

**BEFORE THE MAHARASHTRA REAL ESTATE  
APPELLATE TRIBUNAL, MUMBAI**

**APPEAL NO.AT006000000010825**

Mr. Sandip Dinesh Raje	...Appellant
Versus	
Kavya Mira Realty	...Respondent

( Ms. Dipti Mehta, Advocate for Appellant  
Ms. Sneha Nair, Advocate for Respondent)

**CORAM : SUMANT KOLHE, MEMBER (J)**  
**S. S. SANDHU, MEMBER (A)**  
**DATE : 16<sup>th</sup> NOVEMBER, 2019**

**JUDGMENT (PER S. S. SANDHU, MEMBER (A))**

Appeal is filed against the order dated 31.10.2019 passed in the complaint No.CC006000000056067. By the said order, the Authority has held Respondent liable to pay interest to the complainant from 1.8.2018 till actual date of possession and not w.e.f. 1.1.2015 as prayed for by Complainant.

2. The parties in this order will be referred as "Complainant" and "Respondent" as referred before the Authority for the sake of convenience.



3. The facts submitted on record reveal that the complainant purchased an apartment in the Respondent's project Kavya Residency located at Ghodbunder Road, Thane vide agreement for sale on 1.1.2013. Committed date for possession is December, 2013 as per clause 9 of the said agreement. As Respondent failed to deliver possession as committed, Complainant approached the Authority seeking possession of the apartment along with interest and compensation on delay in possession under Section 18 of The Real Estate (Regulation and Development) Act, 2016 (for short "The Act")

4. In the proceedings before the Authority, Respondent submitted that project could not be completed in all respects for the reasons beyond his control and now even though project is complete the Planning Authority is not issuing the Occupancy Certificate (OC) for want of Urban Land Ceiling (ULC) No Objection Certificate (NOC) from the Collector, Thane. After hearing the parties, the Authority observed that a decision was already taken by it in Complaint No. CC006000000056067 relating to the same project directing thereby to Respondent to complete the Project by July 2018. By applying the same to the instant matter, the authority



directed the Respondent to pay interest on the entire amount paid by Complainant from 1<sup>st</sup> August, 2018 till actual date of possession. It is the grievance of the Complainant that the Authority did not consider his request to award interest with effect from 1.1.2015 along with compensation/damages. Accordingly the appeal is filed to challenge the Order dated 31.10.2018 for seeking relief of interest from the said date on paid amount of Rs.35.65 Lacs along with compensation and damages.

5. Parties were heard at sufficient length.

6. The Complainant has submitted facts of the case and reliefs sought by him in writing on record. It is submitted that payment of 99% of the agreement value is already made by September, 2014. However, the Respondent failed to deliver possession in all respects on or before 1.1.2015 as per the revised commitment given by him. It is alleged that the Authority erred in accepting that Respondent could not complete the project for the reasons beyond his control and that Respondent is unable to get occupancy certificate and handover possession for want of NOC from the Collector Thane. It is argued that impugned order is not justified at all as it does not specify any date for obtaining OC and delivery of legal possession of the flat and



has failed to award interest from 1.1.2015 along with compensation and damages.

7. While referring to the facts stated in the rejoinder filed by Complainant to the reply of Respondent, Learned Counsel for Complainant submitted during oral arguments that Respondent had offered possession to Complainant vide e-mail dated 5.1.2019 of the booked apartment. However, when the Complainant went on 10.1.2019 to complete the process for possession, he was asked to furnish certain back dated undertakings to Respondent in pre-drafted formats before delivering the possession. These include irrevocable consent and no objection vide dated 24.12.2018 in favour of Kavya Mira Realty i.e. the Respondent addressed to Executive Engineer of Municipal Corporation of Thane and an offer letter dated 31.12.2018 by Respondent for possession and pursuant thereto documents for handing/taking over possession to be signed by both the parties. Learned Counsel argued that though the Complainant is ready to take possession by paying the balance amount, he is not willing to sign and furnish the said pre-drafted communications/undertakings as the conditions precedent to handing over possession contained therein are not acceptable to Complainant.



8. On the contrary, Learned Counsel for Respondent reiterated the submissions he made before the authority as mentioned above. She submitted that as the physical construction is now complete, large number of allottees have already taken possession of their respective flats. But the Complainant is not taking the possession of the apartment as per the order of the Authority. She also submitted that furnishing of aforesaid undertakings by Complainant before taking possession is essential for avoiding certain legal hassles later. She also drew our attention to the fact that after passing of the impugned order, the Complainant had filed another Complaint No.CC006000000056840 in the same matter. The said Complaint has also been disposed of in the similar manner by the Authority vide order dated 25.1.2019 and accordingly the Complainant should accept the possession by making necessary balance payment.

9. After hearing parties and considering aforestated facts, it appears that by taking into consideration the necessary factors responsible for delay in completing the project, the Authority has already directed the Respondent in other similar complaints in this project to complete the construction by 31.7.2018. Applying the same analogy to this case, vide impugned order the Authority has accordingly directed Respondent to pay interest to Complainant

from 1.8.2018 onwards till handing over possession of flat. As brought to our notice, the Authority has passed the same order on 25.1.2019 even in the complaint lodged second time by Complainant. Thus, it appears that the Authority has taken a well considered view in the matter after in depth examination of the facts of the case and has protected the interests of the Complainant by awarding interest till possession as per the Act. Therefore, we do not find any illegality, impropriety and incorrectness in the view taken by the Authority in the given circumstances

10. It is pertinent to observe further from the written account put on record by Complainant that as a result of developments during the hearing of his second time complaint, the Complainant seems to have accepted the decision of the Authority and accordingly the parties have made efforts in expediting the possession. But as argued by his learned Counsel in the instant proceedings, the Complainant did not take possession as he did not want to sign the afore-stated undertakings which contained conditions unacceptable to him. Though the Complainant is not obliged to accept and agree to the said conditions if those are contrary to the agreed terms of agreement executed by the parties, it is entirely upto the parties to come to a mutually agreeable and workable solution for expediting handing over the possession for implementation of the impugned



order till the OC is expedited and obtained. In this background, suffice to observe that as the rights and interests of the Complainant have already been protected by the Authority by awarding interest on the amount paid by him till possession is handed over, the Tribunal has no cause to disturb the impugned order.

11. In view of the above discussion and observations, the impugned order being just and proper in the given circumstances, we do not wish to interfere with the same. Accordingly, appeal deserves to be dismissed and we pass following order.

**: ORDER:**

- 1) Appeal No. AT006000000010825 is dismissed.
- 2) Order dated 31.10.2018 passed in the complaint No.CC006000000056067 is upheld.
- 3) Parties and the Authority be informed of this order as per Sec.44(4) of the RER Act, 2016.

  
(S.S. SANDHU)  
R/- M(A)

  
(SUMANT KOLHE)