

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000055143

Rupal and Shridhar Mani ... Complainants

Versus

Lucina Land Development Limited
MahaRERA Regn. No. P52000001592 ... Respondent

Corum: Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainants were themselves present a/w Mr. Parthasarathy Sundarajan, authorised representative (i/b M/s. R. S. Prabhu & Associates).

Respondent was represented by Mr. Nilesh Gala, Adv; and Manish Gala, Adv.

Order
October 24, 2018

1. The Complainants have entered into a registered agreement for sale (*hereinafter referred to as the said agreement*) to purchase an apartment bearing no: 706 in the Respondent's project 'Indiabulls Greens - 1' situated at, Panvel, Raigad. The Complainants have alleged that the date of possession as stipulated by the said agreement was to be on or before a period of 60 months from the date of the said agreement; however, the Respondent has failed to hand over the possession of the said apartment. Further, they alleged the amenities and facilities that were promised by the Respondents are not part of the almost completed project.
2. Therefore, they prayed that the Respondent be directed to pay them interest for the delay in handing over possession and to handover possession of the apartment with facilities and amenities as promised.
3. The learned counsel for the Respondent submitted that MahaRERA in previous complaints filed against the said project has already directed the Respondent to handover possession of the apartments before December 31, 2018, after considering the mitigating circumstances in the project. Further, he submitted that the Respondent



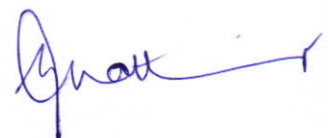
has already obtained the Occupancy Certificate for the said project before the filing of the present complaint and has offered possession of the apartment to the Complainants. Therefore, he argued that the provisions of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 will not be applicable. He also submitted that the Respondent will not demand charges for services that are not being provided for at the time of handing over possession.

4. The Complainants also prayed that the Respondent be directed to initiate the process of formation of society.
5. 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. “*

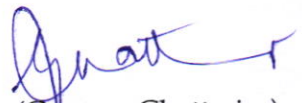
Simple present tense used in the starting line of Section 18 clearly indicated that the provision shall apply only till the project is incomplete or the promoter is unable to give possession. Once the project construction is complete or possession is given, as the case may be, the said provision ceases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

6. In view of the above, the provision regarding interest on delay to the Complainants, as per section 18 of the Real Estate (Regulation and Development) Act, 2016, shall not apply.
7. The Complainants are advised to take possession of the said apartment at the earliest. The Respondent shall not demand charges for facilities/amenities that are not being



provided at the time of handing over possession and until such time the said facilities/amenities are provided.

8. The Respondent shall initiate the process of formation of the society within 30 days from the date of this Order.
9. Consequently, the matter is hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA