

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

Virtual Hearing held through video conference as per
MahaRERA Circular No.: 27/2020

COMPLAINT NO: CC006000000195910

NEERA ABHAY SINGH

...Complainant/s

Vs

EKTA PARKSVILLE HOMES PRIVATE LIMITED

...Respondent/s

MahaRERA Project Registration No. P99000000116

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA

Complainant present

Advocate Abir Patel i/by Wadhiya Gandhi & Co. for the Respondent

Order

July 27, 2021

1. The Complainant is a home buyer and an Allottee within the meaning of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016 and the Respondents are Promoters/Developers within the meaning of Section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016. The Respondents have registered their project "EKTA PARKSVILLE PHASE I" under section 5 of the Real Estate (Regulation and Development) Act, 2016 ("RERA") bearing MAHARERA Registration No. P99000000116 (hereinafter referred to as the "said Project").
2. The Complainant is seeking relief in terms of the INTEREST on the total amount paid i.e. Rs. 67,16,935/- for the delayed period.
3. On 15.06.2021, the following roznama was passed by this Authority:
"Both the Parties are present. The Complainant submits that this is a flat for which Occupation Certificate was already received and the possession was to be given

Ajoy Mehta

subsequent to the last instalment which the Complainant claims to have been paid on 23.11.2020.

The Advocate for the Respondent while confirming the other facts however submits that the complete payment was received on 10.05.2021 only. He further submits that in view of the pandemic in May 2021 the Respondent was not able to handover possession. He submits that the Respondent would be now handling over possession to the Complainant.

Both the Parties are at liberty to file their Written Submissions before 29.06.2021. the matter is Reserved for Order thereafter."

4. The submissions of the Complainant are as follows:
 - a. Vide an agreement for sale dated 06.11.2019, an apartment No. 703 on the 7th floor, admeasuring 74.28 sq. mtr. (carpet) in wing 'G' of the Central Park in the said Project for a consideration of Rs.62,14,500/- (hereinafter referred to as "**said apartment**") was agreed to be purchased by the Complainant (hereinafter referred to as "**said agreement**").
 - b. On 04.12.2020, the Complainant paid the total consideration amount towards the said apartment and requested the Respondent to handover possession of the said apartment.
 - c. As per the said agreement, clause No. 15 states that the Respondent had completed the construction of the building and had also obtained the occupation certificate (OC). It further stated that the said apartment is ready for use and occupation and that no further construction related obligations are pending. The Respondent vide the aforesaid clause stated that possession of the said apartment can be handed over within 7 days from the date of receipt of the entire amount of the consideration as specified in the said agreement.
 - d. Further, it is also submitted that the said agreement at clause No. 15.3 (i) states that the Allottee can call upon the Promoter by giving a written notice ("*Interest Notice*") to pay interest at the interest rate for every month of delay from the date of possession on the sale consideration paid by the Allotees. And that this interest shall be paid by the Promoter

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to the Allottee till the date of offering the possession of the said flat by the Promoter to the Allottees.

e. In view of the clause No. 15.30 (i) of the said agreement the Complainant herein issued an Interest Notice to the Respondent dated 20.01.2021 claiming interest for delay in possession of the said apartment from 12.04.2021 on the total amount paid towards the said apartment.

5. The Respondent herein has not submitted any reply and/ or any submissions in the matter refuting the claims of the Complainant in spite of liberty granted to both the Parties by this Authority on 15.06.2021 to file written submissions by 29.06.2021. However, the Respondent during the hearing dated 15.06.2021 had confirmed the other facts in the present complaint and stated that the complete payment of the said apartment was received on 10.05.2021 only. It was further submitted that in view of the pandemic situation in the month of May 2021 the Respondent was not able to handover possession to the Complainant. The Respondent further submitted that the Complainant would now be handing over possession of the said apartment to the Complainant.

6. From the submissions of the Complainant the only issue that remains to be decided in this matter is that *Whether the Complainant is entitled to claim interest for the delay in handing over possession of the said apartment?*

7. Before dealing with the facts in this complaint, it is pertinent to examine "possession" as contemplated under section 18 of the said Act:

"18. (1) 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; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, 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

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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."

8. From the plain reading of section 18 it is clear that if the Promoter (Respondent herein) fails to handover possession as per the terms of the agreement for sale by the specified date therein, the Allottee (Complainant herein) has a choice either to withdraw from the said Project or stay with the Project. Further, in case the Allottee (Complainant herein) chooses to stay and not withdraw from the said Project, he is entitled to claim interest for every month of delay till handing over possession at such rate as may be prescribed from the Promoter (Respondent herein).
9. Thus, in the present complaint, the following observations are noteworthy:
 - a. The agreement for sale was entered on 06.11.2019 whereby the date of possession as submitted by the Complainant was within 7 days from the date of receipt of the entire consideration and all amounts as mentioned in the said agreement. This fact is not disputed by the Respondent as they have filed no reply in the matter till date in spite of allowing time to file written submissions.
 - b. The Complainant has paid all the amounts towards the total consideration of the said apartment as demanded by the Respondent by the 16.12.2021 as per the payment details submitted by the Complainant. However, the Respondent during the hearing dated 15.06.2021 stated that the complete payment of the said apartment was received on 10.05.2021 only. The Respondent has failed to support this fact by placing relevant document on record.
 - c. Further, the Respondent has delayed in handing over possession of the said apartment as per the committed date i.e. within 7 days from the date of receipt of the entire consideration and all amounts as mentioned in

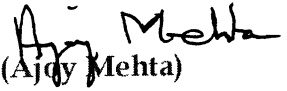
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the said agreement thereby violating the provisions of section 18 of the said Act.

10. From the aforesaid observations it is clear that the Complainant can choose to not withdraw from the said Project and is entitled to claim interest for every month of delay till handing over possession at such rate as may be prescribed from the Respondent. From the records submitted by the Complainant herein it is clear that as on **16.12.2020** the Complainant had paid the entire consideration including all amounts as mentioned in the said agreement to the Respondent after which within 7 days the Respondent ought to have handed over the possession of the said apartment to the Complainant which has been delayed. Thus from 23.12.2020 the Respondent shall be liable to pay interest to the Complainant for the delay in handing over possession of the said apartment. Thus, the answer to issue herein above is in **affirmative**.

FINAL ORDER

The Respondent is directed to pay interest from 23.12.2020 till the time of handing over possession of the said apartment along with the occupation certificate at the rate as prescribed *under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules 2017* for the delay in handing over possession of the said apartment.


(Ajay Mehta)
Chairperson, MahaRERA