

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

COMPLAINT NO: CC006000000012373

Sunil Daga  
Manish Kathuria ... Complainants.

**Versus**

Larsen & Toubro Ltd.  
(Emerald Isle) ... Respondents.

COMPLAINT NO: CC006000000023296

Harshad Jagdish Kandalkar  
Rekha Sinha ... Complainants.

**Versus**

Larsen & Toubro Ltd.  
(Emerald Isle) ... Respondents.

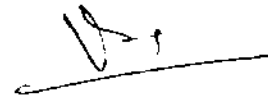
MahaRERA Regn: P51800003307.

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

**Appearance:**  
Complainant: Adv. Ameya Tamhane.  
Respondents: Adv. Abir P. (ABV) Wadia  
Gandhi & Co.

**FINAL ORDER  
03<sup>rd</sup> May 2018.**

Mr. Sunil Daga and Manish Kathuria booked the flat no. 201, Tower-4 of the Respondents Emerald Isle project. Ms. Rekha Sinha booked a flat no. 306 in Tower-4 in the same project. According to these complainants the respondents have not handed over the possession on or before 30<sup>th</sup>



August 2016 and October 2016 respectively. The respondents gave the possession of the flats of Ms. Rekha Sinha on 05.12.2017 and did not hand over the possession of the flat to Mr. Sunil Daga and Manish Kathuria. Therefore, these complainants have been claiming interest on their investment for every month of delay.

2. The respondents have filed their reply and the possession certificates showing that they handed over the possession of flat no. 201 to Mr. Sunil Daga and Manish Kathuria on 16.02.2018. They handed over the possession of flat no. 306 to Ms. Rekha Sinha on 05.12.2017, on receiving the occupation certificate. Therefore, the respondents have taken preliminary objection that these two complaints are not maintainable under Section 18 of the Real Estate (Regulation and Development) Act, 2016.

3. I have heard the learned advocate of the complainants who submits that the complainants are entitled to claim the interest on their investment from the respondents from the date of default till handing over the possession of the flats. The learned advocate of the respondents submits that this is not permissible under Section 18 of the Act. He has relied upon the order passed by this Authority in Balaji Infinity Society-vs-Balaji Infinity - Complaint No.CC00500000000010.

4. Only point that arises for my consideration is, whether the complaints filed by the allottees for claiming interest of the delayed period after getting the possession of their apartments are maintainable under Section 18 of the Act? My answer is in negative for the following reasons.

5. There is no denial to the fact that the complainants themselves have passed the possession certificates in favour of the respondents showing they have received the possession of the flats booked by them. It is also mentioned therein that the Competent/local Authority has issued the occupation certificate therefore the possession of complainants becomes



legal. On this backdrop, it is necessary to look at relevant portion of Section 18 of the Act.

6. Section 18(1) provides that if the promoter fails to complete or he is unable to give possession of apartment, plots 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 to pay interest to an allottee who does not intend to withdraw from the project, for every month of delay, till the handing over of the possession.

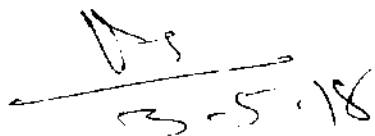
This provision therefore, makes it clear that only when the promoter fails to complete or is unable to give possession of an apartment, the allottee is entitled to claim interest for every month of delay. Simple present tense is used by the legislators while enacting this provision. It clearly indicates that right to claim interest continues so long as construction is incomplete or delay in handing over the possession lasts. Once the construction is complete or possession is given, as the case may be, then Section 18 (1)(a) ceases to operate. In these two cases the possession has already been taken by the complainants. There is no failure of the respondents to complete or to give possession, therefore Section 18 (1) (a) of the Act is not attracted. Hence, the order.

**ORDER**

Both the complaints are dismissed.

Mumbai.

Date: 03.05.2018.

  
3-5-18  
( B. D. Kapadnis )  
Member & Adjudicating Officer,  
MahaRERA, Mumbai.