

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

1. Complaint No. CC006000000171851

Mr. BhauKisanBhangare

..Complainants

Versus

M/s. RIEL Infrastructure Pvt Ltd

Mr. Haresh R Bhanushali

Mr. PremHareshBhanushali

Mr. Shudhir D Telavane

..Respondents

Along with

2. Complaint No. CC006000000171923

Mrs. Deepti Deepak Rastogi

M/s. Deepak VirendraRastogi

..Complainants

Versus

M/s. RIEL Infrastructure Pvt Ltd

Mr. Haresh R Bhanushali

Mr. PremHareshBhanushali

Mr. Shudhir D Telavane

..Respondents

Along with

3. Complaint No. CC006000000192578

KamleshDilipDube

AartiKamleshDube

..Complainants

Versus

M/s. RIEL Infrastructure Pvt Ltd

Mr. Haresh R Bhanushali

Mr. PremHareshBhanushali

Mr. Shudhir D Telavane

..Respondents

MahaRERA Project Registration No. P51700010153

Coram: Dr. Vijay Satbir Singh, Hon'ble Member - 1/MahaRERA

Adv. AmeyAthavale appeared for the complainants.

Mr. Sunny Jain appeared for the respondents.

ORDER

(05th March, 2021)

(Through Video Conferencing)

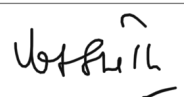
1. The complainants above named have filed these 3 complaints seeking directions from the MahaRERA to the respondent to pay the interest for the period of delay in handing over the possession of their flats under

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the provisions of Section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as RERA) with respect of booking of their flats bearing nos. B-101, B-404 & A-003 respectively in the respondent's registered project known as "Jolly Apartment Wing A and B" bearing MahaRERA registration No. P51700010153 at Shahapur, Dist-Thane.

2. These complaints were heard on various occasions and the same were finally heard on 17/02/2021 as per the standard operating procedure dated 12th June 2020 issued by MahaRERA for hearing of complaints through video conferencing. Both the parties were issued prior notification and were asked to file their respective submissions before MahaRERA. Accordingly, both the parties appeared through their respective advocates and made their submissions. During the hearing the respondent promoter was directed to upload its reply/written submissions on record of MahaRERA within a period of two weeks. However, till date the respondent promoter has not uploaded its reply on record of MahaRERA. It shows that the respondent promoter is not willing to contest these complaints. Hence the MahaRERA has perused the available record.
3. The complainants have filed the present complaints under section 18 of RERA seeking interest for delayed possession and have provided the following information in their complaints in support of their claim.

Names of the complainants	Flat Numbers, Total Consideration & amount paid towards flat cost	Date of registered AFS	Date of possession in AFS
BhauKisanBhangare	B-101 Rs. 13,08,125/- Rs.11,58,125/-	09-02-2015	31-12-2016
Deepti Deepak Rastogi Deepak V Rastogi	B-404 Rs. 10,92,500/- Rs. 10,50,000/-	04-12-2015	31-12-2016



Kamlesh Dilip Dube Aarti Kamlesh Dube	A-003 Rs. 10,92,750/- Rs. 10,12,000/-	07-12-2017	31-03-2018
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4. The complainants have stated that the respondent No. 1 is the promoter who has registered this project with MahaRERA. The respondent No. 2 and 3 are the directors of the respondent No.1 while the respondent 4 is the owner of the project land who has assigned the development rights to respondent No. 1 to develop the said land by executing the development agreement dated 28-12-2013. They further stated that the respondent No.1 by executing the agreement for sale with them has agreed to handover possession of their flats on dates specified herein above. However, it has failed and neglected to comply with its liability under the said agreements. Moreover, the respondent promoter has not informed the change in date of possession while registering this project with MahaRERA to 31-12-2018 and further till 31-12-2019. As on date the construction work as well as the amenities are incomplete on site. Further, in the brochure the respondent promoter has shown access road, but on site the access road is not there. Hence, the complainants are seeking immediate possession of their flats after completion of the project along with interest and compensation for the delayed possession under section 18 of the RERA.
5. The respondent No.1 promoter though appeared for the hearing through its advocate has not filed any reply on record as per the directions given by the MahaRERA on 17-1-2021. However, during the course of hearing, the advocate for the respondent No.1 has informed MahaRERA that it has obtained extension from MahaRERA till 30-06-2021 and it is bound by the said date. Moreover, the pending work would be completed within the next 2 to 3 months. Further the complainants need not pay the balance amount towards the consideration and the possession would be given to them.

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6. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, these complaints have been filed mainly seeking possession of the flat along with the interest for the delayed possession under section 18 of the RERA. Admittedly, there are registered agreements for sale entered into between the complainants and the respondent promoter dated 9-02-2015, 4-12-2015 and 31-03-2018. According to the said agreements the respondent promoter was liable to handover possession of the said flats to the complainants on the dates mentioned in the above mentioned table. Admittedly possession of the flats is not given to the complainants. It shows that the respondent promoter has violated the provision of section 18 of the RERA.
7. The respondent promoter though appeared for the hearing has not filed any reply on record stating the reasons of the delay. However, it has agreed to handover possession of the flats to these complainants on the revised completion date of the mentioned on MahaRERA website i.e. 30-06-2021. Even, it has also agreed to waive the balance consideration amount payable by the complainants. It shows that the respondent promoter has accepted the delay occurred in this project.
8. The Hon'ble High Court of Judicature at Bombay in its judgment dated 6th December, 2017 passed in W.P. No. 2737 of 2017 has clearly held that the payment of interest on the money invested by the home buyers is not a penalty, but a type of compensation for the delay. Since, the respondent promoter has violated the provisions of section 18 of the RERA, it is therefore liable to pay interest for the period of delay in accordance with the terms and conditions of agreement. The MahaRERA therefore can not accept the offer given by the respondent promoter for waiving the outstanding dues payable by the complainants in lieu of the interest payable by it under section 18 of the RERA.
9. In view of above facts and discussion, the respondent is directed to pay

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interest to the complainants from agreed dates of possessions mentioned in the agreements for every month till the actual date of possession on the actual amount paid by the complainants at the rate of Marginal Cost of fund based Lending Rate (MCLR) of SBI plus 2% as prescribed under the provisions of section 18 of the RERA and the Rules made thereunder.

10.The MahaRERA further directs that since the project is nearing completion, the payment of interest at this stage may jeopardise the completion of the project. Hence, the MahaRERA is of the view that the respondent is at liberty to set off the interest amount along with the outstanding dues payable by the complainants and the balance amount of interest if any shall be paid at the time of possession.

11.With regard to the claim of compensation raised by the complainants under section 18 of the RERA, the MahaRERA is of the view that since the complainants wants to continue in the project, they are not entitled to seek compensation under section 18 of the RERA. Hence, their claim towards compensation stands rejected.

12.With the above directions, all 3 complaints stand disposed of.

13.The certified copy of this order will be digitally signed by the concerned legal assistant of the MahaRERA. It is permitted to forward the parties a copy of this order by e-mail.



(Dr.Vijay Satbir Singh)
Member - 1/MahaRERA