

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

COMPLAINT NO: CC006000000000391

RAJU BANA ... Complainant.  
Versus  
KAILAS PATIL ... Respondent.

MahaRERA Regn: P51700006977

Coram: Hon'ble Shri B.D. KAPADNIS.

05<sup>th</sup> October 2017

**Final Order**

The complainant has filed this complaint u/s. 18 Real Estate (Regulation & Development) Act, 2016 (for short, RERA) for getting compensation on account of the respondent's failure to give the possession of his booked flat no. 503 in the respondent's project 'Kailas Heights' situated at Kalwa, Dist. Thane.

2. The complainant contends that the respondent is the proprietor of Ms. Trinity Construction company which launched the aforesaid project. The respondent executed the agreement of sale of the said flat on 17.11.2011 and agreed to give the possession of the said flat within 18 months from the date of agreement. However, for one reason or the other he avoided to complete the construction of the building and give possession of the booked flat. Hence the complainant claims a compensation amounting to Rs. 10 lac towards the house rent of last five years and the mental harassment. He also claims the future house rent at the rate of Rs. 20,000/- per month till he gets the possession.

3. Respondent admits that the possession of the flat has not been given till the date. He has filed the reply to contend that after commencement of the construction in the year 2008 a bridge constructed on a stream collapsed and therefore, he could not continue the construction till the year 2012 when the bridge was reconstructed. He further contends that in the record of rights the area of survey no. 48/4 is shown 2,230 sq. meters but

  
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in the record of inspector of land records it was less than that. In order to get it corrected, he had to wait till 30.12.2014. Thereafter he submitted the amended plan for construction of additional floors in the place of initial 7 floors and had to spend one year in the process. Thereafter in the year 2015 L.B.T. rules were brought into effect by Thane Municipal Corporation and it took some time to settle the issue. He also had to wait till the record of inspector of land records/ city survey office was corrected regarding the transfer of his land used for D.P. Road. Thereafter, he has submitted the amended plan on 20.07.2017 for further construction of work and the sanction is awaited. Hence he contends that the project is delayed because of the reasons which were beyond his control.

4. I have heard the parties and perused the documents produced by them.

5. The only point that arises for my consideration is, whether the respondent has failed to deliver the possession of the flat on the agreed date and if yes, whether the complainant is entitled to get compensation or the interest on his investment u/s. 18 of RERA?

6. The complainant has produced the copy of index II to show that the respondent executed the agreement of sale of the above numbered flat in his favor on 17.11.2011. Page no. 14 of the agreement shows that respondent agreed to give possession of the flat within 18 months from the date of agreement. The contention of the complainant has not been challenged by the respondent regarding the delay in handing over the possession of the flat. The respondent has assigned the reasons of delay which are mentioned above. It is seen that initially the respondent was to construct a building having only 7 stories. Thereafter he changed his mind to add additional floors and according to him till 2017 the process of obtaining the sanction is going on. The facts to which the respondent refers to above are not, in my opinion, sufficient to hold that the project is delayed because of the reasons beyond his control. Not only that, during those days Maharashtra Ownership Flats (Regulation of the Promotion Of Construction, Sale Management and Transfer) at 1963 was holding the field. Section 8(b) of the said Act provides that if the promoter for reasons beyond his control is unable to give possession of the flat by date specified, or the further agreed date and a period of 3 months thereafter, or a further period of 3 months if those reasons still exist, then in such case the promoter is liable to pay the interest at the rate of 9% on the amounts paid by the buyer. Even if all the circumstances were in favor of the respondent



to hold that he could not deliver the possession because of the reasons which were beyond his control, he cannot get the extension of more than three plus three months period from the agreed date. In any circumstance I find that the respondent has failed to deliver the possession on the agreed date and hence, he incurs the liability u/s. 18 of RERA to pay interest on the amounts paid by the complainant and in case of special damage, compensation also.

7. The complainant contends that he has been residing in a rented house and he has to pay heavy interest on the loan amount. In view of these facts, I find that no special case has been made out by the complainant for compensation.

8. However, the complainant is entitled to get simple interest at the rate of marginal cost of lending of SBI which is currently \* 8.15% plus 2% p.a. on the amounts paid by him to the respondent in context of this transaction from the respective dates of the payment. The complainant has produced the copy of the cheque dated 15.11.2011 showing that Rs. 1,00,000/- had been paid to the respondent. He has produced receipts dated 03.04.2012 of Rs. 5,00,000/- dated 13.07.2012 of 6,00,000/- dated 30.07.2012/- of Rs. 10,000 /- plus 23,00,000/- dated 05.09.2012 of Rs. 5,29,050/- and dated 13.11.2016 of Rs. 62,490/- to show that he paid Rs. 41,01,520/- to the respondent. In result, the order.

#### Order.

The respondent shall pay the complainant the monthly simple interest at the rate of \* 8.15% plus 2% p.a. Rs. 41,01,520/- from the date of default i.e. from 17.05.2013, till he delivers the possession of the flat to the complainant.

The respondent shall clear the arrears of interest accrued till 30.09.2017 within one month of this order together with Rs. 20,000/- towards the cost of the complaint.



(B.D. Kapadnis)

(Member & Adjudicating Officer)  
MahaRERA, Mumbai

Mumbai  
Date: 05.10.2017.

\*8.15% Corrected as per the order passed on 16.10.2017 u/s. 39 of RERA.

