

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000000287

VASANT JADHAV	... Complainant.
Versus	
KAILAS PATIL	... Respondent.

MahaRERA Regn: P51700006977

Coram: Hon'ble Shri B.D. KAPADNIS.

05th October 2017

Final Order

The complainant has filed this complaint u/s. 18 Real Estate (Regulation & Development) Act, 2016 (for short, RERA) for getting compensation on account of the respondent's failure to give the possession of his booked flat no. 404 in the respondent's project 'Kailas Heights' situated at Kalwa, Dist. Thane.

2. The complainant contends that the respondent is the proprietor of Ms. Trinity Construction company which launched the aforesaid project. The respondent executed the agreement of sale of the said flat on 28.08.2015 and agreed to give the possession of the said flat within 18 months from the date of agreement. However, for one reason or the other he avoided to complete the construction of the building and give possession of the booked flat. Hence the complainant claims a compensation amounting to Rs. 10,000/-per month of last five years towards the house rent and the mental harassment. He also claims the future house rent at the rate of Rs. 10,000/- per month till he gets the possession.

3. Respondent admits that the possession of the flat has not been given till the date. He has filed the reply to contend that after commencement of the construction in the year 2008 a bridge constructed on a stream collapsed and therefore, he could not continue the construction till the year 2012 when the bridge was reconstructed. He further contends that in the record of rights the area of survey no. 48/4 is shown 2,230 sq. meters but in the record of inspector of land records it was less than that. In order to



get it corrected, he had to wait till 30.12.2014. Thereafter he submitted the amended plan for construction of additional floors in the place of initial 7 floors and had to spend one year in the process. Thereafter in the year 2015 L.B.T. rules were brought into effect by Thane Municipal Corporation and it took some time to settle the issue. He also had to wait till the record of inspector of land records/ city survey office was corrected regarding the transfer of his land used for D.P. Road. Thereafter, he has submitted the amended plan on 20.07.2017 for further construction of work and the sanction is awaited. Hence he contends that the project is delayed because of the reasons which were beyond his control.

4. I have heard the parties and perused the documents produced by them.

5. The only point that arises for my consideration is, whether the respondent has failed to deliver the possession of the flat on the agreed date and if yes, whether the complainant is entitled to get compensation or the interest on his investment u/s. 18 of RERA?

6. The complainant has produced the copy of index II to show that the respondent executed the agreement of sale of the above numbered flat in his favor on 28.08.2015. Page no. 14 of the agreement shows that respondent agreed to give possession of the flat within 18 months from the date of agreement. The contention of the complainant has not been challenged by the respondent regarding the delay in handing over the possession of the flat. The respondent has assigned the reasons of delay which are mentioned above. It is seen that initially the respondent was to construct a building having only 7 stories. Thereafter he changed his mind to add additional floors and according to him till 2017 the process of obtaining the sanction is going on. The facts to which the respondent refers to above are not, in my opinion, sufficient to hold that the project is delayed because of the reasons beyond his control. Not only that, during those days Maharashtra Ownership Flats (Regulation of the Promotion Of Construction, Sale Management and Transfer) Act 1963 was holding the field. Section 8(b) of the said Act provides that if the promoter for reasons beyond his control is unable to give possession of the flat by date specified, or the further agreed date and a period of 3 months thereafter, or a further period of 3 months if those reasons still exist, then in such case the promoter is liable to pay the interest at the rate of 9% on the amounts paid by the buyer. Even if all the circumstances were in favor of the respondent to hold that he could not deliver the possession because of the reasons



which were beyond his control, he cannot get the extension of more than three plus three months' period from the agreed date. In any circumstance I find that the respondent has failed to deliver the possession on the agreed date and hence, he incurs the liability u/s. 18 of RERA to pay interest on the amounts paid by the complainant and in case of special damage, compensation also.

7. The complainant has produced agreement of lease entered by him with his landlord Mr. Kishen Pun to show that he has been residing in a rented house and he has to pay heavy interest on the loan amount. The complainant has produced the receipts dated 08.10.2010 of Rs. 50,000/- , 19.08.2015 of Rs. 7,00,000/- , dated 27.10.2015 of Rs. 22,50,000/-, dated 02.01.2016 of Rs. 1,53,375/- and dated 13.11.2016 of Rs. 62,490/-. Thus the complainant has paid Rs. 32,15,865/- The complainant is entitled to get simple interest at the rate of marginal cost of lending of SBI which is currently *8.15% plus 2% p.a. on these amounts. He has not made out any special case for grant of compensation. In the circumstance, I do not find that he is entitled to get the compensation separately.

