

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

COMPLAINT NO: CC006000000057331

Ajay Shashinath Dave

... Complainant.

Versus

Vinay Shravankumar Agrawal
(Balaji Symphony)

...Respondent.

MahaRERA Regn: P52000001043.

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

Appearance:

Complainant: Adv. Pratik Mane.

Respondent: Adv. Sanjuna Sudhakaran.

FINAL ORDER

13th February 2019.

The complainant contends that he booked flat no. I-201 in respondent's registered project "Balaji Symphony" I-Wing situated at New Panvel. He alleges that respondent failed to hand over the possession of the flat on the agreed date i.e. on or before March 2016 with grace period of six months. The complainant wants to continue in the project and claims interest on his investment for every month of delay under Section 18 of RERA from the date of default till he took the possession of the flat on 10.01.2019.

2. The respondent has pleaded not guilty and he has filed the reply to contend that he has received the occupation certificate of Phase-1 where the booked flat of the complainant is situated, on 21.08.2018. The complainant was informed to take the possession of the flat by email dated



23rd August 2018. On 24th December 2018, the complainant came to his office and negotiated for the discount of Rs. 80,000/- which was granted on account of delayed possession and good relations. The complainant filed the complaint on 25.12.2018 and took the possession of the flat on 10th January 2019 without making any grievance of delayed possession. The respondent contends that though he promised the complainant to hand over the possession of the flat in December 2017, the planning authority changed and NAINA became the Planning Authority because of it, podium plan was altered and the fire department added new obligation to provide fire sprinklers in all the flats. The complainant has not averred that because of the delayed possession he has suffered. The respondent relies upon Para-125 to 127 of the Neelkamal Realtors judgement to contend that he should not be punished because he is a performing builder. He refers to one order passed by the Hon'ble Chairperson of MahaRERA wherein the complainants of those cases agreed to the revised date of possession 01.09.2018 and if the possession would not be handed over on or before the said date thereafter the interest would be payable. Hence, the respondent requests to dismiss the complaint.

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

POINTS	FINDINGS
1. Whether the respondent failed to hand over the possession of the flat on agreed date?	Affirmative.
2. Whether the complainant is entitled to get interest from 1 st October 2016 to 9 th January 2019 on his investment on account of delayed possession u/s 18 of RERA?	Affirmative.



REASONS

4. The respondent has contended that he has specified in the agreement that he shall hand over the possession of the flat by December 2017 with grace period of six months, it means that he agreed to hand over the possession by June 2018. I have gone through the agreement for sale and find that it is specifically mentioned in Para-4(a) of the agreement that the promoter shall give possession of the flat "on or before March 2016 subject to the extension of time for a further period of six months." Hence, the respondent has taken the false plea that the agreed date was December 2017. The six months' grace period is very often contemplated in the agreement, if for some genuine reason the project is delayed, the allottee shows the grace to extend the period by next six months. In this context, section 8(b) of Maharashtra Ownership Flats Act can be looked into. It provides that if the promoter fails to give possession in accordance with the terms of the agreement on the date specified in it for the reasons beyond his control, then the period can be extended for three months and if those reasons still exist, then the period can be extended by next three months. If the project is delayed beyond the period of six months, then the allottee gets right to claim interest from the date of default. The respondent has contended that the delay is caused because the planning authority changed to NAINA and therefore, plans were changed. Even if it is taken for granted, that this was sufficient cause for extending the date, it cannot be extended beyond six months. Hence I find that the respondent was under the contractual obligation to hand over the possession by September 2016. Admittedly, the respondent has failed to hand over the possession on the agreed date, hence, I record my finding to this effect.

