

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

**COMPLAINT NO. CC006000000056461**

Ajay Maurya  
Reena Ajay Maurya

..Complainants

Verses

Goldstar Realtors  
Amit Prakash Masalia  
Prakash Rasiklal Masalia  
Munir Abdul Latif Gazi,  
Salim Abdul Latif Gazi  
Shirin Munir Gazi

..Respondents

MahaRERA Regn. No. P99000006550

**Coram:**

Hon'ble Shri Madhav Kulkarni.  
Adjudicating Officer, MahaRERA.

**Appearance:**

**Complainant:** Adv. Ajay Yadav

**Respondent :** Absent

**FINAL ORDER**

**(Dated 25.04.2019)**

1. The complainants who had booked a flat with the respondent/builder, filed this complaint for direction to the respondent to hand over possession of the flat as per agreement and to pay interest on the amount received from the complainants.
2. The complainants have alleged that respondent No.1 is a Partnership firm and respondent nos. 2 and 3 are the partners. Respondent nos. 4, 5 and 6 are the owners of land survey nos. 45,

46, 47 and 53 at village Kambalgaon, Tal. Palghar, Dist. Palghar. The respondents floated project by name Colours Discovery. Since the year 2011, the complainants were looking for a suitable residential accommodation in Palghar area. The complainants booked 2 BHK flat No. 103 in building no. 3 for a consideration of Rs.14,30,000/- in the said project. The complainants paid Rs.4,56,956/- till 09.08.2014 starting from 15.01.2012. After rigorous follow up, respondents executed agreement for sale on 08.04.2015. The contents were not read over to the complainants, nor complainants were allowed to read them which were running into 93 pages. The agreement was handed over to the complainants on 12.10.2015 i.e. after about 6 months. The complainants found out that no date for delivery of possession was mentioned in the agreement. After follow up, respondents promised to complete the construction within 15 to 18 months and to deliver possession of the flat. An e-mail was received by one Mr. Vishal Mutreja who had booked a flat in the same building, in that respect. The complainants further paid Rs.2,96,726/-. The complainants took loan from ICICI Bank to the extent of Rs.2,86,000/-. Thus the complainants paid an amount of Rs.10,39,682/- out of the total consideration of Rs.14,30,000/-. The complainants paid stamp duty of Rs.57,200/- and registration charges of Rs.14,300/-. The complainants found that work at the site was stopped. The complainants sent notices on 19.12.2016 and 14.01.2018. Delay in delivery in possession has occurred, solely on account of respondents. The complainants are entitled for Rs.2,00,000/- as compensation on account of harassment caused by the respondents.

3. The complaint came up to me on 26.03.2019. The respondents were absent. Arguments for complainants were heard.

4. Following points arise for my determination. I have noted my findings against them for the reasons stated below:

POINTS	FINDINGS
1 Have the respondents failed to deliver possession of the flat to the complainants as per agreement, without there being circumstances beyond their control?	Affirmative
2 Are the complainants entitled to the reliefs claimed?	Affirmative
3 What Order?	As per final Order.

#### REASONS

6. **Point Nos. 1** – The complainants have placed on record copy of receipt of Rs,51,000/- dated 15.01.2012, which was paid towards booking of flat no. 103. Then receipt for Rs.2,35,000/- dated 25.02.2012, again receipt for Rs.14,700/- dated 19.08.2013 for VAT tax, receipt for Rs.8,837/- dated 19.08.2013 towards Service Tax are produced. There is also receipt dated 09.08.2014 for Rs.1,43,000/-. There is receipt of Rs.4,419/- dated 09.08.2014 towards Service Tax. Copy of Agreement dated 08.04.2015 is placed on record. It is clear that though the booking was done on 15.01.2012, agreement came to be executed only on 08.04.2015. It is the contention of the complainants that respondents were hesitating to execute agreement.
7. Even though RERA was not in force, on 08.04.2015, MOFA was in force at that time. Under Section 3(2)(f) of MOFA, promoter is bound to specify in writing date by which possession of the flat is to be handed over. Clause 13 of the Agreement, which was meant for date for delivery of possession has been kept blank. As per clause 15, possession of the flat shall be given subject to the Occupation Certificate.



8. ~~This~~ contention of the complainants is that on coming to know that date for delivery of possession was not mentioned in the agreement, they started pursuing the matter with the respondents with other flat purchasers. Other flat purchaser Mr. Vishal Mutreja received an e-mail on 19.11.2016 to the effect that possession will be given within 15 to 18 months. Even then it would be in May, 2018. There is no challenge that respondents have not handed over the possession till today. No justification for delay is coming from the respondents. Under Section 46 of Contract Act, where no time for performance is specified, <sup>engagement</sup> ~~must~~ be performed within a reasonable time. As the complainants had booked flat in the year 2012, almost 7 years have gone by and this was reasonable time, in fact more than reasonable time for completion of the construction and handing over possession by the respondent. I therefore, hold that respondents have failed to deliver possession without there being circumstances beyond their control. I therefore, answer point no. 1 in affirmative.
9. Point No. 2 The complainants claim to have paid in all Rs.10,39,682/- towards price of the flat including loan of Rs.2,86,000/-. It appears that amount includes Service Tax and VAT Tax. Also complainant have paid Rs.71,500/- towards stamp duty and registration charges. Tax amount and stamp duty and registration charges have gone to government authorities. Prayers of the complainants is for recovering interest on the amount paid by them to the respondents. Further, prayer is for directions to the respondents to hand over possession of the flat to the complainant. U/s 71 of RERA Adjudicating Officer has powers to adjudge compensation u/s 12, 14, 18 and 19. Thus no powers are vested to direct the respondent to handover the possession. Under Section 18(1), proviso where allottee does not

want to withdraw from the project he shall be paid by the promoter, interest for every month of delay till handing over possession, at such rate as may be prescribed. Present agreement is dated 08.04.2015. If we calculate 18 months from this date, it will come to 07.10.2016. The complainants will be entitled to recover interest on the amount paid towards purchase of the flat together with interest as provided rule 18 of Maharashtra Rules from 08.10.2016. I therefore, answer point no. 2 in the affirmative and proceed to pass following order:

### **ORDER**

1. The respondents to pay interest on rs.10,39,682/- minus tax paid to government @ 10.75% p.a. from 07.10.2016 till possession of the flat is delivered to the complainants or intimation is given after obtaining Occupation Certificate.
2. The respondents to pay Rs.20,000/- to the complainants as costs of this complaint.
3. The respondent to pay above amounts within 30 days from the date of this Order.

Mumbai

Date : 25.04.2019

*MD 25-4-2019*  
**(Madhav Kulkarni)**  
**Adjudicating Officer**  
**MahaRERA**