In result, the order.

Order.

The respondent shall pay the complainant the monthly simple interest at the rate of *8.15% plus 2% p.a. on Rs. 32,15,865/- from the date of default i.e. from 28.02.2017, till he delivers the possession of the flat to the complainant.

The respondent shall clear the arrears of interest accrued till 30.09.2017 within one month of this order together with Rs. 20,000/- towards the cost of the complaint.



Mumbai
Date: 05.10.2017.

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

*8.15% Corrected as per the order passed on 16.10.2017 u/s. 39 of RERA.

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000000287

VASANT SHANKAR JADHAV

... Complainant.

Versus

KAILAS CHATRAPATI PATIL
MahaRERA Regn: P51700006977.

... Respondent.

Complainant Represented by himself.

Respondent Represented by Mr. Mahabala Alva Adv.

Coram: Hon'ble Shri B.D. KAPADNIS.

16th October 2017

Final Order

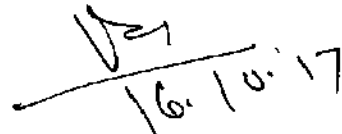
This matter has been decided on 05.10.2017 and the respondent therein, has been directed to pay the interest on the amounts paid by the complainant to him with simple interest @ 10.5 % plus 2% from the respective dates of payments till he delivers the possession of the flat to the complainant.

After passing of this order it has come to my notice that rule 18 of Maharashtra Real Estate (Regulation & Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest, & Disclosure on Web Site) Rules, 2017 lays down that the rate of interest payable by the promoters to the allottee shall be the S.B.I. highest marginal cost of lending rate plus 2%. The current rate is 8.15% and not 10.5% as mentioned in the orders passed in these complaints. Therefore, it is necessary to rectify the said figure by exercising the power of rectification of orders conferred by Section 39 of the Real Estate (Regulation & Development) Act, 2016 by substituting 8.15% in the place of 10.5%.

Hence, the orders are being corrected accordingly.

After correction the orders be uploaded. Parties to submit the copies of the order for correction.

Mumbai
Date: 16.10.2017.


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



Complaint No. CC00600000000287/17

Mr. Vasant Shankar Jadhav

) ... Complainant

V/s.

M/s. Trinity Construction Company

) ... Respondent

Application on behalf of
the respondent is as under

MAY IT PLEASE YOUR HONOUR

The respondent submits that, this Hon'ble authority was pleased to passed the order on 05/10/2017 on the complaint of the complainant namely Vasant Shankar Jadhav and thereafter again the authority has issued the notice to the respondent through Email to appear before the authority on 16/10/2017 accordingly the respondent appeared before the authority and presiding officer of the authority has passed the final order on 16/10/2017 and rectify the order dated 05/10/2017.

The respondent submits that, being aggrieved and dissatisfied from the order passed by this authority dated 05/10/2017 and 16/10/2017, the respondent wants to prefer the appeal before the Tribunal but Tribunal is not yet to be framed. Therefore it is necessary to this authority to stay the order dated 05/10/2017 and 16/10/2017 till the formation of Tribunal.

It is therefore prays that, Hon'ble authority may stay the order dated 05/10/2017 and 16/10/2017, in the interest of justice.

Filed On: 26/10/2017

Order is stayed for next
3 weeks, for the reasons
mentioned in Annex-
1
26.10.17

Respondent

(K. K. K.)
26/10/2017



MAHARASHTRA REAL ESTATE REGULETORY AUTHORITY

BRANDRA, MUMBAI

Complaint No. CC00600000000287/17

Mr. Vasant Shankar Jadhav) ... Complainant

V/s.

M/s. Trinity Construction Company) ... Respondent

Application on behalf of the Respondent is as under;

MAY IT PLEASE YOUR HONOUR

The respondent submits that, this Hon'ble Authority was pleased to passed the order on 05/10/2017 on the complaint of the complainant namely **Mr. Vasant Shankar Jadhav** and therefore again the Authority has issued the notice to the respondent through Email to appear before the Authority on 16/10/2017 accordingly the respondent appeared before the authority and Presiding Officer of the Authority has passed the Final Order on 16/10/2017 and rectify the Order, Dtd. 05/10/2017

The respondent submits that, being aggrieved and dissatisfied from the Order passed by this Authority, Dtd. 05/10/2017 and 16/10/2017, the respondent wants to prefer the appeal before the Tribunal but the Tribunal is not yet to be framed, therefore it is necessary to this Authority to stay the Order Dtd. 05/10/2017 and 16/10/2017 till the formulation of Tribunal.

