

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

1. COMPLAINT NO: CC00600000089947.

Ashish Arora
Shobhana Arora ... Complainants.
Versus
Larsen & Toubro Limited ...Respondent.

2. COMPLAINT NO: CC00600000090083.

Niranjan K Chandwani
Dipti Chandwani
A. N. Chandwani ... Complainants.
Versus
Larsen & Toubro Limited ...Respondent.

3. COMPLAINT NO: CC006000000100430.

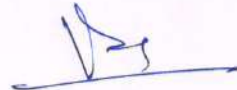
Khetan Saroj Shivkumar
Khetan Vikas Shivkumar ... Complainants.
Versus
Larsen & Toubro Limited ...Respondent.

4. COMPLAINT NO: CC006000000110645.

Sambasivarao Kotha
Nagachandravathi Kotha ... Complainants.
Versus
Larsen & Toubro Limited ...Respondent.

5. COMPLAINT NO: CC006000000110894.

Dominic Thomas ... Complainant.
Versus
Larsen & Toubro Limited ...Respondent.



6. COMPLAINT NO: CC006000000182003.

Sudhir Balram Dole
Gauri Sudhir Dole ... Complainants.
Versus
Larsen & Toubro Limited ...Respondent.

MahaRERA Regn: P51800005072.

Coram: Shri B.D. Kapadnis,
Member-II , MahaRERA.

Appearance:

Complainants: Adv Mr Biswajit Mukherjee
i/b Adv. Mr Anil D'souza.

Respondent: Adv. Ms. Neha Mehta in Complaint
nos. 1, 2.

Adv. Mr. Manish Gala in Complaint no. 3,4,5.

Adv. Mr. ~~Nikhil~~ Sampat in complaint no.6.

Mithil

FINAL ORDER

18th January, 2021

The complainants have filed these complaints under section 18 of the Real Estate (Regulation & Development) Act, 2016 to contend that they have booked their flats in the respondent's 'Emerald Isle- T7' Project situated at Kurla. The respondent agreed to handover the possession of their flats on or before 31.03.2017 with grace period of six months. However, the respondent failed to handover the possession of the flats on agreed date. It handed the possession of the flats on the dates mentioned in the table below. Therefore, they claim interest on their consideration amount for delayed possession. The necessary information furnished by them is as follows:

[Handwritten signature]

Names of the Complainants	Flat nos.	Agreed date of Possession	Possession taken on	Possession Demand Letter	Liability ends on
Ashish Arora Shobhana Arora	T-7 502	March 2017 + Grace Period of Six Months	20.08.2018	27.06.2018	27.07.2018
Niranjan K Chandwani Dipti Chandwani A. N. Chandwani	T-7 2302	March 2017 + Grace Period of Six Months	23.06.2018	16.05.2018	16.06.2018
Khetan Shivkumar Khetan Vikas Shivkumar	T-7 2203	March 2017 + Grace Period of Six Months	22.06.2018	16.05.2018	16.06.2018
Sambasivarao Kotha Nagachandravathi Kotha	T-7 203	March 2017 + Grace Period of Six Months	08.06.2018	16.05.2018	08.06.2018
Dominic Thomas	T-7 1202	March 2017 + Grace Period of Six Months	30.09.2018	16.05.2018	16.06.2018
Sudhir Balram Dole Gauri Sudhir Dole	T-7 1001	March 2017 + Grace Period of Six Months	19.11.2018	27.06.2018	27.07.2018

2. The respondent has pleaded not guilty. It has filed the replies in the complaints appearing at sr. nos. 1 to 4 but did not file any reply in the complaints appearing at sr. nos.5 and 6.

It contends that --

i) Tree Completion Certificate was required for obtaining the occupancy/completion certificate. The respondent applied for it on 07.02.2017 and got it on 27.04.2017.

ii) It applied for Environmental Clearance Certificate on 30.06.2016. However, the committee which was authorized to grant it, was dissolved and therefore the respondent had to apply for it to Environment Assessment Committee at New Delhi on 09.11.2016 and obtained it on 25.08.2017.

iii) Municipal Corporation of Greater Mumbai abruptly issued stop work notice on 21.06.2017 in the context of Urban Land (Ceiling and Regulation) Act, 1976 which was challenged by the respondent in Writ Petition No. 1783 of 2017. Hon'ble Bombay High Court granted stay on 29.06.2017. The corporation finally withdrew the stop work notice on 29.07.2017.

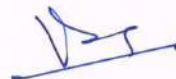
iv) Moreover, the allottees were required to make the payment as per clause 16 in time because it was the essence of the contract and as per clause 20 of the agreement, the allottee he is liable to pay the interest on delayed payment. The allottees did not make the timely payment. The respondent applied for occupancy certificate on 22.01.2018 and received it on 27.04.2018. Therefore, the respondent contends that it is entitled to get reasonable extension of 17 months in terms of clause 23 of the Agreement for sale. The complainants have accepted the possession of the flats without any protest. Therefore, as per section 55 of the Indian Contract Act, the allottees cannot claim compensation. It has handed over the possession of the flats on time and therefore it is not liable to pay interest for delayed possession to the complainants.



3. Heard the learned advocates of the parties on virtual platform.

4. The respondent has filed applications to transfer the complaints to bench of Chairperson by contending that the other matters pertaining to the same issue have been decided by him. The Chairperson has proceeded on pre-retirement long leave and therefore, it is not possible to transfer these cases to his bench and mostly because of this fact, the respondent has not pressed these applications.

