

**BEFORE THE ADJUDICATING OFFICER WITH  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI**

**Complaint No. 0060000000001145**

Madhavi Naik .. Complainant  
Versus  
Kailas Patil .. Respondent

**MahaRERA Regn. No. :P51700006977**

**Coram: Shri Madhav Kulkarni**

**Hon'ble Adjudicating Officer**

**Appearance:**

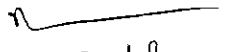
**Complainants: Madhavi Naik appeared in person**

**Respondent: Kailas Patil appeared in person.**

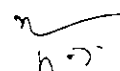
**FINAL ORDER**

**Date: 4<sup>TH</sup> July, 2018**

1. The complainant who had booked a flat in the project floated by the Respondent Builder seeks interest on the amount paid by her to the Respondent as he failed to deliver possession of the flat within the agreed period and also seeks compensation for the hardship suffered. Arguments for Complainant were heard on 24.4.2018 for Respondent on 21.5.2016. Since I am working at Mumbai and Pune Offices in alternate weeks and as per availability of Stenographer the matter is being decided now.

  
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2. The complainant has alleged that she had booked a flat in the Project floated by the Respondent. As usual the complaint is cryptic and lacks the necessary details as to the name of the Project and its location and the number of the flat that was booked by complainant and the price that was agreed and the amount that was actually paid to the Respondent . Such details are required to be fished out from the Agreement. However even the full Agreement is not placed on record by the complainant. What can be made out from copy of Index II Register is the name of the Project 'Kailas Heights' , Flat No. 403 at Survey No. 48/4 Duttawadi, Kalwa, Thane. Built up area is given as 84.58 sq.mtrs. The consideration agreed is Rs.33,50,000/- The date of Agreement is 12<sup>th</sup> of April 2012.
3. Para 7 of the Agreements states that the builder/developer shall give possession of the flat to purchaser within 18 months from the date of Agreement provided all amounts due by purchaser under the Agreement are paid to the builder/developer, however this shall be subject to availability of cement, steel, building materials in time and the grant of necessary electric conection, water connection and subject to other action beyond the control of builder/developer. Since the date of Agreement is 12<sup>th</sup> April, 2012 ordinarily the possession should have been delivered in December, 2013. The Complainant has annexed a receipt for Rs.5 lakhs which is in fact annexed to the Agreement. Three cheques totally amounting to Rs.5 lakhs have been mentioned under that receipt. The Complainant has annexed the Commencement Certificate issued by Thane Municipal Corporation.
4. The receipt dated 4.4.2012 is for Rs. 1 lakh, that dated 3<sup>rd</sup> April 2011 is for Rs.1 lakh and that dated 4<sup>th</sup> April 2012 for Rs.2 lakhs are also annexed to the complaint. There is a lot of confusion about the dates of the receipts. However, cheque nos. can be compared with those annexed to the Agreement. They are the same cheque nos. which find place in the Agreement. Again a receipt for Rs.14,36,000/- dtd. 25<sup>th</sup> July, 2012 is placed on record. Another receipt for Rs.7 lakhs dated 12<sup>th</sup> July, 2012 is also placed on record. Cheque numbers mentioned therein are 912955 and 247249. One complaint application from Shailendra Narayan Pawar to the Dist. Supdt. of Land Records, Thane dated 5<sup>th</sup> January 2007 and the Order of Taluka Inspector Land Records, Thane dated 29<sup>th</sup> June, 2007 is also placed on record. It appears that the respondent gave an

  
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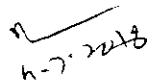
Undertaking while obtaining Commencement Certificate to abide by the decision that would be given in the matter.