The respondent has already filed an application, Dtd. 26/10/2017 to stay the Order Dtd. 05/10/2017 and 16/10/2017 till the formulation of Tribunal and the Officer of the Authority had remarked on the application to stayed the said Orders for next 3 weeks from the day of application (a remarked copy is annexed herewith). The respondent hereby submits that, till the day and date the Tribunal is not formed and therefore requests to stay the Order Dtd. 05/10/2017 and 16/10/2017 till the formulation of Tribunal and notify on formation of Tribunal to the respondent for the proceedings.

It is therefore prayed that, Hon'ble Authority may stay the said Orders, Dtd. 05/10/2017 and 16/10/2017 in the interest of Justice.

Filed On 10 /11/2017

Respondent

6
order is stayed
for next- two weeks
as appellate tribunal is
not yet set up.

10.11.17.

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

BRANDRA, MUMBAI



Complaint No. CC00600000000287/17

Mr. Vasant Shankar Jadhav) ... Complainant

V/s.

M/s. Trinity Construction Company) ... Respondent

Application on behalf of the Respondent is as under;

MAY IT PLEASE YOUR HONOUR

The respondent submits that, this Hon'ble Authority was pleased to passed the order on 05/10/2017 on the complaint of the complainant namely Mr. Vasant Shankar Jadhav and therefore again the Authority has issued the notice to the respondent through Email to appear before the Authority on 16/10/2017 accordingly the respondent appeared before the authority and Presiding Officer of the Authority has passed the Final Order on 16/10/2017 and rectify the Order, Dtd. 05/10/2017

The respondent submits that, being aggrieved and dissatisfied from the Order passed by this Authority, Dtd. 05/10/2017 and 16/10/2017, the respondent wants to prefer the appeal before the Tribunal but the Tribunal is not yet to be framed, therefore it is necessary to this Authority to stay the Order Dtd. 05/10/2017 and 16/10/2017 till the formulation of Tribunal.

The respondent has already filed applications, Dtd. 26/10/2017 and Dtd. 10/11/2017 to stay the Order Dtd. 05/10/2017 and 16/10/2017 till the formulation of Tribunal and the Officer of the Authority had remarked on the application Dtd. 10/11/2017 to stayed the said Orders for next 2 weeks from the day of said application (a remarked copy is annexed herewith). The respondent hereby submits that, till the day and date the Tribunal is not formed and therefore requests to stay the Order Dtd. 05/10/2017 and 16/10/2017 till the formulation of Tribunal and notify on formation of Tribunal to the respondent for the proceedings.

It is therefore prayed that, Hon'ble Authority may stay the said Orders, Dtd. 05/10/2017 and 16/10/2017 in the interest of Justice.

Filed On ____/11/2017

Respondent

order is
stay -> till
16.12.17
A
21.11.17



MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

BRANDRA, MUMBAI

Complaint No. CC00600000000287/17

Mr. Vasant Shankar Jadhav

) ... Complainant

V/s.

M/s. Trinity Construction Company)

... Respondent

Application on behalf of the Respondent is as under;

MAY IT PLEASE YOUR HONOUR

The respondent submits that, this Hon'ble Authority was pleased to passed the order on 05/10/2017 on the complaint of the complainant namely **Mr. Vasant Shankar Jadhav** and therefore again the Authority has issued the notice to the respondent through Email to appear before the Authority on 16/10/2017 accordingly the respondent appeared before the authority and Presiding Officer of the Authority has passed the Final Order on 16/10/2017 and rectify the Order, Dtd. 05/10/2017

The respondent submits that, being aggrieved and dissatisfied from the Order passed by this Authority, Dtd. 05/10/2017 and 16/10/2017, the respondent wants to prefer the appeal before the Tribunal but the Tribunal is not yet to be framed, therefore it is necessary to this Authority to stay the Order Dtd. 05/10/2017 and 16/10/2017 till the formulation of Tribunal.

