

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

COMPLAINT NO: CC0060000000023826

Arvind Kumar
Manisha R. Gupta

... Complainants.

Versus

M/s. Abhay Builders
Mr. Alakhnath R. Singh
Mr. Surendra Bahadur U. Singh
Mr. Sanjay M. Singh
Mr. Abhay J. Singh
(Sheetal Complex)

... Respondents.

MahaRERA Regn: P51700012936

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

Appearance:

Complainant: C.A. Ramesh Prabhu.

Respondents: Adv. Prakash H. Mishra.

FINAL ORDER

6th June 2018.

The complainants have booked the flat no. 1202 in D-wing of respondents' registered project Sheetal Complex, Vijay Nagar, Mira Road (East). According to the complainants, while executing the agreement for sale respondents left the date of possession blank but orally promised them that they shall hand over the possession of the flat by the end of December 2016. However, the respondents have failed to hand over the possession on the agreed date though they have paid 75% amount of consideration. They want to continue in the project but they seek the interest on their



amount for every month of delay till they get the possession of their booked flat.

2. The respondents have opposed their claim by contending that they received the commencement certificate on 06.07.2012. Thereafter on 09.12.2013, they got the revised commencement certificate of D-wing and on 11.08.2016, they got the amended commencement certificate of D, E, F, G - wings of their project. Therefore, the project is delayed. They deny that they agreed to hand over the possession of the booked flat by the end of December 2016. According to them, the complainants have not paid the part of consideration as mentioned in the agreement. Moreover, they would be liable to pay interest at the rate of 9% as per Section 8 of Maharashtra Ownership Flats Act 1963 till 30.04.2017 and thereafter at the rate prescribed by RERA.

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

POINTS	FINDINGS
1. Whether the respondents agreed to deliver the possession of the booked flat by the end of December 2016?	Affirmative.
2. Whether the respondents have failed to hand over the possession of the booked flat on agreed date?	Affirmative.
3. Whether the respondents could not hand over the possession of the flat because of the reasons beyond their control?	Negative.
4. Whether the complainants are entitled to get interest on their amount for every month of delay till they get the possession of their flat?	Affirmative.



REASONS

4. The respondents have not disputed that they executed the agreement for sale in favour of the complainants on 28th October 2016 and the date of possession mentioned in its Clause No. 7 has been kept blank. When the agreement for sale has been executed, in those days it was governed by Maharashtra Ownership Flats Act. Section 4 (1A)(a)(ii) casts an obligation on the promoter to execute the agreement for sale when he receives more than 20% of the consideration and it is necessary to mention the date by which the possession of the flat is to be handed over to the purchaser. The respondents have not discharged this statutory duty and therefore, they are estopped from denying the date suggested by the complainants. Mr. Arun Kumar has filed an Affidavit stating on oath that the respondents promised to deliver the possession of the flat on or before December 2016. The respondents have not filed any counter Affidavit; hence I hold that the complainants have proved that the respondents agreed to deliver the possession of their flat by the end of December 2016.
5. There is no dispute on the point that the respondents have not delivered the possession of the flat till the date of the complaint.
6. The respondents have contended that though they received the commencement certificate on 06.07.2012 and it was revised on 09.12.2013 and finally it was amended on 11.08.2016, I find that this is not the reason which was beyond their control. It appears that commencement certificates have been revised and amended at the instance of the respondents and they got the benefit by getting them revised or amended. Therefore, I do not find any reason which was beyond the control of the respondents which delayed the project.
7. Mr. Arvind Kumar has filed an affidavit showing that he has made the payment of Rs. 44,00,000/- to the respondents towards the consideration of the flat which is 75% of the total amount of consideration.



Therefore, I am not convinced that the complainants have not made the payment according to the terms of the agreement for sale.

8. The complainants want to continue in the project. Section 18 empowers them to claim interest at prescribed rate for every month of delay on their investment till they receive the possession of the flat. The prescribed rate is 2% above the SBI's highest marginal cost of lending rate which is currently 8.05%. In Neelkamal Realtors Suburban Pvt. Ltd. -v/s- Union of India in Writ Petition No. 2737 of 2017, Bombay High Court has held that Section 18 of RERA is retroactive, therefore, I find that the complainants are entitled to get the interest from the date of default that is from 01.01.2017 at prescribed rate. The complainants are entitled to get Rs. 20,000/- towards the cost of complaint. In result, the order.

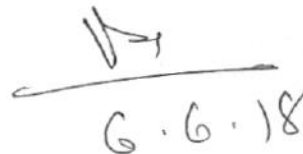
ORDER

The respondents shall pay simple interest at the rate of 10.05% on complainants' amount Rs. 44,00,000/- from 01.01.2017 till the respondents deliver the possession of the booked flat for every month of delay.

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

Mumbai.

Date: 06.06.2018.



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