

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

COMPLAINT No: CC006 000000011506 and CC006 000000011524

Deepak Peswani & Anr

..Complainants

Vs

Yash Infracity Realty Pvt Ltd & another

..Respondents

MahaRERA Registration NO. P52100008049

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

Adv. Hamed Kadiani a/w Adv. Kavisha Shah
for complainant appeared.

Mr. Mutahhar Khan a/w Mr. Vishal Mehta
for respondent no. 1

None appeared for respondent no. 2.

ORDER
(15.01.2019)

1. The complainants are allottees of Flats No. B-902 and B-901 on the 9th floor, B Wing, Baner, Pune in the project Yash Twin Tower belonging to the Respondents. They had executed the registered agreements bearing No. 3609/2014 and No. 3608/2014 dated 2nd May, 2014 which had date of possession on or before December, 2015.
2. The respondents/developers failed to complete the project and could not handover the possession of the flats to the complainants by the date stipulated in the agreement. Hence, these complaints have been filed.
3. Heard the parties on the dates fixed for hearing. The complainants demanded interest for the delay u/s 18 of the Real Estate Regulatory Authority Act, 2016 (Herein after referred to as the RERA Act, 2016). The respondents contested the claim and argued that the complainants were investors who had invested their money to get tax concessions through long term capital investment. They were not genuine home buyers. They further argued that delay in completion of the project

happened at the level of the Pune Municipal Corporation (PMC). They had applied for Commencement Certificate in the month of December, 2013 surrendering "the amenities space" as required. However, PMC have failed to take action till July 2016 and hence delay cannot be attributed to the respondent.

4. After hearing the arguments of both the parties and analysing the facts of this case, it became clear that the respondent did not handover the possession of the flats by the agreed date of possession in the agreement.
5. The respondents' argument that complainants were only the investors does not match with the facts of the case. There are registered agreements for sale between the complainants and the respondents having several terms and conditions. The complainants clearly fall in the definition of allottees as presented in the said Act. The Definition of **Allottee** given in Section of the 2 (d) of the RERA Act, 2016 which is as follows:

*" **Allottee** " in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."*

Moreover, the said Act does not differentiate between an investor and a home buyer. The complainants have been allotted the apartments and have necessary documents of transactions. Hence, they are allottees.

6. The respondents' argument that delay of project was due to PMC cannot help them in explaining the reasons of the delay of project and avoiding their statutory obligations towards the complainants. They had applied for Commencement Certificate offering amenities to the PMC

in December, 2013. When they registered the agreements with May 2014, they were well aware of the constraints in getting the Commencement Certificate from the Planning Authority. In fact, they should have avoided booking of the flats before having all the approvals in hand. However, they continued selling the flats / apartments with the clear date of possession. Now they cannot blame PMC for the delay in approval and consequently avoid their responsibility towards buyers. The complainants are therefore, entitled to payment of interest under Section 18 of the RERA Act, 2016.

7. In view of the facts discussed above, the respondents are directed to pay interest to the complainants on the money given by them to the developers for the period of delay at the rate of Marginal Cost Lending Rate (MCLR) plus 2 % as prescribed under the provisions of Section-18 of the Real Estate (Regulations and Development) Act, 2016 and the Rules made there under till the possession of flat is handed over to the complainants.

Accordingly, the complaint is disposed of.



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