5. There is no dispute between the parties that the respondent agreed to handover the possession of the flats booked by the complainants on or before 31.03.2017 with grace period of 6 months. The respondents has also assigned the reasons which delayed the project. According to the learned advocates of the respondent this period of delay should be excluded from agreed period of possession because the causes were beyond the control of the promoter. The agreements have been executed under Maharashtra Ownership Flats Act 1963(MOFA). Section 8(b) thereof provides that, if the promoter for reasons beyond his control is unable to give possession of the flat by date specified in the agreement for sale or further agreed date, the period for giving possession of a flat can be extended for three months first and if they continue to exist even thereafter, then it can further be extended for a period of three months. The maximum limit to extend this period is only six months and not more. This limit is prescribed by the statute and it does not permit any contrary term or condition mentioned in the agreement for sale to apply. Therefore, I find that the grace period which is agreed upon by the parties is agreed as per the provision of section 8(b) of the MOFA. In view of this, even if it is taken for granted, that the respondent was really prevented from completing the project in time



because of the reasons assigned by it, the period of possession cannot be extended beyond six months. Parties have agreed to have the grace period of six months to cover the unpredictable events causing delay which is quite in consonance with section 8(b) of MOFA. Therefore, the relief to this extent can be moulded to hold that the agreed date of possession was 30th September, 2017 at the most. This is one aspect of the matter.

6. Other aspect of this issue has been considered by the Hon'ble Bombay High Court in the case of Neelkamal Realtors Suburban Pvt. Ltd. vs Union of India, wherein it has held that the promoter having the experience and expertise in the field has to estimate the time of completing the project by taking into consideration all the unpredictable obstacles and the hurdles coming in his way of completing it. Therefore, I do not give much importance to the submissions of the learned advocates that the period of delay should be excluded from the period of possession contemplated by the parties.

7. It is argued on behalf of the respondent that, some of the complainants did not make the payment as per the schedule but I do not find that it will make any difference because the respondent has delayed the possession. Had there been delay in paying the instalment by the allottees, the respondent was entitled to recover the interest thereon but ultimately it would have to pay the interest at the same rate on those amounts to the complainants. Therefore, it was actually taking interest by one hand and paying it to the complainants by another. Practically it makes no difference. On the contrary, if the respondent claims the interest for the delayed possession at higher rate, then the respondent is also liable to pay the interest at the same rate as is contemplated by the definition of the



interest provided under section 2 (za) of the RERA and it is also prescribed rate of interest by the Act itself. Be that, as it may.

8. It is fact that the respondent has failed to handover the possession of the flats on 30.09.2017 as agreed. It is the contention of the respondent that, within the period of 30 days of the demand/ possession letter the possession was to be taken by the allottees by making the payment of the balance amount and by performing other formalities which are required to be performed under the agreement. Therefore, I find that, liability of the respondent comes to an end after 30 days of the possession / demand letters issued to the complainants or the actual date of possession whichever is earlier.

9. Section 18 of the RERA provides that, if the promoter fails to complete or is unable to give the possession of the apartment in accordance with the terms of agreement for sale or as the case may be, duly completed by the date specified therein then, 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 handing over the possession at such rate as may be prescribed. The respondent relies upon section 55 of the Indian Contract Act which reads as under:

"55. Effect of acceptance of performance at time other than agreed upon.

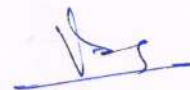
If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the



time of such acceptance he gives notice to the promisor of his intention to do so."

Section 88 of the RERA provides that, the provisions of the Act i.e. RERA shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Section 89 thereof provides that, provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. In view of these provisions, I find that, the provisions of, if they are consistent with the provisions of RERA can be made applicable. At the same time, section 55 of The Contract Act cannot be made applicable and it cannot override section 18 of the RERA because section 89 gives overriding effect to its provisions. Their right to claim interest for delayed possession has been conferred upon them by section 18 of RERA and it survives even after taking possession of the flats. Therefore, I find no substance in argument of the respondent's learned advocates that the allottees are not entitled to get the interest for the delayed possession as they have taken the actual possession of the premises.

10. To conclude, I hold that, the liability of the respondent to pay interest on the investment of the complainants starts from 01.10.2017 till the expiry of 30th day of the demand / possession letter. The complainants are entitled to get interest on the amount of consideration paid on or before 30.09.2017, from 01.10.2017 and on subsequent payment of consideration, the interest shall be paid from the dates of their payment till the expiry of the respondent's liability mentioned in the table above. The respondent is liable to pay simple interest at the prescribed rate which is 2% above SBI's highest MCLR, it is currently 7% p.a. The complainants are also entitled to

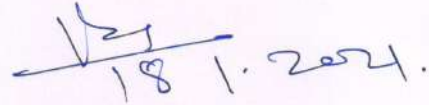


get Rs. 20,000/- towards the cost of their complaints. Therefore, the following are the order.

ORDER

- A. The respondent shall pay simple interest at the rate of 9% p.a. to the complainants on the amount of consideration paid by them on or before 30.09.2017, from 01.10.2017 and on subsequent payment of consideration, from the dates of their payment till the expiry of the respondent's liability mentioned in the table above.
- B. The respondent shall also pay Rs. 20,000/- to the complainants of each complaint towards the cost of their complaint.
- C. Original order is kept in the record and proceeding of filed by Ashish Arora, CC006000000089947 and photostat copies are kept in rest of the complaints.

Date: 18.01.2021

 18.1.2021.

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