

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

COMPLAINT NO: CC006000000057232

Suyog Tikle

... Complainant.

Versus

Om Sai Infra & Om Sai Group
(Sai Kanishk Phase II)

... Respondents.

MahaRERA Regn: P51700012436.

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

Appearance:

Complainant: In person.

Respondents: Adv. Rohan More.

FINAL ORDER

14th February 2019.

The complainant contends that he booked flat no. 405 in building no. B-6 of respondents' registered project "Sai Kanishk Phase II" situated at Dawale, Village Diva (East), District Thane. He alleges that the respondents have failed to hand over the possession of the flat on agreed date 31st December 2016. He wants to continue in the project and therefore, he claims interest for every month of delay on his investment till getting possession of the flat under section 18 of RERA.

2. The respondents have filed the reply to contend that as against the total value of the flat Rs. 34,88,430/-, the complainant paid them only Rs. 18,67,215/-. They contend that they could not complete the project though they received commencement certificate on 11.01.2013 because when they made excavation for the foundation, they had to face hard basalt rock and for blasting it they required various permissions which were not issued



promptly. The respondents obtained revised commencement certificate of building no. B-6 for constructing it up to 7th floor on 13.08.2014. Thereafter, they obtained revised permission on 31.05.2016 to construct it up to 12th floor because of the change of FSI policy. They had to change the contractor and appoint new one on 23.11.2018 for making the construction in full swing. Hence, they submit that the project is delayed and the reasons of delay were beyond their control. However, they show their readiness to refund the complainant's amount within the period of four months, if he cancels the booking.

3. Following points arise for determination and my findings recorded thereon are as under:

1. Whether the respondents failed to hand over the possession of the flat on the agreed date? Affirmative.
2. Whether the respondents are liable to pay the complainant the interest on his investment for delayed possession under Section 18 of RERA? Affirmative.

REASONS

4. The respondents have not disputed the fact that they agreed to hand over the possession of the flat by December 2016. However, they have not handed it over till the date of complaint. The complainant wishes to continue in the project and therefore, in these circumstances, he is entitled to get interest on his investment from the date of default till receiving the possession of the flat under Section 18 of RERA.

5. The respondents have taken the plea that the project is delayed because the reasons were beyond their control namely the blasting of basalt rock and revised commencement certificate obtained on 13.08.2014. The agreement for sale is entered into in the year 2015. Therefore, the causes

which occurred before the date of agreement have no reliance. It appears that the respondents have taken the second revised commencement certificate by taking advantages of changed FSI policy for construction of additional floors. This action is taken by them for making more money out of the same project. The change of contractor cannot be said to be sufficient ground. Complainant is not responsible for these causes. In view of these facts, I hold that the respondents have failed to prove that they were prevented by sufficient causes from completing the project in time.

6. The complainant has filed the payment format showing the payments made by him to the respondents which includes the amount of stamp duty and registration charges Rs. 2,41,600/- and Rs. 78,790/- towards the taxes. The complainant wants to continue in the project. Therefore, he has to bear the amount of stamp duty, its registration charges and taxes. The complainant has paid Rs. 17,44,715/- before 31.12.2016 and he has paid Rs. 1,23,000/- on 27.05.2017. Therefore, the complainant is entitled to get interest on Rs. 17,44,715/- from 01.01.2017 and on 1,23,000/- from 27.05.2017. The prescribed rate of interest is 2% above the SBI's highest MCLR which is currently 8.55%. The complainant is entitled to get Rs. 20,000/- towards the cost of the complaint.

7. Respondents contend that if they would be required to pay interest, the project would be adversely affected but the same respondents show their readiness to refund the complainant's amount within the period of four months, if he cancels the booking. Therefore, their plea that if they would be required to pay interest, the project would be adversely affected is false. Hence, the order.



ORDER

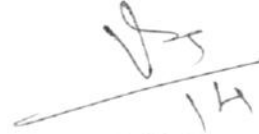
The respondents shall pay simple interest on Rs. 17,44,715/- from 01.01.2017 and on Rs. 1,23,000/- from 27.05.2017 at the rate of 10.55% per annum till the possession of the flat is handed over.

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

The respondents are allowed to give credit note of the accrued interest against the balance amount to be paid by the complainant, if any.

Mumbai.

Date: 14.02.2019.


14.2.19

(B. D. Kapadnis)

Member & Adjudicating Officer,
MahaRERA, Mumbai.

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---Respondents.

**Coram: Shri B.D. Kapadnis,
Hon'ble Member-II.**


**ORDER ON THE RECOVERY APPLICATION FILED IN
COMPLAINT.**

The complainant reports non-compliance of the final order. Mr. Deepesh Jain appears for the respondents. He submits that the complainant should pay the dues first and then at the time of final payment the account would be settled and credit note would be given. If the complainant pays extra money, then that money would be refunded on completion of the project.

2. I do not find this reason justifies the respondents in complying with the order. On the contrary, the order specifically provides that the respondents are allowed to give credit note of the accrued interest against the balance amount to be paid by the complainant, if any. If there would have been an intention of the respondents to comply with the order, they would have passed the credit note but they have not done so.

3, Hence issue the recovery warrant under section-40(1) of the RERA for recovery of the amount of cost.

Mumbai.
Date:12.03.2020.


(B.D. Kapadnis)
Member II,
MahaRERA, Mumbai.