

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

Complaint No. CC006000000057695

Manik Nilesh Joshi and Nilesh Madhav Joshi

..... Complainant

Versus

M/s. L&T Parel Project LLP

M/s. Omkar Realtors and Developers Pvt. Ltd.

M/s. Omkar Realtors and Developers

M/s. Darshan Realtors

..... Respondents

Project Registration No. P51900010178

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

Heard Adv. Nilesh Gala for the complainant.

Adv. Gauri Tyagi appeared for the respondent No. 1.

ORDER

(7th August, 2019)

1. The complainants have filed this complaint seeking directions from MahaRERA to the respondents to pay interest for the delayed possession under section-18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "the RERA Act, 2016) on the actual amount paid by them to the respondent in respect of booking of their flat No. 2404, on 24th floor, in Tower No. TO2 of the respondent's project, known as 'Crescent Bay' bearing MahaRERA Registration No. P51900010178 at Parel, Mumbai.
2. This matter was heard on several occasions when both the parties sought time to settle the matter amicably. However, in spite of several meetings,

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the parties could not arrive at ~~of~~ mutually agreeable terms. Hence, this matter is heard finally today. During the hearings, the complainants have argued that they had booked the said flat in the respondent's project by executing a registered agreement for sale on 21-04-2015 for a total consideration amount of Rs.4,00,98,360/-. According to the said agreement, the respondent was liable to handover possession of the said flat to the complainant on or before 30-04-2018. However, the respondent has failed to handover possession of the same to the complainants on agreed date of possession. The respondent has obtained occupancy certificate for the said building on 12-03-2019 and offered possession of the same to the complainants vide letter dated 22-03-2019. The complainants have also taken possession of the same without prejudice to their claim of interest during pendency of this complaint. Hence the complainants have filed this complaint seeking relief under section-18 of the RERA Act, 2016 for the delayed period of possession till the date of actual possession. The complainants further argued that though more than 51% allottees have booked their flats in this project, the respondent has not taken steps for formation of a society of the allottees.

3. The respondent filed his written submission on record and disputed the claim of the complainants. The respondent has stated that the present complaint is not maintainable as the complainants are not entitled to seek reliefs as prayed for since they have already taken possession of their flat on 23-04-2019. The respondent further argued that the complainants were offered fit-out possession in the month of January, 2019. However they have failed to take the same. Subsequently, they have obtained occupancy certificate on 12-03-2019 and offered possession. Further, clause No. 15 of the said agreement for sale entered into between the complainants and the respondents clearly states that the date of possession can be further

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extended on account of any event which is beyond the control of the respondents. The respondent further stated that though the complainants have made default in payments, no interest was charged for the same. It was argued that the water connection obtained by him for the project was inadequate and in the month of April, 2018, the respondent No. 2 applied for boosting of the water connection and therefore, it got NOC from MCGM for boosting water connection on 21-04-2018. The project got delayed due to the factors which were beyond its control. With regard to the formation of society, the respondent has stated that it has already taken steps for formation of the society as required under the provisions of RERA Act, 2016.

4. The MahaRERA has examined the submissions made by both the parties as well as the record. In the present case, prima facie, it appears that there is a registered agreement for sale executed between the complainant and the respondent, wherein the agreed date of possession was 30th April, 2018 including the grace period. But, the respondent has failed to handover possession of the same within the date. Subsequently, the respondent obtained occupancy certificate on 12-03-2019 and handed over possession of the said flat to the complainants on 23-04-2019 and same is accepted by the complainants 'under protest' without affecting their claim towards the interest during pendency of this complaint.
5. In the present case, the date of possession as per the agreement for sale was April, 2018 with grace period of 6 months. i.e 31-10-2018. The respondent argued that the project got delayed due to the factors which were beyond his control. Even if the said reason given by the respondent, is accepted, the MahaRERA feels that the same has happened due to the fault of the respondent. The complainants are not responsible for the same.

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6. Considering all the difficulties pointed out by the respondent, the MahaRERA feels it is reasonable to give 6 months grace period, which was also permissible under the provisions of the MOFA Act, to complete the project. Accordingly, in the agreement for sale, the date of possession can be given extension by a period of 6 months as grace period in terms of ~~clause~~ of the agreement for sale, to consider his contractual liability to compensate the allottees under section-18 of the RERA Act 2016.
7. The MahaRERA further feels that the payment of interest on the money invested by the home buyers is not the penalty, but, a type of compensation for delay as has been clarified by the Hon'ble High Court of Judicature at Bombay in above cited judgment dated 6th December 2017. The respondent is liable to pay interest for the remaining period of delay.
8. In view of above facts and discussion, the respondent is directed to pay interest to the complainant from 1st November, 2018 till the date of occupancy certificate i.e. 12-03-2019 at the rate of Marginal Cost Lending Rate (MCLR) plus 2% as prescribed under the provisions of Section-18 of the Real Estate (Regulation and Development) Act, 2016 and the Rules made there under on the actual amount paid by the complainants.
9. With regard to the issue raised by the complainants for formation of the society, the MahaRERA observed that since the respondent has already taken steps for formation of society, he shall complete the said process and form a society within a period of 90 days from the date of order. The claim of the complainant for compensation, the MahaRERA feels that as per the provision of section 18(1) of the RERA Act, 2016, since the complainant wants

to continue in the project, he can seek interest for the delayed possession and hence, his claim for compensation stands rejected.

10. With the above directives, the complaint stands disposed of.



(Dr. Vijay Satbir Singh)

Member – 1/MahaRERA

