

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

Complaint No.CC005000000011192

**Dr Mrs.Manisha D Katikar &
Dr.Duttaprasanna B Katikar
Versus**

.. Complainant

Zinnia Spaces Pvt Ltd

.. Respondent

**Coram :ShriS.B.Bhale
Hon'ble Adjudicating Officer**

FINAL ORDER

8-08-2018

1. The complainants have filed this complaint claiming the interest for every months of delay, till the handing over the possession, at such rate as may be prescribed under the provisions of Real Estate (Regulation & Development) Act 2016 (hereinafter referred as RERA). For the state of Maharashtra the above said act came into force on 1-5-2017.
2. It is alleged that the complainants have booked the flat bearing No.202 inclusive of adjacent terrace admeasuring 21.75 sq.mtrs and covered stack parking, located at Yerandewan, Pune, vide agreement dated 27-3-2014. In terms of that agreement the respondents have agreed to hand over the possession of booked flat on or before March 2016. The total cost of the booked flat was Rs.1,75,00,000/- . Further it is alleged that at the time of the booking of the flat the complainants had paid the amount of Rs.1,65,00,000/- on 26-3-2014. It is also alleged that prior to this complaint they had filed complaint No.999 of 2017

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before this authority only to direct the respondents to produce the entire papers of the aforesaid project. Thereafter, the complainants have filed this complaint claiming the relief of interest for delayed possession under the provisions of Section 18 of RERA.

3. The respondents have filed the reply to this complaint on 6-8-2018. Prior to this, they have also filed on record the completion certificate dated 5-3-2018. It needless to say that the complaint is of dated on 19-3-2018.
4. The case made out by the respondents vide their reply is that due to unavoidable circumstances, they could not complete the project in time. Consequently they failed to hand over the possession of booked flat within stipulated period. Further they contend that in terms of agreement they are ready to pay the amount of Rs.10,000/- per month to the complainants towards rent or damages till the handing over of possession. In terms of agreement they are only liable to pay monthly compensation as stated above in the event of their failure to hand over the possession within stipulated period. The complaint of complainants is false and as such liable to be dismissed.
5. It is to be noted that the plea of the respondent is not recorded till taking the final hearing of this complaint. The reasons for not recording the plea and the ready and willingness of the respondents to argue the matter on merits for final order will be seen from the previous Rojnamas dated 7-6-2018, 18-6-2018 & 6-8-2018. In the Rojnama dated 7-6-18, the respondents had undertaken to hand over the possession of the booked flat to the complainants within the period of one month. Complainants were also ready and

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willing to take the possession of the booked flat as undertaken. Further, on 18-7-2018 the respondents had again undertaken to hand over the possession of the booked flat on or before 22-7-2018 but failed to do so. In the above fact and circumstances and on account of the failure of the respondents to hand over the possession, the complainant was heard finally on merits for final order. It is also necessary to point out that the respondents or their representative intentionally failed to remain present before this authority to avoid the recording of plea. In the above circumstances and on the oral submission of the advocate of respondents, their plea is deemed to be recorded.

6. Heard parties through their advocates, perused papers filed on record. Receipt of amount Rs.1,65,00,000/- from the complainants by the respondents towards booked flat under the agreement dated 23-3-2014 is not disputed. Further, fact remains that respondents failed to hand over the possession of the booked flat to the complainant in terms of agreement on or before March, 2016. The project in which the complainants have booked the flat is also registered with RERA authorities under the Act. In such circumstances I can say that the case of the complainant can only be governed under the provisions of RERA and not in terms of agreement and admitting to pay the compensation of Rs.10,000/- per month till handing over the possession of the booked flat to the complainants by the respondents is not tenable. In view of the provisions of RERA, the complainants have acquired the legal right to claim the interest on the amount paid by them to the respondents towards the consideration of booked flat for delayed possession under the provisions of Section 18

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of RERA. Therefore, the complainants claim being legal, it is liable to be accepted.

7. As the complainants intending to remain with the project, the only question remains for consideration is what will be the amount which can be treated as due and payable for interest and the day from which they are entitled for interest. As stated above and as the complainants are intending to remain with the project, the amount spent by them towards the stamp duty cannot be considered for charging the interest. On perusal the copy of the registration of agreement it will be seen that the amount of stamp duty spent by the complainants is of Rs.10,50,000/- If this amount spent towards stamp duty is deducted from the amount of Rs.1,65,00,000/- the remaining amount will be Rs.1,55,50,000/- which can be treated the due and payable amount for charging the interest from the date of receipt of said amount by the respondents from the complainants. Further the date of possession of the booked flat as agreed was March, 2016, therefore, the complainants are entitled to claim the interest for delayed possession under the provisions of section 18 from the respondents still the handing over the actual possession of the same. It is also necessary to make it clear that they are the respondents who failed to hand over the possession of booked flat to the complainants as undertaken on time to time before this authority and as is mentioned in the Rojnamas referred earlier. Not only that but they failed to hand over the possession even they have filed on record the completion certificate of the project dated 5-3-2018. May be by admitting this fact, that they failed to hand over the

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possession as agreed the respondents have agreed to argue the matter to dispose of the complaint on merits finally. The act and conduct of the respondents is sufficient to say that the complaint of the complainants for claiming the relief of interest for delayed possession is justified.

8. In view of the provisions of RERA and rules framed there under, the rate of interest payable by the promoters/developers to the allottees of the booked flat as may be prescribed as such, shall be the State Bank of India's highest marginal cost lending rate (MCLR) plus 2% above. In case the aforesaid rate is not in use, it would be replaced by such bench mark lending which the State Bank of India may fix from time to time for lending the money to public. In view of the Rules framed under the RERA, the rate of interest (MCLR) of SBI is currently 8.05% plus 2% above. Thus the complainants are entitled to receive the simple interest on the amount which is due and payable Rs.1,55,50,000/- at the rate of 10.5% per annum since the date of receipt of above said amount by the respondents against the booked flat under the agreement dated 27-3-2014. With this and having regard to the facts and circumstances of the case and the reasons recorded, I am going to record my findings against point No.1 in the affirmative and proceed to pass the following order:

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ORDER

1. The respondents are directed to pay the interest on the amount of Rs.1,55,50,000/- with simple interest at the rate of 10.05% per annum since the date of receipt of amount

with effect from 1-4-2016 till the reliasition of the entire amount and untill handing over the possession of the booked flat, under agreement dated 27-3-2014.

2. The respondents are also directed to make the payment of interest as ordered for delayed possession within the period of one month since the date of this order and continue to pay the same till handing over the possession of booked flat.
3. The respondents are also directed to pay the amount of Rs.30,000/- towards the cost of this litigation.

Pune
Date :- 8.08.2018

S.B. Bhale
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(S.B. Bhale)
Adjudicating Officer,
MahaRERA,