

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

COMPLAINT NO: CC006000000001925

Shrikant G. Pandit  
Sudha S. Pandit

... Complainants.

Versus

Rahul Anklesrai, HDIL  
(Premier Exotica 1)

... Respondents.

MahaRERA Regn: P51800004431

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

**Appearance:**

Complainants: Adv. Mr. Shashikant Kadam.

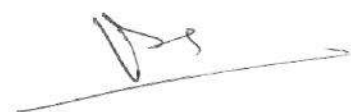
Respondents: Mr. V.K. Madan Mohan.

**Final Order**

21<sup>st</sup> March 2018.

Whether the promoter can claim interest on the amount due from the allottee who continues in the project as per Section 19 (6) (7) of the Real Estate (Regulation and Development) Act, 2016 (RERA) in the complaint filed under its section 18? is the legal issue involved in this complaint.

2. The complainants complain that they booked flat no. 604, 6<sup>th</sup> floor, B-wing, Premier Exotica-1 Building in Kurla for Rs.1,04,50,290/-. The respondents agreed to deliver its possession by the end of August 2016 with grace period of 12 months but they failed to hand over the possession on the agreed date. The complainants want to continue in the project, therefore, they claim the interest for every month of delay on their amount under Section 18 of RERA till the possession of their flat is delivered.



3. The respondents have filed their written statement wherein they have admitted that they have failed to deliver the possession of the flat on or before 31<sup>st</sup> August 2016 though, they have received Rs. 50,79,137/- from the complainants till 12.10.2016. Complainants did not make any payment thereafter. According to them, 95% construction was completed when the agreement for sale came to be executed on 09.08.2016. Complainants were liable to make 95% payment of the consideration. Complainants were liable to pay remaining amount of Rs. 48,48,639/- on 09.08.2016 with interest from 09.08.2016. Therefore, they contend that if the complainant's prayer is granted, their prayer may also be considered for payment of their dues with interest. The respondents further contend that the time was the essence of contract for the purpose of paying the dues. They were liable to give possession to the complainants only on full payment of the consideration. Since the complainants have not paid the consideration in full, they are not entitled to get interest on their amount because of the delayed possession. The respondents further contend that the flat booked by the complainants is in the sale component of the SRA project. There was the plan to expand Mumbai Airport and rehabilitation scheme connected thereto was thereafter shelved by the Government. Though rehab buildings were ready, the Government/Slum Rehabilitation Authority were not ready to take the said buildings and therefore, the occupancy certificate of the entire project is withheld. They submit that this reason was beyond their control and hence, they request to dismiss the complaint.

4. Following point arise for determination. I record my finding thereon as under:

#### POINTS

1. Whether the respondents have failed to deliver the possession of the flat on the agreed date?

#### FINDINGS

Affirmative.



2. What is due from the complainant to the Respondents on account of unpaid consideration and tax? Rs. 48,48,639/-
3. Whether the parties are entitled to get simple interest at prescribed rate on their amount in the same complaint filed u/s 18 of RERA? Affirmative.

### REASONS

5. The respondents have not denied the fact that the complainants booked the flat and they agreed to deliver the possession thereof on or before 31<sup>st</sup> August 2016 with a grace period of 12 months. However, they have failed to deliver it on agreed date. Hence I hold that the complainants have proved that the respondents have failed to deliver the possession of the flat on the agreed date.

6. The respondents submit that because of Mumbai Airport expansion plan the Government did not take rehab buildings in their possession and therefore, O.C. has not been issued. According to them, this reason was beyond their control. I find that the agreement has been executed in the year 2016 when Maharashtra Ownership Flats Act, 1963 was applicable to the agreement. As per Section 8 (b) of the said Act the promoter is entitled to get the extension of 3 + 3 months only when the grounds beyond their control exist. Even if it is accepted that because of the reason assigned by the respondents the project is delayed, they cannot get the extension of more than six months. Therefore, the date of default/ delay can be counted from the expiry of those six months that is from 1<sup>st</sup> March 2017.

7. The complainants want to continue in the project. Therefore, the only amount which they have paid towards the consideration is to be considered while assessing their claim under Section 18 (1) of RERA. It becomes clear from the reply of the respondents that the complainants paid

them Rs. 50,79,137/- till 12.10.2016, that is, before the agreed date of delivery of flat towards the consideration. This fact is established.

8. The respondents contend that when the agreement for sale was executed at that time 95% construction of the building having the booked flat was completed. Therefore, as per the terms of agreement the complainants were liable to pay them 95% of the amount of consideration. Complainants paid Rs. 48,48,638/- less than the payable amount. This fact has been established by the respondents.

9. Section 18 of RERA permits the allottee to get interest at prescribed rate for every month of delay on his amount. Rate of interest is prescribed under the rules which is 2% above the State Bank of India's marginal cost of lending rate which is currently 8.05% per annum. Section 2(za) defines the interest. It provides that the rate of interest payable to allottee and promoter shall be equal. In view of this provision, I find that both parties are entitled to get simple interest on their amount at the rate of 10.05% per annum. The complainants are entitled to get the interest on their amount from the date of default/delay i.e. from 1<sup>st</sup> March 2017 till they get the possession of their flat.

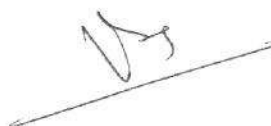
10. Section 19 (7) of RERA provides that the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount and charges to be paid under Sub-Section (6). Sub-Section (6) casts obligation on the allottee to make necessary payments in the manner and within the time specified in the agreement. The respondents are entitled to get the interest on their amount Rs. 48,48,638/- from 09.08.2016 i.e. from the date of agreement till its payment is made by the complainants.

11. I do not find any legal hurdle in considering the rival claims of both the parties in the same proceeding. In order to minimise the difficulties, it is necessary to clarify that the parties are at liberty to set off their claims. In the facts and circumstances, I do not find that the complainants are entitled

to get anything on account of the cost of the complaint. Hence, the final order.

### ORDER

1. The respondents shall pay the complainant simple interest at the rate of 10.05% p.a. on Rs. 50,79,137/- from 01.03.2017 till the respondents' hand over the possession of their flat.
2. The complainant shall pay the respondents simple interest at the rate of 10.05% per annum on Rs. 48,48,638/-from 09.08.2016 till they are paid.
3. The parties are at liberty to set off their claims.



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

Mumbai.  
Date: 21.03.2018