BEFORE THE

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

MUMBAI

COMPLAINT NO: CC006000000000646

Rahul Pandurang Kadam ... Complainant.
Versus
KailasChatrapati Patil ... Respondent.

COMPLAINT NO: CC006000000000865

Naresh Kisan Patil ... Complainant.
Versus
KailasChatrapati Patil ... Respondent.

COMPLAINT NO: CC006000000000868

Hemant Varade ... Complainant.
Versus
Kailas Chatrapati Patil ... Respondent.

MahaRERA Regn: P51700006977

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

Appearance:
Complainants: In person.
Respondent: Through Samrudha Patil.

Common Final Order.
28th February 2018

The complainants have filed these complaints u/s. 18 Real Estate (Regulation & Development) Act, 2016 (for short, RERA) for getting compensation on account of the respondent's failure to give them possession of their booked flat nos. 304, 703 & 701 respectively of the respondent's project 'Kailas Heights' situated at Kalwa, Dist. Thane.

2. The complainants contend that the respondent is the proprietor of Ms. Trinity Construction company which launched the aforesaid project. The respondent executed the agreements of sale of the said flats and agreed to give the possession of flat nos. 304 to Mr. Rahul Kadam within 18 months from 04.05.2011, of flat no. 703 to Mr. Naresh Patil within 18 months from 24.05.2011 and of flat no. 701 to Mr. Hemant Varade within 18 months from December, 2010. However, for one reason or the other he avoided to complete the construction of the building and give possession of the booked flats. The complainants want to continue in the project. Hence the complainants claim a compensation and interest on their amount till they get the possession of their flats.

3. Respondent admits that the possession of the flats 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 in the record of inspector of land records it was shown 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. Mr. Patil submits that the construction of the project is in progress and he shall deliver the possession within a year.

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

6. The respondent has not disputed the fact that he has not handed over the possession of the flats booked by the complainants on the agreed dates. Hence I record my finding to this effect.

7. 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 was 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 amount paid by the buyer. Even if it is assumed that all the circumstances were in favour 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 at the prescribed rate on amount paid by the complainants.

8. Mr. Rahul Kadam has filed the receipts showing that he paid the respondent Rs. 26,36,000/- out of Rs. 33,50,000/-. He is entitled to get monthly interest at prescribed rate which is currently 10.05% on this amount paid to respondent from the date of default i. e. from 05.11.2012 till the possession of his flat is handed over by the respondent.

9. Mr. Naresh Patil has filed the receipts showing that he paid the respondent Rs. 14,50,000/-. He submits that he paid Rs. 3,00,000/- on 03.05.2011 by cheque no. 083800 drawn on S.B.I. on completion of fourth slab but the respondent has not issued the receipt thereof. Mr. Patil admits the receipt of this amount and promises to issue the receipt of Rs. 3,00,000/-. In this circumstance, I hold that Mr. Naresh paid Rs. 17,50,000/- to the respondent. He is entitled to get monthly interest at prescribed rate which is

currently 10.05% on this amount from the date of default i. e. from 25.11.2012 till the possession of his flat is handed over by the respondent.

10. Mr. Hemant Varade has filed the receipts showing that he paid the respondent Rs. 24,00,000/-. He is entitled to get monthly interest at prescribed rate which is currently 10.05% on this amount paid to respondent from the date of default i. e. from 30.06.2012 till the possession of his flat is handed over by the respondent.

11. The complainants are not entitled to get compensation under other heads because the interest awarded is compensatory in nature but they are entitled to get Rs. 20,000/- towards the cost of the complaints.

Order.

The respondent shall pay the complainants the monthly simple interest as directed in para no. 8 to 10 of this order till he delivers the possession of the flats to the complainants together with Rs. 20,000/- towards the cost of each complaint.

28-2-18

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

Mumbai
Date: 28.02.2018.

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.

Complaint No. CC006000000000646

Project No. P51700006977

Rahul Pandurang Kadam ---Complainant.

Versus

Kailas Chatrapati Patil
(Kailash Heights ---Respondent.

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

ORDER FOR RECOVERY UNDER SECTION 40(1) FOR NON-COMPLIANCE OF THE ORDER DATED 28.02.2018.

The complainant complains that the respondent has not complied with the order passed in his complaint on 28th February 2018. In response to the notice son of the respondent Mr. S. K. Patil has appeared to tell that financially the respondent is not able to pay interest to the complainant because the funds available with the respondent are being used for the completion of the project. This cannot be the excuse and therefore, I am convinced that the respondent has been avoiding to comply with the order without any just excuse.

2. It is necessary to issue recovery warrant under section 40(1) of RERA against the respondents to recover the dues. Hence the following order.

ORDER

Issue recovery warrant against the respondent addressed to the Collector, Thane directing him to recover simple interest accrued on complainant's amount Rs. 26,36,000/- at the rate of 10.05% p.a. from 25.11.2012 till handing over the possession of his booked flat and to pay the same to the complainant and report the compliance.

Complainant to submit the statement showing the accrued interest.

The proceeding stands closed completely.

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

Mumbai
Date: 05.06.2018.