5. The Respondent has filed Affidavit cum a written explanation. It appears that it is his sole proprietary business in the name and style "Unity Construction Co. " It is alleged that the actual area of the flat is not 1150 sq.ft. but is 910 sq.ft. The Agreement had mentioned the condition in case of delay due to technical difficulty or due to Municipal compliances . The brochure that was provided to the buyers clearly mentions that a construction of G + 12 floors will be carried out by developer. Many permissions were required to be obtained and they take a long time. If penalty is saddled on the Respondent, the entire construction work will come to a standstill. The complainant has paid Rs.26,36,000/- by cheque. On the other hand the complainant alleges that she paid Rs.26 lakhs in cash. In that case the total consideration allegedly paid exceeds the consideration that was agreed and it is doubtful. The Respondent also craves for a lenient view .
6. On the basis of rival contentions of the parties, following points arise for my determination. I have noted my findings against them for the reasons stated below :

<u>Points</u>	<u>Findings</u>
1. Has the Respondent delayed delivery of possession without justifiable reason ?	Yes
2. Is the Complainant entitled to the reliefs claimed ?	Yes
3. What Order ?	As per final order

#### REASONS

7. Point No. 1 & 2 : At the argument stage the Complainant has placed on record the Agreement in entirety. The Complainant has submitted that she booked a flat on the 4<sup>th</sup> floor. The Respondent was supposed to

  
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construct upto 7<sup>th</sup> storeys. The complainant has paid the entire consideration amount of 33,50,000/- to the Respondent out of which Rs.6,50,000/- were paid in cash. The son of the Respondent on the other hand submitted that due to the complaint that was preferred, construction of 11<sup>th</sup> and 12<sup>th</sup> floors is stopped. However, the Project is on the verge of completion. The Complainant has paid Rs.26,36,000/- and she is yet to pay Rs.7 lakhs. There is no proof about cash allegedly paid by the Complainant.

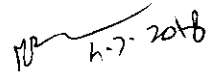
8. Only a feeble attempt has been made by the Respondent to justify delay in delivery of possession to the Complainant. Commencement Certificate was issued to the Respondent by the Municipal Corporation. One C.C. dated 15<sup>th</sup> November 2012 in favour of Arvind Narayan Pawar is placed on record. Another C.C. dated 9<sup>th</sup> November 2015 is also there on record received in favour of the Respondent. One copy of Notice dated 21<sup>st</sup> December, 2015 issued to the Complainant reads that the Respondent had received Rs.26,36,000/- and had not received Rs.4,64,000/-.
9. The Agreement is showing total consideration as Rs.33,50,000/- . Further expenses required to be borne by the purchaser are mentioned in para 12 of the Agreement. They come to around Rs.25,000/-. There is also no dispute about stamp duty and registration fee which is generally borne by the purchaser. Then I repeat that the Respondent has not delivered possession within the time frame that was agreed and no proper justification from him is coming forth. Consequently the complainant is entitled to claim interest from the Respondent. The receipts that are placed on record by the complainant acknowledge the payment of Rs.26,36,000/- It is the contention of the complainant that she had paid the balance of consideration in cash. In his Affidavit the Respondent states that such a payment is doubtful but does not state in clear words that no amount was received by him in cash. It is his contention that there is no proof about complainant paying any amount in cash. A builder receiving some amount in cash was a common thing. That used to be the unaccounted income of the builders. At the same time, the complainant is required to prove that she paid the amount to the Respondent in cash . In fact the complainant submitted that the Respondent and one Patil have issued a receipt for Rs.12,50,000/-. Why such evidence is not produced

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by her is not understood. Anyway the complainant is entitled to recover interest on the amount paid by her from the Respondent @ 10.05% p.a. since June 2014. I therefore answer point no. 1 and 2 in the affirmative and proceed to pass final order .

ORDER

1. The Respondent shall pay interest @ 10.05% per annum to the Complainant since 12th of June, 2014 on Rs.26,36,000/- which payment has been proved and on additional payments if proved by the Complainant till he delivers possession of the flat to the Complainant or communicates the Occupation Certificate received by him to her.
2. The Respondent shall pay costs and compensation of Rs.50,000/- to the Complainant .
3. The Respondent shall pay the above amounts within 30 days from the date of issue of this Order.

  
( M.V. Kulkarni)

Adjudicating Officer, MahaRERA  
Mumbai

Place : Mumbai

Date: 4<sup>th</sup> July, 2018.