BEFORE

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

MUMBAI

COMPLAINT NO: **CC005000000010416**

Mrs. Aparna Makarand Kelkar ... Complainant.

Versus

Karan Venkateshwara Associates (AOP)
(Athena A Building & B Building) ... Respondents.

MahaRERA Regn: **P52100004030**

And

COMPLAINT NO: **CC005000000010417**

Mr. Makarand Vasant Kelkar ... Complainant.

Versus

Karan Venkateshwara Associates (AOP)
(Athena A Building & B Building) ... Respondents.

MahaRERA Regn: **P52100004030**

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

Complainants: Mr. Milind Deshpande,Adv.
Respondents: Mr. P.V. Bohuwe, Adv.

Common Final Order

10th January 2018.

Pleadings of complainants.

In these complaints filed under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (in short, RERA), Mrs. Aparna Kelkar contends that she booked a flat No. 101 and Mr. Makarand Kelkar contends that he booked a flat No. 104 in respondents' registered project 'Athena' situated at Vadgaon Sheri, District Pune. The respondents agreed to deliver the possession of these flats on or before 31st January 2016. They failed to deliver the possession of these flats on the agreed date and therefore, the complainants are seeking the refund of their amount with interest and/or compensation under Section 18 of RERA.

Defence of respondents.

2. The respondents have filed their explanation after pleading not guilty. They contend that the flats booked by the complainants have been completely constructed and are made ready for delivering their possession in the month of January 2016 itself. The respondents have informed the complainants to take possession but complainants have not taken their possession. The respondents have started the process of getting the completion certificate. They allege that the complainants have been avoiding to take the possession of their apartments with some ulterior motive. Their claim is false and therefore, they are liable to pay them compensatory cost. Moreover, they contend that the provisions of Section 18 and 19 of RERA are not attracted and hence, they request to dismiss the complaints.

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

	POINTS	FINDINGS
a)	Whether the respondents have failed to deliver the Possession of the flats booked by the complainants on the agreed date?	Affirmative.
b)	Whether the complainants are entitled to get refund of their amount with interest?	Affirmative.

REASONS

Delayed possession:

4. There is no dispute between the parties that they have mentioned in the agreements executed by them for sale on 29.01.2015 that respondents shall deliver the possession of the flats within the period of 12 months from the date of execution of the agreements. Therefore, the possession was to be delivered by the respondents within 12 months. Hence, I find that the agreed date of delivery of possession was 28th January 2016. It is admitted by the respondents that the possession has not been delivered yet.

5. The respondents have taken the stand that the flat was ready for delivering the possession in the month of January 2016 itself but the complainants have not taken the possession of their flats, though the respondents intimated them to take the possession. According to the respondents, many allottees of the said project have taken the possession of their flats. In this context, it is necessary to look at Section 3 (2) (i) of the

Maharashtra Ownership Flats Act 1963. It provides that a promoter shall not allow persons to enter into possession of a flat without obtaining completion certificate, where such certificate is required to be given by the local authority and no person shall take possession of a flat until such completion certificate has been duly given by the local authority. The respondent themselves have contended that they have applied for obtaining the occupancy certificate and it is still awaited. In this circumstance, neither the respondents can hand over the possession of the flats to the complainants, nor the complainants can take their possession. In view of this legal position, I find that there is no substance in the contention of the respondents that the flats are ready from January 2016 and the complainants have not been accepting their possession with ulterior motive. I am not accepting the submission of the respondents, that the provisions of Section 18 (1)(a) and Section 19(4) of RERA are not attracted for the same reason. I, therefore, record my finding that the complainants have proved that the respondents have failed to deliver possession of their booked flats on agreed date and their cases fall under Section 18 and 19(4) of RERA.

Entitlement of the complainants.:

6. Section 18 of RERA provides that when the promoter fails to deliver the possession of an apartment on agreed date of possession specified in the agreement for sale, the allottee gets option to withdraw from the project and claim refund of his amount with interest and compensation also. The complainants have exercised this right to opt for withdrawal from the project. Therefore, they are entitled to get refund of their amount with interest.

7. Mrs. Aparna Kelkar has filed the statement of payment which shows that she paid Rs. 1,00,000/- on 28.10.2014, Rs. 17,17,500/- on 29.01.2015, Rs. 64,50,000/- on 07.02.2015, these amounts have been paid towards consideration. She paid Rs. 5,27,160/- towards the stamp duty and registration charges of agreement for sale on 29.01.2015 and paid Rs. 2,55,466/- towards service tax on 24.03.2015, Rs. 82,675 towards VAT on 24.03.2015. The respondents have admitted the receipt of these amounts. Mrs. Aparna Kelkar is entitled to refund of these amount.

8. Mr. Makarand Kelkar has also filed a statement showing the payment made by him to the respondents. He paid Rs. 1,00,000/- on 28.10.2014, Rs. 16,12,000/- on 29.01.2015, Rs. 68,48,000/- on 07.02.2015 towards the consideration of flat. He has also paid Rs. 5,44,700/- on 29.01.2015 towards stamp duty and registration charges of the agreement for sale. Rs. 2,64,504/- on 24.03.2015 towards service tax and Rs. 85,600/- on 24.03.2015 on account

of VAT. The respondents have not disputed the receipt of these payments. Mr. Makarand Kelkar is entitled to get refund of these amount.

9. Section 18 of RERA provides that the allottees are entitled to get refund of their amount with interest at prescribed rate. The rate has been prescribed by the rules framed under the Act. The rate of interest is MCLR of SBI which is currently 8.05 + 2% from the dates of their payment. Therefore, the complainants are entitled to get the interest at the rate of 10.05 % from the date of receipt of the amount by the respondents. The interest awarded is compensatory in nature and therefore, the complaints are not entitled to get compensation on other grounds. The complainants are also entitled to get Rs. 20,000/- towards the cost of the complaints. Hence, the following order.

ORDER

1. The respondents shall pay to Mrs. Aparna Kelkar, the amount mentioned in Para 7 of this order with interest at the rate of 10.05% from the date of receipts thereof till they are repaid.
2. The respondents shall pay to Mr. Makarand Kelkar, the amount mentioned in Para 8 of this order with interest at the rate of 10.05% from the date of receipts thereof till they are repaid.
3. The respondents shall pay Rs. 20,000/- to each complainant towards the cost of their complaints.
4. On satisfaction of their claims, the complainants shall execute deed of cancellation of agreement for sale, at respondents' cost.
5. The charge of amount payable to complainants is kept on their booked flats until their claims are satisfied.
6. The respondents' claim for compensatory cost is rejected.

10-1-18

Mumbai.
Date: 10.01.2018.

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