

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000012633

Rajiv M. Gupta ... Complainant.

Versus

Ravi Developments
(Gaurav woods II) ... Respondents.

MahaRERA Regn: P51800011407

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

Complainant: Adv. Mr. Utal J. Patel.
Respondent: Adv. Mr. Krishna Agrawal.

Final Order

13th March 2018.

The complainant has filed this complaint under Section 18 of Real Estate (Regulation and Development) Act, 2016 for getting refund of his amount with interest and compensation on respondents' failure to hand over the possession of flat no. 401, C-Wing in respondents' registered project Gaurav Woods, Mira Road (East), Thane on the agreed date December 2015.

2. The respondents plead not guilty and they have filed their explanation/reply to admit that they agreed to sell the flat to the complainant for Rs. 68,57,115/- under the agreement for sale dated 30.12.2013. According to them, the complainant provided the service of advertising the respondents' projects by way of displaying hoardings and bill boards at various places in Mumbai and Thane through his Global Advertisement Company. The complainant booked the flat by way of

barter system and MOU to that effect had been signed on 06.12.2013. The complainant's booked flat is on 4th floor and the respondents have completed the construction work up to 9th floor. Therefore, they contend that they are ready to give fit out possession now and hand over the possession with O.C. on receipt of the O.C. According to them, Mr. Sanjiv Gupta, the brother of the complainant had meeting with them on 20.03.2017 and Mr. Gupta agreed to accept Rs. 9,00,000/- towards the interest on account of the delay in handing over the possession. Mr. Rajiv Gupta by his letter dated 22nd March 2017 accepted the respondents' proposal that they shall pay Rs. 9,00,000/- by way of interest and it shall be adjustment against the balance of Rs. 20,61,914/-. Therefore, the respondents request to dismiss the complaint.

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

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

REASONS

Delayed possession.

4. There is no dispute between the parties that the respondents agreed to hand over the possession of the flat by 31st December 2015 but they have not handed over its possession till the date of the complaint. Hence, I hold that the complainant has proved that the respondents have failed to deliver the possession of the flat on the agreed date.



Legal Aspects:

5. The Section 18 of RERA provides that the complainant can claim refund of his amount with interest and/or compensation if the promoter fails to deliver the possession of the apartment on the date specified in the agreement. It gives the option to allottee to withdraw from the project. In view of this provision, the complainant has exercised his right to withdraw from the project and claims refund of his amount with interest.

6. Section 18 of RERA allows the allottee to collect his amount with interest at prescribed rate which is 2% above the MCLR of SBI . The current rate of MCLR of SBI is 8.05%. Thus, the complainant is entitled to get simple interest at the rate of 10.05% on his amount from the date of its receipt by the respondents.

Entitlement of the complainant:

7. The respondents have placed on record the letter of Mr. Rajiv Gupta to show that he agreed to accept Rs. 9,00,000/- towards interest on account of the delay in handing over the possession of flat no. 401 of C-Wing and it is to be adjusted against Rs. 20,61,914/- to be paid by the complainant. However, the complainant does not accept this arrangement by contending that his brother Rajiv has no concern with the transaction.

8. The respondents have taken the plea that it is the sale by way of barter system. However, no documentary proof thereof has been placed on record. On the contrary, the agreement for sale produced by the complainant shows that the complainant agreed to purchase the flat and the respondents agreed to sell it to the complainant. Hence, I do not accept the submission of the respondents that Rs. 9,00,000/- offered by them towards interest has been accepted by the complainant and he accepted that the same shall be adjusted against the amount which is payable to the respondents.




9. So far as the payment made by the complainant is concerned, he has produced the statement Exh.'A' thereof on record. The respondents have not disputed the receipt of those payments except the amount of stamp duty, registration charges and the taxes.


10. It appears that the stamp duty has been paid in the name of complainant and therefore, on cancellation of the agreement for sale, the stamp duty shall be refunded by the concerned authority to the complainant himself. So far as the registration charges and the taxes paid by the complainant are concerned, the respondents are liable to reimburse them because they defaulted in handing over the possession of the flat as agreed by them. The remaining amount paid by the complainant towards the consideration of the flat needs to be refunded by the respondents. They are liable to pay the interest on the said amount at the rate of 10.05 % from the date of their respective receipts by the respondents and payment to the government. The respondents are also liable to pay the complainant Rs. 20,000/- towards the cost of the complaint. Hence, the following order.

ORDER

1. The respondents shall pay the complainant the amount mentioned in the statement of payment marked Exh.'A' except the amount of Rs. 4,11,700/- paid towards stamp duty. Exh. 'A' shall form the part of this order.
2. The respondents shall pay the simple interest on the aforesaid amount at the rate of 10.05% per annum from the dates of their receipts and in case of registration charges and taxes from the date of their payment to Government, till this order is complied with.
3. The respondents shall pay to complainant Rs. 20,000/- towards cost of the complaint.
4. The charge of the aforesaid amount shall be on the flat booked by the complainant till its repayment.



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


13.3.18

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

Mumbai.
Date: 13.03.2018

Ent. A.

DETAILS OF PAYMENT MADE TO RAVI DEVELOPMENTS
TOWARDS PURCHASE OF FLAT NO. 401 C WING
AT MIRA ROAD THROUGH HDFC

BANK, BOREVALE BRANCH FROM RAJIV GUPTA

Account No: 01451930015079

Sr No.	Check No. RTGS	Date of Clearing	Amount Rupees.	
1.	556003	28/8/2013	5,31,428/-	(Booking Amt)
			68,572/-	(TDS charge)
2.	839507	27/9/2013	9,00,000/-	
3.	839513	17/12/2013	4,11,700/-	Stamp duty (Service Tax)
4.	839521	15/1/2014	30,000/-	(Registration charges)
5.	839519	12/2/2014	68,572/-	(VAT charges)
6.	839520	12/2/2014	2,11,885/-	(Service Tax)
7.	RTGS. 142	19/5/2017	5,00,000/-	
8.	RTGS. 143	20/5/2017	10,00,000/-	
9.	RTGS. 144	24/5/2017	10,00,000/-	
10.	RTGS 55	02/5/2016	2,00,000/-	
11.	RTGS 58	12/5/2016	6,00,000/-	
12.	RTGS 59	13/5/2016	5,94,000/-	
13.	RTGS 60	17/5/2016	6,00,000/-	
14.	RTGS 61	18/5/2016	6,00,000/-	

Total Amt. RS. 73,16,157/-

Rajiv S. Patel
Advocate
26/12/2018

[Signature]
26/2/18

[Signature]
26/2/18