

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

COMPLAINT No: CC006000000055203

Mr. Shridhar Ala & Complainants
Mrs Hema Malini Devarapalli
Versus

M/s. Soham Estates Respondent
Along with

COMPLAINT No: CC006000000055204

Mrs. Nidhi Goel & Capt. Jyoti Panigrahi Complainants
Versus

M/s. Soham Estates Respondent
Along with

COMPLAINT No: CC006000000055242

Mr. Milind Vasant Patil Complainant
Versus

M/s. Soham Estates Respondent
Along with

COMPLAINT No: CC006000000055246

Mr. Somnath Shetty and Mrs. Latika Shetty Complainants
Versus

M/s. Soham Estates Respondent
Along with

COMPLAINT No: CC006000000055250

Mr. Rakesh Roy & Mrs. Santawana Sahu Complainants

Versus

M/s. Soham Estates Respondent
Along with

COMPLAINT No: CC006000000055253

Mr. Sunil Gupta & Mrs. Archana Gupta Complainants

Versus

M/s. Soham Estates Respondent

DRM

Along with
COMPLAINT No: CC006000000055259

Mr. Mayur More & Mr. Abaji More Complainants

Versus

M/s. Soham Estates Respondent

Along with
COMPLAINT No: CC006000000055346

Mr. Deepak Kumar Complainant

Versus

M/s. Soham Estates Respondent

Along with
COMPLAINT No: CC006000000055347

Mr. Vinay Nair & Mrs Ekta Dutt Complainants

Versus

M/s. Soham Estates Respondent

MahaRERA Registration No. P51700008485

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

Adv. Tanuj Lodha appeared for the complainants.

Adv. Ajay Mehrul a/w Adv. Pawan Band appeared for the respondent.

ORDER
(4th September, 2018)

1. The aforesaid 9 complainants/allottees have filed these complaints seeking directions from MahaRERA to the respondent to pay interest for the delayed possession U/S 18 of the RERA Act, 2016 and also to pay compensation U/S 14 of RERA Act 2016 in respect of booking of their respective flats in the project known as "Tropical Lagoon-4 –Jakaranda" at Thane.
2. The matter was heard finally today. All the complainants are the allottees of Tower No. 4 in the said project. The complaints are identical in nature and pertaining to the same project and hence, all complaints

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were clubbed together and heard at length. During the hearing, the complainants have argued that they have booked their respective flats in the said project and registered agreements for sale have also been executed with all the 9 complainants. According to the said agreements, the respondent had agreed to hand over the possession of the flats to the complainants on different dates between the year 2016 to 2018. However, till date, the respondent has not handed over the possession of the said flats to them. Hence, the complainants are seeking interest under section-18 of the RERA Act, 2018.

3. In addition to this, the complainants have argued following points:

- i) Initially in the brochure published by the respondent, he has shown a bridge connecting to all Towers for direct access. However, the same has not been actually constructed on site by the respondent. The respondent has changed the layout plan without obtaining the consent of the complainants and thereby violated provisions of Section -14 of RERA Act.
- ii) The respondent had earlier planned to construct 26 floors only in the said building and now he is constructing total 27th floors.
- iii) The flats constructed on site are of lesser area than what is agreed by them.
- iv) The respondent has not provided proper cross ventilation as promised at the time of booking.
- v) The respondent is demanding charges for club house by way of corpus which the complainants have already paid and there is enough corpus collected by the respondent from the complainants. Hence they are not liable to pay the same.

In view of these facts, the complainants have requested to allow their complaints.

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4. The respondent has disputed the claim of the complainants and argued that the complaints filed by the complainants are not maintainable as on today and that all the reliefs sought for by the complainants have become infructuous, since the occupation certificate has already been obtained for the said project on 3rd August, 2018.
5. Regarding the delay in handing over possession of the said flats to the complainants, the respondent has argued that there is no intentional delay on the part of the respondent to hand over the possession of the flats to the complainants since the date of handing over of the possession was 31st May, 2018 and respondent has applied for occupancy certificate to the competent authority on 9th May, 2018. As per the provisions of Mumbai Municipal Corporation Act, the respondent was deemed to have received the occupancy certificate within 21 days from the date of receipt of submission of application i.e. 31 May 2018. However, there is a delay on the part of the concerned Competent Authority for granting the occupancy certificate and the respondent cannot be held responsible for the same.
6. The respondent has further argued that, initially though it was proposed to construct the bridge connecting the building with podium, the Thane Municipal Corporation – particularly it's Fire Department had raised objection for the said connection stating that it will create obstruction in the rescue operations by the fire department in case of fire or other life threatening circumstances. Therefore, the Chief Fire Officer had refused to grant NOC for the construction of the said bridge. Hence, the same was to be discontinued. Hence, there is no violation of Section-14 of RERA Act as alleged by the complainants.
7. With regard to construction of 27th floor, the respondent argued that they have obtained permission for carrying out construction of 27th floors prior to enforcement of RERA. The substantial portion of the development potential in the project is left unutilized and the additional construction has not

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resulted in any loss to the complainants. Even the revised commencement certificate has been uploaded on RERA website.

