

**BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
PUNE**

Complaint No.CC005000000010865

Ashwini Sharad Pore

.. Complainant

Versus

Deepak Sakharam Kulkarni

.. Respondent

**Coram : Shri M.V. Kulkarni
Hon'ble Adjudicating Officer**

FINAL ORDER

✓ 19th APRIL, 2018

✓ 1st JUNE

1. The Complainant contended that she booked Flat No. B-706 in the project "DSK Mayurban" situated at Gat No. 530 (Old Gat No. 1093 of village Pirangut, Tal. Mulshi, District Pune of the Respondent. The Agreement was registered on 20.09.2014 by Registered Deed No. 3296. The Respondent had floated scheme "Aadhi Gar, Paise Nantar", under which, he was supposed to pay pre-EMI till the date of possession. The possession was agreed to be delivered on or before 30.06.2017. The Respondent failed to give possession on agreed date and made default in payment of pre-EMI. Therefore, the Complainant has filed this complaint. The complainant prays that, (i) Respondent be directed to pay pre-EMI; (ii) Respondent be directed to pay interest on the amount paid by Complainant; (iii) Respondent be directed to pay compensation; (iv) Respondent be directed to correct CIBIL rating of Complainant; (v) TATA Capital Housing

✓ 6-2018

Finance Corporation Ltd. (hereinafter referred as TCHFCL) be directed to recover pre-EMI from Respondent only and (vi) Respondent be directed to hand over possession of the said flat at the earliest.

2. Before the learned Member & Adjudicating Officer, MahaRERA, Mumbai, the Respondent failed to appear on 28.02.2018 and exparte order came to be passed against the Respondent. After the complaint was transferred to Adjudicating Officer, Pune on 03.04.2018, the Complainant and representative of the Respondent were present. Plea of representative of Respondent was recorded. The matter was adjourned to 17.04.2018 for final hearing. On 17.04.2018, the authorized representative of the Respondent was absent. Hence the matter has proceeded exparte against the Respondent. Arguments on behalf of the Complainant were heard.
3. Following points arose for my determination. I have recorded my findings thereon for the reasons given below.

POINTS

FINDINGS

- (1) Whether the Respondent has delayed Delivery of possession of Flat No.B-706 Without there being reasons beyond his control ?In the Affirmative
- (2) Whether Respondent is liable to pay pre-EMI till possession of the flat is handed over ? In the Affirmative

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- (3) Whether Complainant is entitled to get Interest on the amount paid to the Respondent ? In the Affirmative
- (4) What order ? As per final order.

REASONS

4. **POINT Nos. 1 to 3** :- The Respondent has neither filed his written explanation in his defence, nor has made any submissions in his defence orally. The Complainant on her part, has produced the agreement on record. Under the agreement, the purchaser undertook to execute triparte agreement and undertook to seek loan from TCHFCL @ 10.15% p.a. on floating basis. The Developer undertook to pay pre-EMI till possession is delivered or completion certificate is issued by Architect/Competent Authority. Statement of Account from TCHFL is produced on record by the Complainant. Accordingly, the interest rate from 12.11.2014 was 10.15% p.a.; from 10.09.2017, it was 9.90% p.a. and from 12.01.2018 it was 8.50% p.a. Since the Respondent has undertaken to pay the pre-EMI till possession is delivered or completion certificate is obtained, and it is not disputed by the Respondent that possession has not yet been delivered or completion certificate has not yet been obtained, the Respondent is liable to pay pre-EMI till possession is delivered or completion certificate is obtained.
5. The further prayer of the Complainant is to recover interest from the Respondent on the down payment made by her. The Complainant has mentioned in her complaint, that she has paid Rs. 1,00,000/- at the time of booking on

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28.08.2014 and Rs. 4,10,000/- remaining amount of 10% of the total amount as down payment on 10.09.2014. Further she has paid Rs.51,839.95 for extra work on 20.01.2016. In support of her claim, the Complainant has produced on record Receipts, dated 24.08.2014, 10.09.2014 and 20.01.2016. She has also filed on record the statement of account showing the amount of Rs. 5,61,840/- to the Respondent including stamp duty of Rs. 2,32,400/- and registration charges of Rs. 31,600/-. The statement filed by her further shows that the TCHFL has made total amount of Rs. 35,39,326/- to the Respondent by way of disbursement of loan, based on demand raised by the Respondent. Section 18 of the Maharashtra Real Estate Regulation Act, 2016 (RERA) allows to recover interest on the amount paid by the allottee to the promoter, if the promoter fails to deliver possession of the flat on the agreed date. The complainant wants to continue with the project and therefore, Complainant is entitled to recover interest on the above amount at the prescribed rate viz. MCLR of State Bank of India, which is currently 8.05% p.a. + 2% p.a. on the amount paid by him, for every month of delay from the date of default till handing over of possession.

6. Complainant is also entitled to get Rs.20,000/- towards cost of this Complaint. Hence I answer Point Nos.1 to 3 accordingly and proceed to pass the following order.

ORDER

1. The Respondent shall pay due EMIs of the loan taken by the Complainant till he delivers possession of the flat in question or obtains completion certificate.

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2. The Respondent shall pay to the Complainant interest @ 10.05% on the amount Rs.4,10,000/- (Rs. 5,61,840/-) (after deducting the amount paid towards Stamp Duty, Registration Charges, Service Tax, VAT, and other Govt. Dues, if any) paid by the Complainant.
3. The Respondent shall pay to the Complainant Rs. 20,000/- towards cost of this complaint.

Pune *18 JUNE*
Date :- *19.04.2018*

signed on 16.06.2018
(M.V.Kulkarni)
Adjudicating Officer,
MahaRERA, Pune