

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC00600000044011

Vinay Singh ... Complainant

Versus

Kapstone Constructions Private Limited
MahaRERA Regn. No. P51700001060 ... Respondent

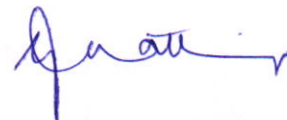
Corum:
Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant was himself present.
Respondent was represented by Mr. Hemant Mistry, Authorised representative.

Order

July 18, 2018

1. The Complainant has purchased an apartment bearing No. 3001-G in the Respondent's project 'Rustomjee Azziano Wing G' situated at Thane via a registered agreement for sale (*hereinafter referred to as the said agreement*). The Complainant has stated that the Respondent has informed him that the said project is now completed and has raised demands for the full and final payment. However, he alleged that the said apartment is not habitable. Therefore, he prayed that the Respondent be directed to complete all the major pending works in the apartment along with the amenities to be delivered in accordance with the terms and conditions of the agreement for sale, before demanding full and final payment for the apartment, reimburse the interest paid by him on home loan after the Respondent stopped bearing it pursuant to raising the demand for full and final payment and that the Respondent should pay for the future loan interest EMIs till the project is complete.



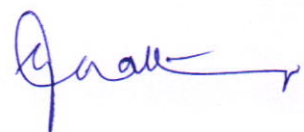
2. The Authorised representative for the Respondent submitted that the Respondent has obtained the occupation certificate for the said project in February, 2018. Further, he submitted that the possession of the apartment, along with the amenities, is offered to the Complainant in accordance with the terms and conditions of the agreement for sale after receipt of the occupation certificate. He added that as per the agreed terms between the parties, the Respondent was required to pay the pre-EMI only till the last and final demand is raised by the Respondent, which has been raised only after the OC was received from the Competent Planning Authority. He finally submitted that the Respondent has not violated any of the said terms.
3. Complainant raised concerns about the correctness of the occupation certificate and alleged that the project is yet to be completed.
4. Section 18 (1)(a) of the said Act reads as:

“ if the promoter fails to complete or is unable to give possession of an apartment, plot or building, – (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. “


Simple present tense used in the starting line of Section 18 clearly indicated that the provision shall apply only till the project is incomplete or the promoter is unable to give possession. Once the project construction is complete or possession is given, as the case may be, the said provision ceases to operate.

5. In view of the above facts, the Respondent is not liable to pay interest on delay to the Complainants, as per section 18 of the Real Estate (Regulation and Development) Act, 2016 nor is he liable to pay pre-EMI after OC has been received and the demand for



full and final payment of the consideration price has been raised. The Complainant, if he so desires, may take up the matter regarding the correctness of the occupation certificate issued by the Competent Authority, with appropriate authorities.

6. Consequently, the matter is hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA