

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

COMPLAINT No: CC006000000000089

Mr. Venkata Phanindra Kumar Valluri Complainant

Versus

M/s. Akshar Space Pvt Ltd Respondent
Along with

COMPLAINT No: CC006000000000977

Mr. Ramesh Singh Complainant

Versus

M/s. Akshar Space Pvt Ltd Respondent

Along with

COMPLAINT No: CC006000000000985

P.V.S.S Varma Complainant

Versus

M/s. Akshar Space Pvt Ltd Respondent

Along with

COMPLAINT No: CC006000000000733

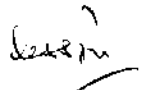
Mr. Sandip Sherkar Complainant

Versus

M/s. Akshar Space Pvt Ltd Respondent

Along with

COMPLAINT No: CC006000000000950



Mr. Harsh Kurra

..... Complainant

Versus

M/s. Akshar Space Pvt Ltd

..... Respondent

Along with
COMPLAINT No: CC006000000000987

Mr. SomajiKubal

..... Complainant

Versus

M/s. Akshar Space Pvt Ltd

..... Respondent

Along with
COMPLAINT No: CC006000000001014

Mr. LalitBhosale

..... Complainant

Versus

M/s. Akshar Space Pvt Ltd

..... Respondent

Along with
COMPLAINT No: CC006000000000870

Mr. Abhijit Jadhav

..... Complainant

Versus

M/s. Akshar Space Pvt Ltd

..... Respondent

Along with
COMPLAINT No: CC006000000001407

Mr. Harvinder Gambhir

..... Complainant

Versus

M/s. Akshar Space Pvt Ltd

..... Respondent

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6/10/20

Along with
COMPLAINT No: CC006000000012758

Mr. P Satyanarayan

..... Complainant

Versus

M/s. Akshar Space Pvt Ltd

..... Respondent

Along with
COMPLAINT No: CC006000000022978

Mr. Souvik Das

..... Complainant

Versus

M/s. Akshar Space Pvt Ltd

..... Respondent

Along with
COMPLAINT No: CC006000000001597

Mr. Rajkishor Rajak

..... Complainant

Versus

M/s. Mount Marry Builders

..... Respondent

Along with
COMPLAINT No: CC006000000012669

Mr. Manojkumar Lalbahadur Singh and Anita Singh

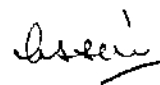
..... Complainant

Versus

M/s. Akshar Space Pvt Ltd

..... Respondent

Along with
COMPLAINT No: CC006000000001737



Richa Agrawal

..... Complainant

Versus

M/s Mount Mary Builders and M/s. Akshar Space Pvt Ltd

..... Respondents

MahaRERA Registration No. P51700003889

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

Adv. Jayram Chandnani appeared for the complainants.

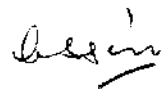
Adv. Bharat Agarwal a/w Adv Ashwini Ghag appeared for the respondent.

Adv. Sanjuna Sudhakaran appeared for respondent viz M/s. Mount Mary Builders.

Order

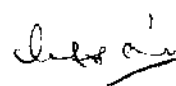
(12th March 2018)

1. The above complaints have been filed by 14 complainants, who are the allottees in the project registered with MahaRERA bearing No. P51700003889 known as "Green World" at Airoli, Dist. Thane. They have prayed for directions from this authority to the respondents under section 18 of the Maharashtra Real Estate (Regulation and Development) Act, 2016 to pay them interest for the delayed period of possession in respect of their flats in the said project.
2. The first 9 complaints bearing Nos. Complaint Nos. CC006000000000089, CC0060000000000977, CC0060000000000985, CC0060000000000733, CC0060000000000950, CC0060000000000987, CC0060000000001014, CC0060000000000870, and Complaint No. CC0060000000001407 were heard together on different dates and both the parties argued the matter through their advocates. Adv Jayram Chandnani appeared for all the complainants and Adv Bharat Agarwal a/w Adv Ashwini Ghag for the



respondent. The hearings were finally concluded on 27.02.2018. The parties were also allowed to file written submissions. In the meantime, five similar complaints of the same project were received which were clubbed with the previous nine complaints and were heard on 05.03.2018. However, the rival parties submitted that the arguments made by them earlier may be taken into consideration for these five complaints which were factually similar to the previous nine complaints.

