

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

Complaint No.CC005000000011128

**Pallavi Yogesh Gavate
Versus**

.. Complainant

M/s.Gagan Horizon Ventures

.. Respondent

**Coram :ShriS.B.Bhale
Hon'ble Adjudicating Officer**

**FINAL ORDER
06-08-2018**

1. This is the Complaint under Section-18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as RERA). For the State of Maharashtra the above said act came into force on 1-5-2017.
2. It is the case of complainant that she had booked the flat No.A-403, in project of respondent named Gagan Akankasha, situated at Urali Kanchan, Pune under the agreement dated 23-5-2013. In terms of that agreement the respondent had agreed to handover the possession of booked flat on 31-3-2015. The total cost of the booked flat was Rs.12,96,000/- Amount paid by the complainant to the respondent on time to time against the booked flat is Rs.11,96,556/-. Instead of receiving the aforesaid amount, the respondent failed to

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hand over the possession of the booked flat in terms of agreement. Therefore, by this complaint she has claimed the relief of interest and compensation for delayed possession under the provisions of Section 18 of RERA.

3. The plea of the respondent was recorded through their representative on 21-06-2018 to which they pleaded not guilty. Further, the respondent has resisted the claim of complainant vide written submission dated 5-6-2018. It is the case of respondent that the project wherein the complainant has booked the flat is prolonged due to the circumstances which were beyond their control. The respondent was unable to start with the construction of project in absence of environmental clearance certificate (ECC). They had applied for ECC to the concerned government authority on 8-10-2012. However, they got the certificate of environmental clearance from the concerned authority vide letter dated 13-6-2018. Due to the aforesaid facts and circumstances the project is delayed. In the agreement ⁱⁿ question there is a clause of force majeure. Considering this very fact the complaint is liable to be dismissed.

4. From the above facts and circumstances of the case following points ^{arise} for my determination and I am going to record my findings thereon for the reasons stated below:

POINTS

FINDINGS

- | | | |
|---|--|-----|
| 1 | Whether the complainant is entitled to claim the interest & compensation | YES |
|---|--|-----|

on the amount paid by her to the
respondant on time to time against the
booked flat under the agreement dated
23-5-2013?

2 What order?

As per final order.

REASONS

5. Heard Mr. Viabhav Modi, the representative of complainant. Whereas Mr. ~~Nitesh~~ ^{Nitesh} Shah the representative of respondent. Perused the papers filed on record. On perusal, the copy of agreement and the statement of accounts regarding the payments made by the complainant on time to time to the respondent against the booked flat, it will be seen that, inspite of receiving the entire amount of Rs.11,96,556/- the respondent failed to hand over the possession of booked flat on or before 31-3-2015 in terms of agreement. It is submitted on behalf of respondent that they could not get the environmental clearance certificate in time from the concerned government authority and that circumstance was beyond their control. No doubt about it that the respondent got the environmental clearance certificate vide ^{letter} dated 13-6-2018. However, there is no explanation for what reason the certificate was delayed. The delay for getting the aforesaid certificate may prolong for any reason and may be on account of the failure of respondent for compliance of the terms and conditions if any. The complainant is least concern for the delay so caused. It was the duty of the respondent to hand over the possession of the booked flat to the complainant in terms of agreement when they received the almost entire amount from the complainant. During the

2013/6-8.

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period of 2012 and 2013. Considering this very fact the defence taken by the respondent cannot be accepted. In another words the complainant's claim for interest and compensation for delayed possession by this complaint is justified under Section 18 of the RERA.

6. As the complainant intends to remain with the project of respondent, the question remains what will be amount which can be treated as ^{due} ~~give~~ and payable for interest and the date from which complainant is entitle for interest on the amount paid by her to the respondent on time to time against the booked flat. As ^{stated} ~~stated~~ above and as the complainant intends to remain with the project, the amount spent by her towards the stamp duty cannot be considered for charging the interest. The amount spent by the complainant towards stamp duty is Rs.65,000/- If the aforesaid amount spent towards stamp duty minused from the amount paid by the complainant to the respondent on time to time i.e., Rs.11,96,556/- it will come to sum of Rs.11,31,556/-. This will be the amount on which the complainant can claim the interest as is prescribed under the provisions of RERA. According to complainant the date of possession of the booked flat was 31-3-2015. It is fact that she could not get the possession of the booked flat on the aforesaid date. Therefore, she is entitled to claim the interest on the due and payable amount Rs.11,31,556/- from the respondent with effect from 1st April, 2015 and onwards till she get the actual possession of the booked flat in terms of agreement from the respondent. She is entitled to receive the interest on the aforesaid amount from the date of receipt of amount to the respondent on time to time. Here I would like to make it

7/11/15
6-8

clear that she cannot claim the separate compensation as interest payable to her on the due and payable amount under the provisions of RERA is much higher and it includes the compensation. It is also necessary to point out that it is an admitted fact that complainant had received the amount of Rs.48,000/- towards the rent/damages. This amount received to the complainant from the respondent is liable to be deducted from the amount of interest which is due and payable.

7. In view of the provisions of RERA and rules framed under RERA, the rate of interest payable by the promoters / developers is as such rate as may be prescribed shall be the State Bank of India's highest marginal cost lending rate (MCLR) + 2% above. In case the aforesaid rate is not in use, it would be replaced by such bench mark lending rate which the State Bank of India may fix from time to time for lending the money to the general public. In view of the rules framed under the RERA, the rate of interest (MCLR) of State Bank of India which is currently 8.05% + 2% above. Thus, the Complainant is entitled to receive simple interest on the amount which is due and payable i.e., Rs.11,31,556/- at the rate of 10.05% per annum since the date of payment of amount on time to time to the respondent against booked flat under the agreement dated 23-5-2013. With this, and having regard to the facts and circumstances of the case and for the reasons recorded, I am going to record my findings against Point No.1 in the affirmative and proceed to pass the following order.

gfs
b.b.

ORDER

1. The respondent is directed to pay the interest on the amount of Rs.11,31,556/- with simple interest at the rate of 10.05% per annum since the date of amount received from complainant on time to time with effect from 1-4-2015 till the reliasition of same and handover the possession of booked flat deducting the amount of Rs.48,000/- received to the complainant from the respondant towards rent/damage.
2. The respondent is directed to make the payment of interest for delayed possession as stated above within the period of one month since the date of this order and continue to pay the same till handing over the possession of booked flat.
3. The respondent are also directed to pay the amount of Rs.5,000/- to the complainant towards the cost of this litigation.

Pune

Date :- 06.08.2018

S.B. Bhale
(S.B. Bhale)

6.8.18
Adjudicating Officer,