The respondent has already filed applications, Dtd. 26/10/2017 and Dtd. 10/11/2017 to stay the Order Dtd. 05/10/2017 and 16/10/2017 till the formulation of Tribunal and the Officer of the Authority had remarked on the application Dtd. 21/11/2017 according to the said Order, that the Order is stayed till 16.12.2017 (a remarked copy is annexed herewith). The respondent hereby submits that, till the day and date the Tribunal is not formed and therefore requests to stay the Order Dtd. 05/10/2017 and 16/10/2017 till the formulation of Tribunal and notify on formation of Tribunal to the respondent for the proceedings.

It is therefore prayed that, Hon'ble Authority may stay the said Orders, Dtd. 05/10/2017 and 16/10/2017 in the interest of Justice.

Filed On 13/12/2017

Respondent

0
13.12.17
Execution of the order is
Stayed till appeal period is
over. It can not be stayed beyond
appeal period by this authority.
Hence Appeal is filed. By
member & A.O.

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.

COMPLAINT NO: CC006000000000287

Vasant Shankar Jadhav ... Complainant.

Versus

Kailas Chatrapati Patil
(Kailash Heights) ... Respondent.

MahaRERA Regn: -P51700006977

COMPLAINT NO: CC006000000000391

Raju Bana ... Complainant.

Versus

Kailas Chatrapati Patil
(Kailash Heights) ... Respondent.

MahaRERA Regn: -P51700006977


COMPLAINT NO: CC006000000000382

Ashish Gurav ... Complainant.

Versus

Kailas Chatrapati Patil
(Kailash Heights) ... Respondent.

MahaRERA Regn: -P51700006977



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

Final Order on the applications of the complainants filed u/s 63 of RERA.
3rd April 2018

In these three complaints, the complainants have submitted their applications contending therein that orders have been passed in their complaints directing the respondent to pay them monthly simple interest on their amount from the date of respondent's default in handing over the possession of their flats till they are delivered and the cost of the complaint also. However, respondents have not complied with the orders. Therefore, the show cause notices under Section 63 of the Real Estate Regulatory Act have been issued to the Respondent.

2. The respondent has filed a common reply to contend that if he would be required to comply with these orders and to pay penalty, he would not be able to afford it. He will have to divert his funds for complying with the orders and ongoing project shall come to stand still. Therefore, he requests to take lenient view and reject the applications.

3. Heard the complainants and the learned Advocate of the respondent.

4. Rule 19 of Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and disclosures on website) Rule, 2017 provides -

19 "Timelines for refund - The refund of any amount which is payable by the promoters to allottees along with the applicable interest and compensation, if any, under the Act or the Rules and Regulations, shall be made by the Promoter to the allottee within thirty days from the date on which such refund along with applicable Interest and Compensation, becomes due and payable to the allottee:

Provided that, every instance thereof shall be reported by the concerned promoters within thirty days to the authority"

5. Section 63 of RERA provides that if any promoter fails to comply with any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend to 5% of the estimated cost of the real estate project as determined by the Authority.

6. It is admitted that the respondent has not complied with the said orders. The reason assigned by him for non-compliance of the orders does not appear to be valid and genuine. The respondent got the said orders stayed for some time from this Authority by representing that he would challenge the orders before the Appellate Tribunal. However, now it has been submitted that the respondent has not filed any Appeal against the said orders passed in the complainants' complaints. Therefore, these orders have reached to finality.

7. The complaints have been decided by me as the Member of MahaRERA and no compensation has been provided to the complainants. In this circumstance, as per the provisions of Section 63 of RERA, the penalty can be imposed on the respondent for non-compliance of the order passed by the Authority for every day of default, till the orders are complied with subject to the maximum limit of 5% of the estimated cost of the project. Hence, I am inclined to impose the penalty of Rs. 1,000/- a day on the respondent to meet the ends of justice. Hence, the order.

ORDER

The respondent shall pay Rs. 1,000/- for every day of default in complying with the orders towards penalty u/s 63 of RERA in each complaint from the expiry of period 30 days from the dates of orders, till they are complied with or till the penalty accumulates to the extent of 5% of the estimated cost of the project whichever is earlier.



2. The respondent shall inform the Authority about the compliance of the orders to stop the accruing penalty.


(B.D. KAPADNIS)

Mumbai.

Date: 03.04.2018.

Member & Adjudicating Officer,
MahaRERA, Mumbai.