

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000056686

Prashant B Bhadra and 3 others ... Complainants

Versus

AAP Realtors Ltd.
MahaRERA Regn. No. P51800004278 ... Respondent

Corum: Shri. Gautam Chatterjee, Chairperson, MahaRERA

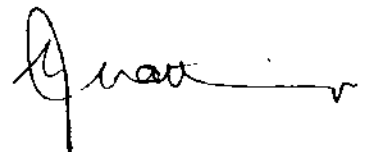
Complainants were themselves present.

Respondent was represented by Mr. Jugal Kanani, Authorised representative.

Order

November 26, 2018

1. The Complainants have purchased apartments bearing no: C-1904, C-1903, C-1902 and C-1901 in the Respondent's project 'Tirumala Habitats' situated at Mulund, Mumbai via registered agreements for sale dated March 30, 2013. The Complainants have alleged that the date of possession as stipulated by the said agreement is long over; however, the Respondent has failed to hand over the possession of the said apartments. Further, they stated that the Respondent has obtained part occupation certificate for the said project on May 22, 2018, however, the building is not in a habitable state and also alleged the amenities and facilities that were promised by the Respondents are not part of the almost completed project. They also stated that the Respondent is charging them interest for the delayed payments and demanding monies beyond what is provided for in the said agreement.
2. Therefore, they prayed that the Respondent be directed to pay them interest for the delay in handing over possession and to handover possession of the apartment with facilities and amenities as promised and not charge interest for delayed payments.



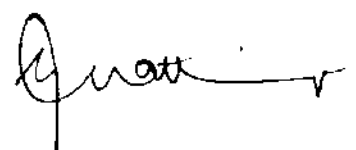
3. The authorised representative for the Respondent submitted that the Respondent has already obtained the Occupancy Certificate for the said project before the filing of the present complaint and has offered possession of the apartment to the Complainants. Therefore, he argued that the provisions of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 will not be applicable. He also submitted that the Respondent will not demand charges for services that are not being provided for at the time of handing over possession provided the Complainants agree to make payments for the same as and when the possession of the amenities is handed over. The authorised representative for the Respondent also submitted that the building is in a habitable state and that other allottees have already taken possession. Further, he submitted that the Respondent has already made applications for water and electric supply connections with the concerned authorities and that the applications are pending for approval soon. He submitted that while the applications are pending for approval, the Respondent has been supplying water and electricity at his cost to the said project. Finally, he submitted that the Respondent has been demanding monies as per the terms and conditions of the said agreements and for services such as piped-gas connections etc. The Respondent has been demanding money as per actuals, which is also as provided in the agreement for sale.

4. Section 18 (1)(a) of the said Act reads as:

" if the promoter fails to complete or is unable to give possession of an apartment, plot or building, – (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;

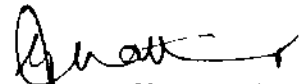
he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. "

Simple present tense used in the starting line of Section 18 clearly indicated that the provision shall apply only till the project is incomplete or the promoter is unable to



give possession. Once the project construction is complete or possession is given, as the case may be, the said provision ceases to operate.

5. In view of the above, the provision regarding interest on delay to the Complainants, as per section 18 of the Real Estate (Regulation and Development) Act, 2016, shall not apply.
6. In view of the above, the Respondent shall not demand charges for facilities/amenities that are not being provided at the time of handing over possession and until such time the said facilities/amenities are provided. The Respondent shall handover possession of the said apartments within 21 days from the date of this Order and shall also provide details explaining how only actuals are being recovered for services such as gas connection etc from the Complainant.
7. Complainants are advised to take possession of the said apartments and make the requisite balance payments (principal amount only without any delayed interest). The Complainants shall submit a declaration to the Respondent that they shall make the payments for the amenities as and when the same are provided for.
8. Consequently, the matter is hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA