

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

Complaint No.CC005000000011947

Abhay Shrirangwar

.. Complainant

Versus

1.Mr.Atul Ratnakar Mahashbde .. Respondents

2.Mr.Vishal Kantilal Jain

3.Mr.Rohan Vijay Mantri

Coram : Shri.W.K.Kanbarkar

Hon'ble Adjudicating Officer

FINAL ORDER

28-12-2018

1. Present complaint is moved seeking directions against respondents to pay interest for the delayed possession of the booked flat and for compensation in the light of Section-18 of The Real Estate (Regulation & Development) Act, 2016. Complainant has booked flat No.205 in the project known as 'Tropical Palms Building H' on the second floor situate at Wakad, Pune. Parties have entered into contract vide registered agreement for sale dated 7-10-2016 for total consideration of Rs.55,50,320/- and out of

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the said amount actually paid amount of Rs.49,00,000/- and more. In pursuance of said agreement for sale agreed to deliver actual possession of the booked flat latest by December, 2017 but respondents have failed in that regard without any sufficient cause. Therefore the present complaint for recovery of interest on delayed possession on the amounts paid and for compensation. Of course present complaint is objected by the respondent on the ground that process of completion of project delayed on account of TDR and other grounds including sanctions etc., which are beyond the control of respondents. Commencement certificate from the competent authority as per the revised building plan was received on 19th Jan, 2018. Therefore, present complaint is not maintainable under law and liable to dismiss. However, alternatively contended that in case interest and compensation is allowed the same should not be on the amounts of stamp duty, GST, VAT etc.,

2. Admitted position that parties have entered into registered agreement for sale on dated 7-10-2016 and thereby booked flat No.H-205 on II floor in the project known as 'Tropical Palms Buildings H', situate at Wakad-Pune for total consideration of Rs.55,50,320/- and by such agreement possession of

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the booked flat was to be delivered latest by December, 2017 with grace period of six months and on payment of all dues payable by the complainant. Material on record reflecting that the complainant has made actual total payment of rupees more than 49 lakhs. It was obligatory on the part of respondents/ developers to deliver actual possession of the booked flat latest by December, 2017. Of course on behalf of respondent put forth grounds of impediments such sanction of plan from the competent authority for loading and utilisation of TDR, non availability of required material for construction, and due to force majeure etc., grounds and because of that it was beyond control of respondents to delivery actual possession of booked flat to the complainant. Therefore, according to respondents not liable to pay any interest or compensation as such for the delayed possession, to the complainant. Force majeure clause or situation in that regard can be made applicable only when the entire situation is beyond the human control or vis majeure. In the instant case such is not the position on record. Moreover, grounds of impediments such as process of TDR, sanction of plan, non availability of material etc., are not just an acceptable under law. Grounds put forth by the respondents for delayed possession are not just and sufficient. Thus, in the lights of aforesaid facts and position on record present complaint for recovery of

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interest on amount paid by the complainant for the delayed possession and for compensation is permissible under Section-18 of the RERA Act. Therefore, the respondents have to pay interest for the delayed possession and also compensation to the complainant under the law as aforesaid. On behalf of respondents alternatively made a submission that in case interest allowed for the delayed possession the same should not be imposed on stamp duty, GST and VAT but such amounts should be excluded. Accordingly, respondents shall pay interest on payment of Rs.49,00,000/- exclusive of stamp duty of Rs.3,35,400/-, to the complainant at State Bank of India's highest marginal cost lending rate 8.70% plus 2% i.e., 10.70% prevailing as on date for the delayed possession from December, 2017, till respondents deliver actual possession of flat in question to the complainant or intimating to the complainant about obtaining of occupancy certificate appropriately. Respondents shall further pay Rs.20,000/- to the complainant as cost of this proceeding. Respondents shall pay aforesaid amounts to the complainant within 30 days from the date of this order.

Pune
Date :- 28.12.2018


(W.K.Kanbarkar)
Adjudicating Officer
MahaRERA