

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

COMPLAINT NO: CC006000000056660.

Nanda Jain

... Complainant.

Versus

M/s.Aanya Realtors
(Falco Rivershire)

... Respondents.

MahaRERA Regn: P51700005912.

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

Appearance:

Complainant: Adv. Krishnan Raghavan.

Respondents: Mr. Rohit Chugani.

FINAL ORDER

13th March 2019.

The complainant booked flat no. 909 in respondents' registered project 'Falco Rivershire' situated at Village Mohili, Tal.Kalyan, District: Thane. The respondents have failed to hand over the possession of the said flat on the agreed date 30th June 2016. Therefore, the complainant claims interest on her investment for every month of delay till getting the possession of the flat under Section 18 of RERA, as she wants to continue in the project.

2. The respondents have appeared and pleaded not guilty but they have not filed their reply. Mr. Rohit Chugani submits that the proposed date of possession mentioned on the webpage of the project be considered for computing the delay as the other benches of the Authority have been doing. He further submits that the respondents have received only Rs. 13,62,557/- up till now.



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

POINTS	FINDINGS
1. Whether the respondents have failed to hand over the possession of the flat on agreed date?	Affirmative.
2. Whether the complainant is entitled to get interest on her investment for every month of delay till getting the possession of the flat?	Affirmative.

REASONS

4. The complainant has produced the copy of the agreement for sale which shows that the respondents agreed to hand over the possession of the flat by June 2016 with grace period of six months. It means that the respondents agreed to hand over the possession of the flat by December 2016. Admittedly the respondents have not handed over the possession of the flat on the agreed date. Mr. Rohit Chugani submits that the proposed date of possession mentioned on the webpage of the project be considered for computing the delay as the other benches of the Authority have been doing. However, he has not produced any order of the Authority in which such a view is taken. In fact, Hon'ble Bombay High Court in Nilkamal Realtors Suburban Pvt. Ltd.-v/s Union of India (WP 2737 of 2017), in para 119 of the judgement has observed that "under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA." Hence I do not accept the submission of Mr. Chugani that the delay should be computed from the revised date of completion.

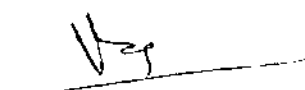
5. Section 18 of RERA provides that if the promoter fails to complete or is unable to give possession of an apartment duly completed by the date of



possession specified in the agreement, he is liable to pay the allottee interest for every month of delay on his investment till handing over the possession of an apartment, if the allottee opts to continue in the project. The complainant wants to continue in the project and therefore she is entitled to get the simple interest at prescribed rate on her investment for every month of delay.

6. The complainant produced the statement of payment marked Exh. A showing that she paid Rs.15,58,272/- towards the consideration of the flat. The respondents submit that they received Rs. 14,10,247/- and out of it, Rs. 47,689/- have been paid towards the service taxes. Mr. Chugani submits that the flat has not been purchased under subvention scheme and there is no tripartite agreement entered into by the complainant and respondents and financier Indiabulls. The complainant has produced on record the letter of the Indiabulls dated 02.11.2018 showing that the flat has been purchased under subvention scheme and liability of the interest servicing lies with the builder till the subvention period as per the agreement between builder and buyer. It shows that Mr. Chugani has no regards for the truth. Be that as it may.

7. The complainant has produced the documentary proof to prove that she has paid Rs. 15,58,272/- to the respondents. Even if it is taken for granted that the respondents paid Rs. 47,689/- towards service tax, the fact remains that Rs. 15,10,583/- have been paid by the complainant towards the consideration of the flat. This amount includes the loan disbursed by Indiabulls Rs. 8,39,028/- on 31.01.2015 and Rs. 68,244/- on 19.02.2015. The complainant is liable to re-pay the loan. Thus, I record my finding that the complainant is entitled to get interest at prescribed rate on Rs. 15,10,583/- from the date of the respondents' default in handing over the possession of the flat. The prescribed rate of interest is 2% above the SBI's highest MCLR which is currently 8.55%. Complainant is entitled to get Rs. 20,000/- towards the cost of the complaint. Hence the following order.



ORDER

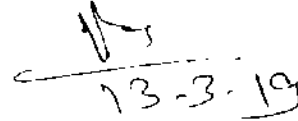
The respondents shall pay the complainant interest at the rate of 10.55% per annum on her investment of Rs. 15,10,583/- from 01.01.2017 till handing over the possession of the flat.

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

The respondents are permitted to adjust the accrued interest against the amount due from the complainant by giving credit note thereof separately and shall pay the balance, if any.

Mumbai.

Date: 13.03.2019.



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