

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000001450

Dilesh Dilip Lad ... Complainant.

Versus

Karam Infrastructure Pvt.Ltd.
(Karm Gardens -1) ... Respondents.

MahaRERA Regn: P51700008284

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

Appearance:

Complainants: Adv.Mr. V.B.Nimbalkar.

Respondents: Adv. Mr. R.M. Thakkar.

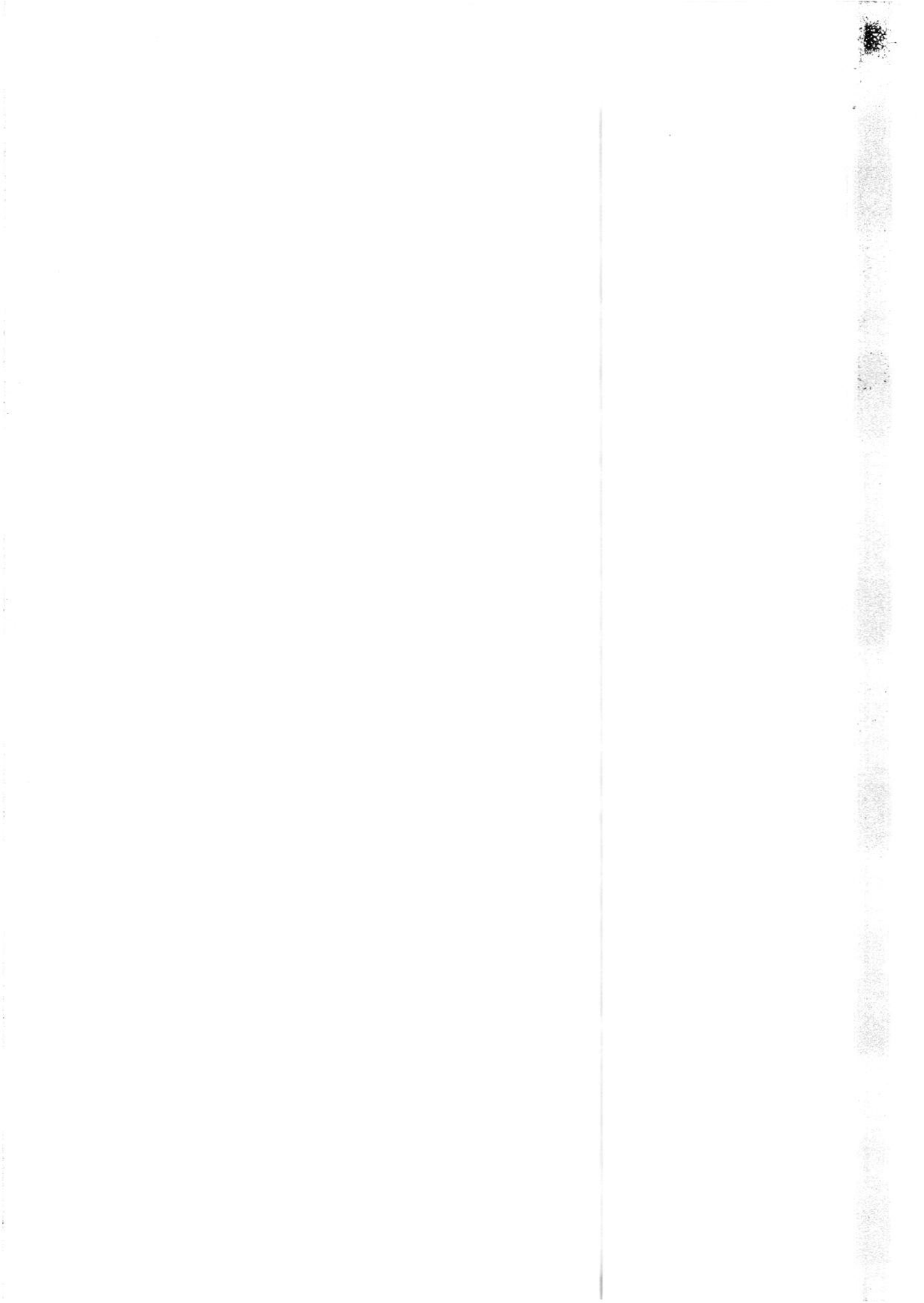
Final Order

21st March 2018.

The complainant complains that he booked flat no. G-01, building no 1-C known as JAI in respondents' registered project 1 Karm Gardens situated at Chikhholi, Taluka Ambernath, District Thane for Rs.17,32,500/-. The respondents agreed to deliver its possession by the end of December 2016 but they failed to hand over the possession on the agreed date. The complainant wants to continue in the project, therefore, he claims the interest for every month of delay on his amount under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (RERA) till the possession of his flat is delivered.

2. The respondents have filed their written statement wherein they have admitted that they have failed to deliver the possession of the flat on





or before 31st December 2016 though, they have received Rs. 13,63,250/- from the complainant. According to them the 8 slabs were cast in the year 2016 only when the agreement for sale came to be executed. Complainant was liable to make the slab wise payment of the consideration as well as he was liable to pay service tax and VAT. Therefore, they contend that the complainant is also liable to pay them Rs. 3,69,225/- as mentioned in the schedule marked Exh. '1' from 17.04.2016. Therefore, they contend that if the complainant's prayer is granted, their prayer may also be considered for payment of their dues with interest.

3. Following point arise for determination. I record my finding thereon as under:

POINTS	FINDINGS
1. Whether the respondents have failed to deliver the possession of the flat on the agreed date?	Affirmative.
2. What is due from the complainant to the Respondents on account of unpaid consideration and tax?	Rs. 3,69,225/-
3. Whether the parties are entitled to get simple interest at prescribed rate on their amount?	Affirmative.

REASONS

4. The respondents have not denied the fact that the complainant booked the flat and they agreed to deliver the possession thereof on or before 31st December 2016. However, they have failed to deliver it on agreed date. Hence, I hold that the complainant has proved that the respondents have failed to deliver the possession of the flat on the agreed date.

5. The complainant wants to continue in the project. Therefore, the only amount which he has paid towards the consideration is to be considered while assessing his claim under Section 18 of RERA. It becomes clear from



the written argument submitted by the complainant that the complainant has paid the respondents Rs. 13,63,250/- before the agreed date of delivery of flat towards the consideration. This amount has not been disputed by the respondents, hence, this payment has been proved by the complainant.

6. There is no dispute between the parties that 8th slab was cast before 17.04.2016. The complainant was liable to make the payment on the basis of the slabs as mentioned in his agreements. After adjusting Rs. 13,63,250/- paid by complainant, Rs. 22,750/- were payable at the time of casting 5th slab. Similarly, Rs. 86,625/- were payable by him at the time of 6th, 7th, & 8th slabs. Agreement had been executed on 17.04.2016 and by that time all these 8 slabs were cast. The respondents have also mentioned in their statement marked Exh. '1' the sale tax and VAT were payable at different stages of the construction but since the agreement had been executed on 17.04.2016 and all the 8 slabs were cast by that time, the total amount of sale tax and VAT became due on that date. Therefore, I agree with the respondents' learned advocate when he submits that Rs. 3,69,225/- are due from the complainant on account of the amount of unpaid consideration and the amount of taxes. I record my finding to this effect.


7. Section 18 of RERA permits the allottee to get interest at prescribed rate for every month of delay on his amount. Rate of interest is prescribed under the rules which is 2% above the State Bank of India's marginal cost of lending rate which is currently 8.05% per annum. Section 2(za) defines the interest. It provides that the rate of interest payable to allottee and promoter shall be equal. In view of this provision, I find that both parties are entitled to get interest on their amount at the rate of 10.05% per annum. The complainant is entitled to get the interest on his amount from the date of default/delay i.e. from 01.01.2017 till he gets the possession of his flat. The respondents are entitled to get the interest on their amount from 17.04.2016 as mentioned in their statement marked Exh. '1' till the payment is made by the complainant. In order to minimise the difficulties, it is



necessary to clarify that the parties are at liberty to set off their claims. In the facts and circumstances, I do not find that the plaintiff is entitled to get anything on account of the cost of the complaint. Hence, the final order.

ORDER

1. The respondents shall pay the complainant simple interest at the rate of 10.05% p.a. on Rs. 13,63,250/- from 01.01.2017 till the respondents hand over the possession of his flat.
2. The complainant shall pay the respondents simple interest at the rate of 10.05% per annum on Rs. 3,69,225/- from 17.04.2016 till they are paid.
3. The parties are at liberty to set off their claims.


21.3.18

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

Mumbai.
Date: 21.03.2018