

**MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.**

COMPLAINT NO: CC006000000057827.

Mr. Sylvester Bosco Henriques

... Complainant.

Versus

Mr. Unmesh Manohar Joshi,
Prop.Kohinoor Developers
(Kohinoor City)

...Respondents.

MahaRERA Regn: P51800003258.

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

Appearance:

Complainant: Mr. Karthik Iyer.

Respondents: Mr. Akshay Bidaye, Manager.

FINAL ORDER

26th March 2019.

The complainant complains that the respondents agreed to deliver the possession of his booked flat no. 13044, Building no. 13, phase-II, of respondents' project 'Kohinoor City' Mumbai, situated at Kurla (West) on 31.12.2016 but they failed to give possession on agreed date. The respondents gave the possession of the flat on 26.12.2018. Therefore, he claims interest on his investment from 01.01.2017 to 25.12.2018 for delayed possession under Section 18 of RERA.

2. The respondents contend that the occupation certificate has been received on 15.05.2018 and the complainant has taken the possession of the flat on 26.12.2018 and therefore, this complaint is not maintainable. The complainant has paid them Rs. 1,58,48,811/- excluding the taxes and other charges. The complainant is provided with parking space, MGL gas pipe line has been installed but final connection is awaited. The revised date of possession 31.12.2019 is yet to be crossed. Since the complainant did not clear

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all the dues demand note dated 21.05.2018 was sent to the complainant and he was asked to clear the dues and take the possession. Finally, the complainant made the payment on 26.11.2018 and took the possession on 26.12.2018. So this delay is caused by the complainant himself. They further contend that they could not complete the project in time because they had to encounter a hard rock, they have to change the design of the basement because of hume pipe and face problems of water logging and land slide also in heavy monsoon. The tower crane collapsed and there was shortage of building material. The DCR - 34 has been modified and the guidelines have also been issued late. Hence, they request to dismiss the complaint.

3. Following points arise for determination and my findings recorded thereon are as under:

POINTS	FINDINGS
1. Whether the respondents have agreed to deliver the possession of the flat on or before 31.12.2016?	Affirmative.
2. Whether the respondents have failed to deliver the possession of the flat on agreed date?	Affirmative.
3. Whether the complainant is entitled to get interest on his amount for delayed possession?	Affirmative.

REASONS

Maintainability of the complaint under Section 18 of RERA:

4. Relevant part of section 18 of RERA reads as under-

'18. Return of amount and compensation-

(1) 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;

(b) *****



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:

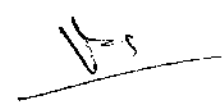
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed".

On the plain reading of this provision it becomes clear that on promoter's failure-

- i) to complete an apartment in accordance with the terms of the agreement for sale or
- ii) to give possession of an apartment on the date specified in the agreement for handing over the possession of such an apartment,

the allottee who does not intend to withdraw from the project, gets right to claim interest at prescribed rate on his investment for every month of delay till the promoter hands over the possession of his apartment or completes it as the case may be. This right accrues from the date of default till the allottee gets the possession of the flat. He cannot be deprived of his accrued legal right only because it will add to financial burden of the promoter. With this backdrop now I shall deal with the factual aspect of the matter.

5. The agreement shows that the possession of flat was to be given on or before December 2016. The respondents have brought to my notice that they received part O.C. on 15.05.2018. They have sent the demand letter and offered the possession on 21.05.2018. Fifty percent consideration was to be paid at the



time of taking possession. It appears from the payment format produced by the complainant that he cleared the balance on 26.11.2018 and 27.11.2018. The format further shows that till 26.11.2014 the complainant paid to respondents Rs. 80,04,451/- only. After considering these facts, I find that the possession was offered on 21.05.2018 and thereafter, the complainant was required to make the payment of remaining consideration and take the possession. The delay is caused by the complainant in making the payment. Mr. Iyer brings to my notice that the additional facility of the gas connection has not yet been provided. However, the fact remains that the O.C. is granted on 15.05.2018 and the possession has been offered on 21.05.2018. Therefore, the delay in handing over the possession of the flat is from 01.01.2017 till 21.05.2018. The complainant therefore, is entitled to get interest on his investment of Rs. Rs. 80,04,451/- during this period only. I record my finding to this effect.

6. The complainant is entitled to get simple interest at prescribed rate from the date of default i.e. from 01.01.2017 till 21.05.2018. The prescribed rate of interest is, 2 % above SBI's highest MCLR which is currently 8.55% per annum.

7. The respondents are liable to pay Rs. 20,000/- to the complainant towards the cost of the complaint. Hence the order.


ORDER

The respondents shall pay the complainant simple interest at the rate of 10.55% per annum on his investment of Rs. 80,04,451/- from 01.01.2017 till 21.05.2018 for every month of delay.

The respondents shall pay Rs. 20,000/- to the complainant towards the cost of the complaint.

Mumbai.

Date: 26.03.2019.


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