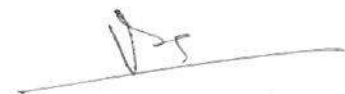
5. The respondent has referred to the order of the Hon'ble Chairman of the MahaRERA without putting the number of the case. It appears that he has relied upon the case of Rajesh Sharma-v/s-Vinay Agarwal,



Complaint No. CC006/54566 decided on 20.07.2018. This order shows that the complainants of those matters accepted the revised time line and on the basis of their consent, the Hon'ble Chairman directed the respondent to hand over the possession of the apartments to those complainants before 31.08.2018 and in case of respondent's failure, directed him to pay the interest from the said date. However, this order is also challenged by those complainants in Appeal No. AT006/10636. In this case the complainant has not given consent for extending the date of possession and hence, this plea is not maintainable.

6. Section 18 of RERA provides that the complainant can get interest on his investment on the promoter's failure to hand over the possession of an apartment on the dates specified in the agreement. Sub-clause (1) of section 18 is drafted in simple present tense, I hold that the material date is the agreed date of possession and not the date of the complaint. Hence, even after receiving the possession the complainant is entitled to get the interest on his investment for the delayed period because the right to get it is accrued to him on the promoter's default to hand over the possession on agreed date. Once there is right, there must be remedy to enforce it and without it the right has no meaning. In view of the matter, I find that though the complainant has taken the possession of the flat, he is entitled to recover the interest on his investment from 01.10.2016 to 09.01.2019.

7. Even on the receipt of the O.C. the right and liability arising out of RERA subsist till they are addressed. Hence, I hold that the complainant is entitled to get interest on account of delayed possession from the date of respondent's default till he receives the possession. Though the respondent makes reference to para 125 to 127 of the judgement of the Hon'ble High Court passed in Neelkamal Realtors Suburban Pvt. Ltd. v/s Union of India (WP 2737/2017), I do not find that they help the respondent to absolve him from the liability arising out of section 18 of RERA.



8. The complainant has filed the payment statement marked Exh.'A' which shows that till 05.03.2016, he paid Rs. 48,03,837/- to the respondent towards consideration and the receipt of this amount is not in dispute. The issue regarding the discount of Rs. 80,000/- requires consideration at this stage. The respondent contends that he has given discount of Rs. 80,000/- to the complainant on 24.12.2018 for compensating him on account of the delayed possession. The complainant on this point submits that he booked the flat in the year 2012 and the respondent charged him the higher rate than prevailing one and hence, he gave discount of Rs. 80,500/- in the year 2014 itself. So, this discount has nothing to do with the compensation on account of delayed possession. The complainant has produced the zerox copy of a letter signed by the respondent on 24.02.2014 which reads Rs. 80,500/- will be adjusted at the time of taking possession on account of club membership". The genuineness of this document is not disputed by the respondent. Therefore, it becomes clear that the respondent has not given any discount of Rs. 80,000/- on account of delayed possession as contended by him. Before parting with this issue I want to put on record that the respondent made false statement in reply that the possession date promised was December 2017 and he gave the discount of Rs. 80,000/- to the allottee for compensating him for the delay that too, on 24.12.2018 when the letter of possession dated 23.08.2018 was sent. It appears that he does not have any regard for the truth and he does not hesitate to make false statement to serve his purpose. This practice of making false statement and misguiding the Authority is highly objectionable and I deprecate it. To conclude, I find that the complainant is entitled to get simple interest on his amount at prescribed rate. The prescribed rate of interest is 2% above the SBI's highest MCLR which is currently 8.55%.

9. The respondent does not hesitate to take false pleas as observed above. Therefore, considering the facts and circumstances of the case and

the poor plight of the complainant before such unscrupulous promoter, the complainant is entitled to get Rs. 35,000/- towards the cost of the complaint. Hence, the order.

ORDER


The respondent shall pay the complainant simple interest at the rate of 10.55% p.a. from 1st October 2016 to 9th January 2019 on his investment of Rs. Rs. 48,03,837/- on account of delayed possession u/s 18 of RERA.

The respondent shall pay the complainant Rs.35,000/- towards the cost of the complaint.

Respondent's practice of making false statement and misguiding the Authority is highly objected and is deprecated.

Mumbai.

Date: 13.02.2019.


13-2-2019

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