

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

COMPLAINT NO: CC00600000090146.

Shyam Swaroop Asthana

... Complainant.

Versus

Macrotech Developers Ltd.-
Lodha Developers Thane Pvt. Ltd.
(Lodha Amara-Tower 26,27,
28, 30, 34, 35, Thane)

...Respondents.

MahaRERA Regn: P51700001031

Coram: Shri B.D. Kapadnis,
Hon'ble Member II.

Appearance:

Complainant: In person.

Respondents: Adv. Akshay Pare.

**FINAL ORDER
10th December 2019.**

The complainant contends that he booked flat no. 2104 of Wing 27 of the respondents' registered project Lodha Amara, situated at Kolshet, Thane. They agreed to hand over the possession of the flat on or before 30th April 2019 subject to additional grace period of 18 months. Respondents have failed to handover the possession of the flat on agreed date. Therefore, the complainant claims interest on his investment which is 95% of the total cost of the flat for delayed possession under section 18 of RERA.

2. The respondents have filed their reply to contend that as per clause 11.1 of the agreement, the fit out possession was to be delivered on 30.04.2019 and as per clause 11.2 the grace period is of 18 months. Clause 1



11.1 of agreement for sale provides for the period of 1 year for getting occupancy certificate from the date of fit out possession and hence, the agreed date is 31.10.2021 which is not crossed. The compensation is sought by the complainant and hence the complaint is not maintainable before the Authority. The respondents' entity is changed to Macrotech developers Ltd. and hence the complaint may be dismissed.

3. After hearing the arguments and perusing the documents produced in the matter, I find that the following facts emerged on record.

- a. The complainant has filed the complaint against Macrotech developers Ltd.
- b. The respondents agreed to hand over the fit out possession of the flat on or before 30.04.2019 subject to grace period of 18 months.
- c. The respondents agreed to obtain occupation certificate within the period of 1 year from the date of fit out possession.

4. As per section 3(2) (f) of The Maharashtra Ownership Flats Act, it is the liability of the promoter to specify in writing the date by which possession of the flat is to be handed over and he shall handover such possession accordingly. Similarly, section 13(2) of The Real Estate (Regulation And Development) Act, 2016 (RERA) also requires him to mention the date of possession in the agreement for sale. Section 3(2) (i) of The Maharashtra Ownership Flats Act prevents the promoter from allowing persons to enter into possession of the flat until a completion certificate where such certificate is required to be given under any law is duly given by such authority. After taking resume of these provisions, I find that the respondents were under legal obligation to mention the date of possession (with OC) in the agreement for sale. The respondents have played mischief by drafting the agreement for sale in obscure manner and hence they are hereby warned not to indulge in such type of deceptive practices. Be that as it may.



5. After going through the relevant clauses of the agreement for sale as they read, I find that the possession of the flat is to be given within 1 year from the date of fit out possession. Hence, the agreed date of possession comes to 30.04.2020. This agreed date of possession has not been crossed yet and hence the complaint is premature.

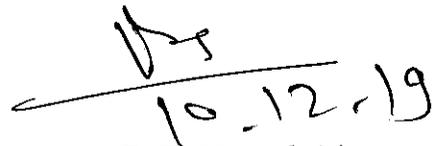
6. However, today when the order is being dictated, Mr. Surendran Nair has filed the unsworn affidavit to contend that the respondents have received occupancy certificate on 31.11.2019 and the key handover of the unit has been scheduled on 12.12.2019.

7. Under section 18 of RERA when allottee continues in the project and possession is delayed, he is entitled to claim only interest on his investment and not the compensation. Therefore, this complaint is maintainable before the Authority. Otherwise also this Authority has held in Sunil Mishra Vs. Nirmal Lifestyle (Kalyan) Pvt. Ltd. (CC006/89948) that only limited issue of compensation needs to be referred to the Adjudicating Officer under section 71 of RERA when the complainants claim compensation under sections 12, 14, 18 & 19 of RERA.

8. In the result, the complaint is dismissed.

Mumbai.

Date: 10.12.2019.

Handwritten signature and date: 10-12-19

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