

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

COMPLAINT NO: CC0060000000012146.

Kirtan Gupta

... Complainant.

Versus

Ravi Developers.
(Gaurav Woods)

... Respondents.

MahaRERA Regn: **P51800011407.**

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

Appearance:

Complainant: In person.

Respondents: Adv. Krishna Agrawal.

FINAL ORDER

11th July 2018.

The complainant has filed this complaint under Section 18 of Real Estate (Regulation and Development) Act, 2016 for claiming interest on his investment for every month of delay as the respondents have failed to deliver the possession of his booked flat no. C-1902, of their registered project Gaurav Wood-II, Mira Road (East) on agreed date 28th February 2013.

2. The respondents have opposed the complainant's claim by contending that they have delivered the possession of the flat on 12.04.2018 itself and therefore, this complaint is not maintainable. On the point of delay, they contend that they want to construct ground stilt + two podium + 21 upper floors. However, the Competent Authority issued commencement certificate up to 9th floor only. They faced the problem of demonetization and therefore, they request to dismiss the complaint.



3. Following points arise for my determination and I record my findings thereof as under:

POINTS	FINDINGS
1. Whether the possession of the flat taken on 12.04.2018 is legal?	Negative.
2. Whether the complainant is entitled to interest for every month of delay till getting the possession of the flat as on agreed date respondents failed to deliver the possession of the flat?	Affirmative.

REASONS

4. The respondents have produced the receipt of possession dated 10.04.2018 passed by the complainant showing that he took the possession of the booked flat C-302. Therefore, the respondents contend that his complaint under section 18 is not maintainable. For this purpose, it is necessary to look at Section 3(2)(i) of Maharashtra Ownership Flats Act, 1963 which provides that the promoter, who constructs or intends to construct such a block or building or flats shall

(1) not allow person to enter into possession until the completion certificate where such certificate is required to be given under any law, is duly given by the local authority and no person shall take possession of a flat until such completion certificate has been duly given by the local authority.

5. In this case, the respondents have not produced the occupancy certificate/completion certificate and hence, I find that the possession taken by the complainant is not legal possession in the eye of law. Moreover, the complainant states that he simply took the possession as "fit out possession" so, it is not for actual occupancy of the complainant.



6. Section 18 (1) of RERA provides that if the promoter fails to or he is unable to give possession of an apartment in accordance with the terms of the agreement for sale or duly completed by the date specified therein, then when the allottee does not intend to withdraw from the project, he shall be paid interest for every month of delay till handing over the possession at prescribed rate. This provision is in simple present tense and therefore, if the actual possession is taken after occupancy/completion certificate and the premises have been occupied in real sense, then only the allottee is not entitled to get benefit of the Section 18 (1)(a) of RERA. Hence, the case of Balaji Infinity Society-v/s-Balaji Infinity (Complaint No. CC005000000010710) is not attracted in this case on which the respondents have placed reliance.

7. To conclude, I hold that though the fit out possession pending the complainant has been taken by the complainant, his complaint is still maintainable under Section 18 of RERA.

8. The complainant has filed the statement of payment showing that he paid Rs., Rs. 11,00,000/- before 15.02.2013 towards consideration of a flat. The complainant is entitled to get the interest on this amount from 01.03.2013.

9. The complainant paid consideration of Rs. 22,81,021/- on 21.01.2015, Rs. 1,51,956/- on 29.04.2015, Rs. 1,00,000/- on 24.10.2015 and Rs. 51,956/- on 04.11.2015. So he is entitled to get the interest on these amount from their dates of payment.

10. The complainant is entitled to get the interest at prescribed rate which 2% above the SBI's highest MCLR. It is currently 8.5%. He is entitled to recover the interest from the date of payment till the possession of flat is lawfully handed over to him. Hence, the following order.

ORDER

The respondents shall pay the complainant interest at the rate of 10.5% on amount mentioned in Para no. 8 & 9 of this order from the dates



of the payment mentioned therein till handing over the lawful possession of the flat to the complainant.

The respondents shall pay Rs. 20,000/- towards the cost of the complaint.

The respondents are allowed to set off amount due from them against the amount payable by the complainant to them if any, and shall pay him the balance.

Mumbai.

Date: 11.07.2018.


11.7.18

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