

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

1. COMPLAINT No: CC006000000057045

Mr. Imran Kasam Shaikh Complainant
Versus
M/s. Sarthak Developers Respondent

Along with

2. COMPLAINT No: CC006000000056445

Mr. Imtiaz Doctor Complainant
Versus
M/s. Sarthak Developers Respondent

Along with

3. COMPLAINT No: CC006000000056448

Mr. Suleman Hooda Complainant
Versus
M/s. Sarthak Developers Respondent

Along with

4. COMPLAINT No: CC006000000056449

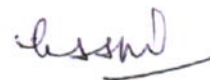
Mr. Shanaz Mahamed Ayub Complainant
Versus
M/s. Sarthak Developers Respondent

MahaRERA Registration No. **P51800007127**

Coram: Hon'ble Dr. Vijay Satbir Singh, Member-1

Adv. Sanjay Chaturvedi appeared for the complainants.

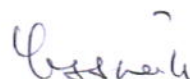
Adv. Meenakshi Adate appeared for the respondent.



ORDER

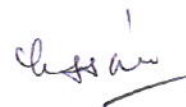
(19th July, 2019)

1. The above 4 complaints have been filed by the allottees in the project registered with MahaRERA bearing No. P51800007127 known as "**Sarthak Heights**" at Varsova, Andheri (West), under Section-18 of the Maharashtra Real Estate (Regulation and Development) Act, 2016. They are seeking directions from this Authority to the respondent to pay interest for the delayed period of possession in respect of booking of their flats in the said project of the respondent and also possession of their respective flats with Occupancy Certificate and other amenities. As per the registered agreements for sale executed between them, the respondent was liable to handover possession of the flats to the complainants on different dates starting from January, 2013 till February, 2018. However, the respondent has failed to handover the possession of the flats to the complainants so far.
2. These complaints have been filed with respect to the same project. Hence the same were clubbed together and heard on several occasion and were finally heard on 13-06-2019. During the hearings, the complainant have argued that they had booked their respective flats in the respondent's project and the registered agreements for sale were also been executed between the parties. According to the said agreements for sale, the respondent was liable to hand over possession of the said flat to the complainant from January, 2013 till February, 2018. However, till date the respondent has not handed over the possession of the said flat to the complainants. Hence the complainant requested to grant relief under section -18 of the RERA Act directing the respondent to pay interest for the delayed possession.
3. The respondent disputed the claim of the complainants and argued that there is no intentional delay on the part of the respondent for handing over



possession of the said flat to the complainant. He further argued that the said project got delayed especially due to the change in DCR-1991 in the year 2012 , whereby the concept of fungible FSI was introduced, due to which he was constrained to get the plans changed. He further argued that the project cost has escalated by a huge margin from what was originally anticipated. The said delay was beyond his control. He communicated the said grounds of delay to the complainants and the same was never objected by them. The respondent relied upon various judgments passed by the MahaRERA to support his case.

4. The MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case, admittedly, there is a registered agreements for sale executed between the complainants / allottees and the respondent / promoter in which the date of possession was mentioned starting from January, 2013 till February, 2018 and till date the possession is not given to the complainants, though substantial amount has been paid by them. It shows that the respondent has violated the provisions of section-18 of the RERA Act, 2016 and the rules made there under. To justify his case, the respondent has argued that the project got delayed due to the change in government policy.
5. The reason cited by the respondent cannot be accepted at this stage and respondent cannot blame the government body for any incomplete work pending on the site. The said reasons cited by the respondent are not covered under the force majeure clause. There is no fault on the part of the complainants who have put their hard earned money for booking of the said flats in the respondent's project. The respondent argued that the project got delayed due to the factors which were beyond his control. The respondent has not given any plausible reasons for the alleged delay.



6. Even all the factors pointed out by the respondent due to which the project got delayed are taken into consideration, there was enough time for the respondent to complete the project before the relevant provisions of Real Estate (Regulation & Development) Act, 2016 came into force on 1st May, 2017. The respondent is, therefore, liable to pay interest to the complainant for delay in accordance with the provision of section -18 of the RERA Act, 2016.
7. In view of above facts and discussion, the respondent is directed to pay interest to the complainants in complaint at Sr. No. 1, 3 and 4 from 1st May 2017 till the actual date of possession and in Complaint at Sr. No. 2 from March, 2018 till the actual date of possession at the rate of Marginal Cost Lending Rate (MCLR) plus 2 % as prescribed under the provisions of Section-18 of the Real Estate (Regulation and Development) Act, 2016 and the Rules made there under.
8. Accordingly, both the complaints are disposed of.



(Dr. Vijay Satbir Singh)
Member-1/MahaRERA