

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

COMPLAINT NO: CC00600000079300

Ashfaque A Halde ... Complainant

Versus

Palghar Land Development Corporation and Another  
MahaRERA Regn. No. P99000000115 ... Respondent

Corum:

Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant was present himself a/w Mr. Gafur, Adv.

Respondent was represented by Ms Prachi Malhotra, Mr. Vikas Malkiya and Mr. Abir Patel,  
Adv. i/b Wadia Ghandy & Co.a/w Ms. Ranjana Parab Adv.

**Order**

September 10, 2020

1. The Complainant has stated that he has purchased an apartment bearing no: 1304-H in the Respondent's project 'EKTA PARKSVILLE PHASE II' situated at Virar, Thane via registered agreement for sale dated March 26, 2013 (hereinafter referred to as the said agreement). The Complainant has stated that the Respondent has failed to handover possession by December, 2016 as stipulated by the said agreement. Therefore, he has prayed that the Respondent be directed to handover possession of the apartment at the earliest and pay him interest for the delay.
2. The authorised representative for the Respondent has in their written submission stated that the complaint has been filed against Palghar Land Development Corporation and the present promoter of the project has been shown as a director thereof. They have added that the promoter of the project Ekta Parksville Homes Pvt. Ltd. is not a Director in Palghar Land Development Corporation and is in no way connected to the firm. Therefore, they have argued that the complaint needs to be dismissed for misjoinder of necessary parties. They have further argued that the

project completion was delayed due to certain mitigating circumstances but the Occupancy Certificate for this Project was obtained on May 15, 2019, before the said complaint was filed with MahaRERA and the same has been uploaded in the "Others" column of the webpage of the project registration. He also submitted that the Respondent has already offered possession to the Complainant but the Complainant is in breach of Section 19(10) of the Act by not taking possession of their apartment.

3. 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.

4. In view of the above facts, the Respondent is not liable to pay interest on delay to the Complainant, as per section 18 of the Real Estate (Regulation and Development) Act, 2016. The Complainant is advised to take possession of his apartment at the earliest.

5. Consequently, the matter is hereby disposed of.

**Gautam  
Chatterjee**

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Chatterjee  
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(Gautam Chatterjee)  
Chairperson, MahaRERA