22 trees which was applied on 18.11.2013 and was granted on 12.06.2015. Thereafter the commencement certificate granted on 30.12.2015. Similarly, there was stay granted by Hon'ble High Court in PIL No. 36 of 2016 for the period from 05.05.2017 to 11.10.2017 for further construction permissions and issuance of occupation certificate in respect of the projects at Ghodbunder Road. The project is affected because of the demonetization scheme, introduction of GST and RERA, shortage of sand due to various orders of the Court etc. Hence, they request to dismiss the complaint.

3. Heard the advocates of the parties.

4. The agreement for sale shows that the respondents agreed to hand over the possession of the flat on or before 31.12.2017 with grace period of six months. Admittedly, the respondents have failed to hand over the possession of the flat during this period. Therefore, the complainant has rightly exercised the right to withdraw from the project and seek refund of his amount with interest under Section 18 of RERA.

5. The respondents' learned advocate points out the causes which delayed the project referred to above. He also brings to my notice the judgements of the Appellate Tribunal in Ashotosh Suresh Bag-V/s-Darode Jog (AT00C/120) and Mahesh Sikotra-V/s-Propel Developers Pvt. Ltd.(Appeal No. 006/10740), and requests to condone the delay. The Hon'ble Appellate Tribunal has held that the agreed period of possession can be extended for moulding the reliefs. In this complaint the agreed period of possession is December 2017. The parties themselves have contemplated the extension of this agreed date by six months for the



reasons mentioned in the agreement. So the contract shows that if for the reason/s mentioned in the agreement the project is delayed, it cannot be delayed beyond the period of six months. The agreement has been executed during the MOFA period. Section 8(b) thereof provides that if the promoter is prevented by sufficient causes from completing the project on the agreed date, the period can be extended by three months for such reasons and if they still continue then the agreed period can further be extended by three months. After lapse of maximum limit of six months, the allottee is entitled to claim refund of his amount with interest. In this case, I find that even after taking it for granted that reasons for delay assigned by the respondents were genuine and they really prevented them from completing the project within the agreed time, the agreed date of possession December 2017 can be extended to six months at the most. The relief can be moulded to this extent only because of the statutory limit provided by MOFA.

6. The respondents deny their liability to refund the amount of stamp duty, registration charges and taxes claimed by the complainant. I find that once the respondents have made default in handing over the possession of the flat on the agreed date and when the complainant wants to withdraw from the project, he has to be restored to the position which he had before booking the flat. In other words, the respondents are liable to refund the entire amount of consideration and have to reimburse all the expenses made by the complainant for purchasing the flat. Therefore, the respondents cannot deny their liability to reimburse the amount of taxes and registration charges.

7. As per Section 47 & 48 of Maharashtra Stamp Act, if the agreement for sale is cancelled without taking possession within five years of the



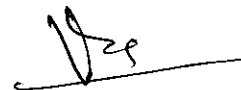
agreement, the refund of the amount of stamp duty can be claimed by the duty payer. The parties have executed the agreement for sale in December 2014 and the period of five years is to expire in December 2019. If the complainant's claim is satisfied within this period, the complainant will be able to seek refund otherwise the respondents will have to reimburse the amount of stamp duty also.

8. The learned advocate of the respondents refers to the payment made by the complainant on 22.09.2018 and submits that the complainant has waived/condoned the delay. I do not find any substance in it because the respondents themselves have referred to the fact that in the month of April 2018 there was negotiation regarding the refund of the complainant's amount. Therefore, it is clear that the complainant did not waive/condone the delay. Moreover, Section 8 of MOFA and Section 18 of RERA confers the statutory right on the complainant to withdraw from the project and claim refund on his amount with interest, in case of promoter's failure to hand over the possession on the agreed date. This statutory right conferred by special enactments cannot be defeated in this manner.

9. The complainant is entitled to get interest on his amount at prescribed rate which is 2% above SBI's highest MCLR. It is currently 8.4%. The complainant is entitled to get Rs. 20,000/- towards cost of the complaint. Hence, the following order.

#### **ORDER**

The respondents shall refund the complainant's amount of consideration paid to the respondents, registration charges and taxes paid to the Government with simple interest at the rate of 10.4% from the date of his payment till refund.




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

If the complainant's claim is not satisfied within five years of the agreement, respondents shall reimburse the amount of stamp duty with prescribed interest.

The charge of the complainants' claim shall be on the flat no. 1104 of the project till the satisfaction of the complainants' claim.

On satisfaction of the claim, the complainant shall execute the deed of cancellation of agreement on respondents' cost.

Mumbai.  
Date: 14.10.2019.

  
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14/10/19.  
(B. D. Kapadnis)  
Member II, MahaRERA,  
Mumbai.

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

**Appearance:**

Complainant: Adv. Mr. Kumar Tolani.

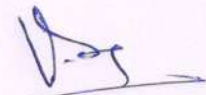
Respondent: Adv. Mr. Abir Patel.

**ORDER ON THE RECOVERY APPLICATION**

23<sup>rd</sup> December, 2020

The complainant reports non-compliance of the final order passed in the complaint. Adv. Shri. Abir Patel appears for the respondent to contend that, the respondent has preferred an appeal against the order passed by the Authority. However, there is no stay order granted by the Appellate Tribunal. Mere filing of an appeal does not operate stay to the execution of the decree automatically, is the spirit of the Order 41 of Rule 5 of Code of Civil Procedure. He further submits that, there is important legal issue involved in the matter because it has been held by Punjab & Haryana High Court that the single bench cannot decide the complaint. However, this decision of Hon'ble Punjab & Haryana High Court has not reached to finality because it is challenged before the Hon'ble Supreme Court. In view of this, I find that, there is no justifiable reason for not complying with the order. Hence, issue warrant under section 40(1) of the RERA for recovery of the complainant's amount. The complainant to file claim affidavit.

Date: 23.12.2020.

  
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23 12 2020  
(B. D. Kapadnis)  
Member-II,  
MahaRERA, Mumbai.