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

COMPLAINT NO: CC00600000000287

Vasant Shankar Jadhav ... Complainant.

**Versus**

Kailas Chatrapati Patil  
(Kailash Heights) ... Respondent.

MahaRERA Regn: -P51700006977

COMPLAINT NO: CC00600000000391

Raju Bana ... Complainant.

**Versus**

Kailas Chatrapati Patil  
(Kailash Heights) ... Respondent.

MahaRERA Regn: -P51700006977

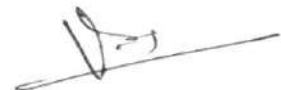
COMPLAINT NO: CC00600000000382

Ashish Gurav ... Complainant.

**Versus**

Kailas Chatrapati Patil  
(Kailash Heights) ... Respondent.

MahaRERA Regn: -P51700006977



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

**Final Order on the applications of the complainants filed u/s 63 of RERA.**  
3<sup>rd</sup> April 2018

In these three complaints, the complainants have submitted their applications contending therein that orders have been passed in their complaints directing the respondent to pay them monthly simple interest on their amount from the date of respondent's default in handing over the possession of their flats till they are delivered and the cost of the complaint also. However, respondents have not complied with the orders. Therefore, the show cause notices under Section 63 of the Real Estate Regulatory Act have been issued to the Respondent.

2. The respondent has filed a common reply to contend that if he would be required to comply with these orders and to pay penalty, he would not be able to afford it. He will have to divert his funds for complying with the orders and ongoing project shall come to stand still. Therefore, he requests to take lenient view and reject the applications.

3. Heard the complainants and the learned Advocate of the respondent.

4. Rule 19 of Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and disclosures on website) Rule, 2017 provides -

19 "Timelines for refund - The refund of any amount which is payable by the promoters to allottees along with the applicable interest and compensation, if any, under the Act or the Rules and Regulations, shall be made by the Promoter to the allottee within thirty days from the date on which such refund along with applicable Interest and Compensation, becomes due and payable to the allottee:





Provided that, every instance thereof shall be reported by the concerned promoters within thirty days to the authority”

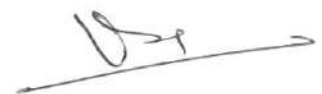
5. Section 63 of RERA provides that if any promoter fails to comply with any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend to 5% of the estimated cost of the real estate project as determined by the Authority.

6. It is admitted that the respondent has not complied with the said orders. The reason assigned by him for non-compliance of the orders does not appear to be valid and genuine. The respondent got the said orders stayed for some time from this Authority by representing that he would challenge the orders before the Appellate Tribunal. However, now it has been submitted that the respondent has not filed any Appeal against the said orders passed in the complainants' complaints. Therefore, these orders have reached to finality.

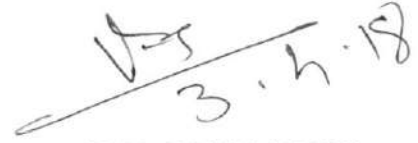
7. The complaints have been decided by me as the Member of MahaRERA and no compensation has been provided to the complainants. In this circumstance, as per the provisions of Section 63 of RERA, the penalty can be imposed on the respondent for non-compliance of the order passed by the Authority for every day of default, till the orders are complied with subject to the maximum limit of 5% of the estimated cost of the project. Hence, I am inclined to impose the penalty of Rs. 1,000/- a day on the respondent to meet the ends of justice. Hence, the order.

#### ORDER

The respondent shall pay Rs. 1,000/- for every day of default in complying with the orders towards penalty u/s 63 of RERA in each complaint from the expiry of period 30 days from the dates of orders, till they are complied with or till the penalty accumulates to the extent of 5% of the estimated cost of the project whichever is earlier.

A handwritten signature in black ink is written above a long horizontal arrow pointing to the right.

2. The respondent shall inform the Authority about the compliance of the orders to stop the accruing penalty.

  
3.4.18

Mumbai.  
Date: 03.04.2018.

(B.D. KAPADNIS)  
Member & Adjudicating Officer,  
MahaRERA, Mumbai.

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

**Complaint No. CC006000000000391**

**Project No. P51700006977**

**Raju Mahadeo Bana**

**---Complainant.**

**Versus**

**Mr. Kailas Chatrapati Patil.**

**---Respondents.**

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

**ORDER ON THE APPLIANT'S APPLICATION FOR RECOVERY UNDER  
SECTION 40(1) FOR NON-COMPLIANCE OF THE ORDER DATED 05<sup>TH</sup>  
OCTOBER 2017.**


The complainant brings to my notice that even after passing of the final order in his complaint the respondents have not complied with the order. They have not preferred the Appeal also. Therefore, the order has attained the finality.

2. The penalty under Section 63 of Real Estate (Regulation and Development) Act, 2016 has been imposed but even thereafter the respondents have not complied with the order. Hence, it is necessary to issue warrant under Section 40(1) against the respondents to recover the amount of penalty as well as complainant's amount. Hence, the following order.

**ORDER**

Issue recovery warrant under Section 40(1) addressed to the Collector, Thane, to recover the penalty and ordered amount to the complainant.

The application stands disposed off.

  
12.7.18  
(B.D. KAPADNIS)

Mumbai

Date: 12.07.2018.

Member & Adjudicating Officer,  
MahaRERA, Mumbai.