

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

COMPLAINT NO: CC0060000000044422.

Richard Jerm Dsilva

... Complainant.

**Versus**

Fareed Merchant

... Respondents.

(Thais Residency)

MahaRERA Regn: P51800011454

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

**Appearance:**

Complainant: Adv. Jovanka Pareira.

Respondents: Adv. Swati Arote.

**FINAL ORDER**

**31st August 2018.**

The complainant booked flat no. 202 in respondents' registered project Thais Residency situated in Andheri and respondents agreed to deliver its possession within 30 months from the date of agreement for sale dated 10.05.2012. The respondents failed to deliver the possession on agreed date but complainant wants to continue in the project. Therefore, the complainant claims interest on his investment for every month of delay under Section 18 of RERA.

2. The respondents have filed the reply to contend that Mr. Thais Dimello and Mrs. Norma Dimello were allotted plot no. 12 N admeasuring 380 sq.mtrs. Situated on CTS No. 440/3/9. Thereafter they granted its development rights the respondents. The respondents constructed building known as Thais Residency on or before month of October 2017



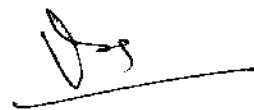
and applied for occupancy certificate. They got occupancy certificate on 11.06.2018. Therefore, they contend that they are ready to hand over the possession of the complainant's flat and hence, this complaint becomes infructuous. They further contend that the delay in obtaining occupation certificate is caused because the owners failed to enter their names on the property register card of the plot and to obtain the non-agriculture certificate from the Revenue Authority in time. The complainant has paid Rs. 10,62,500/- to the M.C.G.M. as deficiency in open space premium as per Clause 39 of the agreement for the sale and therefore, they are not liable to refund it. Hence, they request to dismiss the complainant.

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

POINTS	FINDINGS
1. Whether the respondents failed to hand over the possession of the complainant's booked flat?	Affirmative.
2. Whether the complainant is entitled to get interest on his investment till he gets possession of the flat?	Affirmative.

#### REASONS.

4. The complaint has produced the agreement for sale showing that the respondents agreed to hand over the possession of the flat within 30 months from the execution of the agreement for sale dated 10.05.2012 i.e. on 09.11.2014. However, the respondents have not handed over the possession of the flat on agreed date is an admitted fact.



5. The respondents contend that they have obtained the occupation certificate and therefore, this complaint is not maintainable. The complainant has filed the complaint on 07.05.2018 and the occupation certificate is issued on 11.06.2018. Thus, on the day of the complaint the project was incomplete. As per Section 3(2)(i) of Maharashtra Ownership Flats Act, the promoter was prevented from allowing to enter into possession and the complainant was also prevented from taking possession of the flat without completion certificate. Therefore, I hold that Section 18 of RERA is applicable to the facts of the case because on the date of the complaint, the respondents failed to complete and hand over the possession of the flat to the complainant even after the lapse of the agreed date of possession.

6. The complainant wants to continue in the project and therefore, he is entitled to get interest at prescribed rate on his investment from the date of default of the respondents in handing over the possession of the flat till the same is delivered, for every month of delay under Section 18 of RERA. The prescribed rate of interest is 2% above the SBI's highest MCLR which is currently 8.5%.

7. The complainant has filed the statement of amount paid by him. It shows that he paid Rs. 29,000/- towards the TDS and Rs. 70,38,500/- towards the consideration had been paid before the agreed date of possession. Hence, on these amount the complainant is entitled to get interest from 09.11.2014 till the possession of the flat is handed over.

8. The complainant has paid the following amount of consideration and TDS on subsequent dates.



Date	Purpose	Amount
09.02.2017	TDS	1,500/-
08.03.2017	TDS	2,500/-
04.04.2017	TDS	1,500/-
14.06.2017	TDS	1,000/-
28.06.2017	TDS	2,000/-
06.05.2016	Sale Consideration	5,94,000/-
16.09.2016	Sale Consideration	3,96,000/-
10.11.2016	Sale Consideration	1,48,500/-
21.06.2016	Sale Consideration	5,94,000/-
10.02.2017	Sale Consideration	1,48,500/-
10.03.2017	Sale Consideration	2,47,500/-
13.06.2017	Sale Consideration	99,000/-
28.06.2017	Sale Consideration	1,98,000/-
03.04.2017	Sale Consideration	1,48,500/-

The complainant is entitled to get interest on these amount from the date of their payment till receiving the possession of the flat. The respondents are liable to pay the complainant Rs. 20,000/- towards the cost of the complaint.

9. The complainant is not entitled to get any interest on the amount of service tax and VAT because he has continued in the project.

10. There is small issue of premium paid by the complainant to MCGM for deficiency in open space. According to the complainant, respondents were liable to pay the same and the respondents contend that it is the liability of the complainant as per Clause 39 of the agreement for sale. Clause 39, provides that if any permission is required or any compliance is

to be effected under Central or State Government legislation or any rules framed thereunder or under any order by whatever name called, the same shall be complied with by the purchasers or the body of the purchasers. Therefore, it appears that the premium for deficiency in open space is to be borne by the complainant himself.

11. The complainant wants to take possession and the respondents want to deliver it provided dues of Rs. 2,36,000/- mentioned in the possession letter dated 02.07.2018 are paid. In view of these facts, the following order.

### ORDER

The respondents shall pay the complainant simple interest @10.5% on TDS amount of Rs. 29,000/-, on consideration of Rs. 70,38,500/- from 09.11.2014 and on the amount mentioned in the table contained in Para 8 of the order from the dates of their payment till the handing over the possession of the flat for every month of delay under Section 18 of RERA.

The parties are allowed to adjust the amount payable by them.

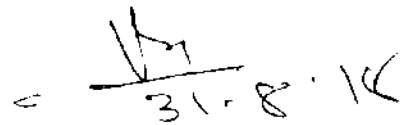
On adjustment of said amount, the respondents shall hand over the possession of the flat to the complainant.

The complainant's claim for Rs. 10,62,500/- is hereby rejected.

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

Mumbai.

Date: 31.08.2018.



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