8. In respect of allegation of less carpet area, the respondent has argued that he has submitted the area of the flats and has not been changed. It is as per the carpet area mentioned in the agreement itself. The respondent shown his willingness for a joint survey to clear the confusion with respect to calculation of the area. With regard to removal of the ventilation window as alleged by the complainants, the respondent argued that the flats are constructed as per the sanctioned plan and in the brochure, ventilation window is not depicted.

9. The respondent has further argued that the complainants have misrepresented the Authority with regard to club house charges. They have further clarified that the corpus fund will be used and handed over to the Federation when it is formed, so that the interest of this corpus fund will be used by the federation to manage the club house costs. The maintenance charge of the of club is very heavy to the tune of Rs.4.5 lakhs which includes security cost, electricity bills, swimming pool, AMC with life guards, staff salary etc., Maintenance charges are being collected on actual basis of clubhouse charges. With regard to GST, the respondent argued that as there was no major input tax credit of GST available because 94% building was completed before implementation of GST. In view of the aforesaid facts the respondent has requested for dismissal of these complaints.

10. MahaRERA has examined the oral submissions as well as written arguments of both the parties. Prima facie, it appears that the complainants are holding registered agreements for sale wherein the date of possession has been clearly recorded. Due to delay in handing over possession, the complainants are seeking interest till the date of actual possession U/S 18 of RERA Act, 2016.

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11. On perusal of these 9 complaints, the date of possession in respect of complaint No. CC006000000055346 of Mr. Deepak Kumar is not yet over and therefore, he is not entitled to seek relief under section-18 of the RERA Act, 2018. Therefore, the respondent is not liable to pay interest to him as on the date of this order.

12. It is a matter of record that in the present case, the occupation certificate has already been obtained by the respondent on 3rd August, 2018 and the flats of the complainants are ready with occupation certificate. However, the complainants are claiming interest from the agreed date of possession as mentioned in the agreement of sale. The respondent has argued that there is no intentional delay on the part of the respondent in handing over the possession of the flat to the complainants. However, the respondent has not clarified as to why the project was delayed and why the possession of respective flats to the 8 complainants has not been given. Therefore, the 8 complainants are entitled to get relief U/S 18 of RERA Act, 2016 till the date of Occupation Certificate i.e. 3rd August 2018 and the rules made there under.

13. In respect of allegation of inclusion of additional floor, MahaRERA feels that since the construction plans for the additional floor was submitted to the competent authority prior to enforcement of RERA Act, the consent was not mandatory.

14. As far as providing lesser carpet area is concerned, the respondent has confirmed through his letter submitted on record of MahaRERA stating that he is ready to conduct a joint survey to ascertain the actual area of flats to resolve the dispute amicably. Therefore, MahaRERA directs that a Joint Survey of respective flats of the complainants be conducted within 30 days from the date of this Order.

15. With regard to ventilation window, the complainants have not produced any substantial proof in support of their allegation. Further, as per the

approved sanctioned plan and brochure, ventilation window is not depicted or shown. The complainants therefore cannot seek any relief on that count.

16. The issue of club membership charges, club house maintenance, etc. MahaRERA feels that whatever is agreed to in the registered agreement for sale by and between the parties is binding on both the complainants as well as respondent. The respondent is entitled to recover the outstanding dues / charges in terms of the agreement and MahaRERA has nothing to do with the claim of the complainants.
17. In view of above facts and discussion, the respondent is directed to pay interest to the eight complainants except Mr. Deepak Kumar, from the agreed date of possession mentioned in their respective agreements for sale, till 03rd August, 2018 i.e. when the occupancy certificate was obtained for the said project at the rate of Marginal Cost Lending Rate (MCLR) plus 2 % as prescribed under the provisions of Section-18 of the Real Estate (Regulation and Development) Act, 2016 and the Rules made there under.
18. MahaRERA further directs the respondent to get the certificate of the fire officer confirming his contention that the bridge as proposed in the plan couldn't be constructed due to concerns of fire safety.
19. With these directions, the complaint stands disposed of.



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