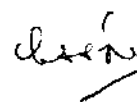
3. During hearing of the complaints, the complainants have stated that they had purchased their flats in the respondents project known as "Green World" in the year 2011. As per the registered agreements for sale the agreed date of possession was 31.12.2015. However, the respondents have failed to complete the project and hand over the possession so far. The complainants have, therefore, prayed for payment of interest as per the provisions of Sec. 18 of Real Estate (Regulation & Development) Act, 2016 and the Rules made there under. It was further argued by the complainants that the respondent had started the project without having necessary approvals in place. In particular, the environmental clearance was not taken before launching the project and the home buyers were kept in the dark. The respondent was, therefore, responsible for any delay on this account. They also produced the copies of various rulings given by the courts and the National Consumer Forum etc. to substantiate their contentions. The gist of the said rulings points out that the issue of environmental clearance has to be resolved before starting a large project having construction beyond 20,000 sq. m. It is unfair trade practice if the builders plan and construct the buildings without getting necessary approvals and don't give the factual information to the buyers. The complainants, therefore, argued that the respondents are solely responsible for the delay in the project and hence should be held liable to pay interest for delay under Section 18 of the RERA Act, 2016.



4. On the other hand, the respondent disputed the claim of the complainants and argued that the project got delayed because of the factors which were beyond his control. He further argued that the delay happened at the level of the State Environment Impact Assessment Authority (SEIAA) and Navi Mumbai Municipal Corporation (NMMC) for the issuance of Environmental Clearance and for that the respondent was not be held responsible. In spite of the fact that he filed an application for environment clearance in the year 2010, the environmental clearance was given in July, 2013. According to the respondent, this was the main reason for the delay of the project. The date of possession, therefore, can be extended in terms of clause Nos. 14, 18 and 19 of the registered agreement for the sale. In addition to this the respondent further argued that the project also got delayed for want of water supply and electricity supply by NMMC since a dispute was going on between MIDC and NMMC on the issue as to which agency would provide the new water pipe line for the said project. However, finally the NMMC provided the water connection in the month of November, 2017.
5. After hearing the rival arguments of both the parties and on perusal of the documents submitted them, it becomes clear that the project got delayed and the respondent has failed to hand over the possession of flats to the buyers. To understand the extent of the liability of the promoters, it is necessary to have an analysis of the reasons for delay as given in the following paragraphs.

Environmental Clearance :

6. It is an undisputed fact that the environmental clearance is necessary for the project which is having construction area of more than 20,000 sq. m. The project known as Green World was given Commencement Certificate by the Competent Authority, i.e. NMMC on 20th April 2010. However, this fact was made known to the home buyers when they signed the



agreement for sale with the respondents as is evident from clause 12 of the Agreement for Sale which read as under:

"12. The purchaser has taken inspection of aforesaid agreement including the development agreement, sanctioned plan and other relevant documents and the purchaser has visited the site of construction and made himself familiar with the terms and conditions imposed by the NMMC/other relevant authorities. The purchaser buying himself/herself/themselves to adhere with the terms and conditions of the above documents."

In condition No.2 of the commencement certificate, it has been made obligatory for the respondents to provide environmental clearance before the commencement of construction work on site. Since the complainants signed the agreements for sale in 2011 and the commencement certificate was issued in 2010, the requirement of environmental clearance before starting the work was well known to the home buyers.

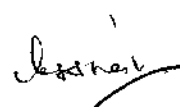
7. The documents produced by the respondents also show that an application was submitted before the Secretary, SEIAA, Maharashtra Environment Department on 05.05.2010 for issuance of NOC for environmental clearance for the proposed project 'Green World'. However, the authority SEIAA discussed the said issue in the meeting held on 11th March 2011, i.e. after 10 months from the date of filing application by the respondents. In the said meeting the authority decided to consider the application in the next meeting of the authority on submission of CZMP map with remarks, etc.
8. Subsequently, the respondents approached City & Industrial Development Corporation of Maharashtra Ltd. (CIDCO) on 05th April, 2011 seeking CRZ-NOC as required by SEIAA. The CIDCO vide their letter dated 11th July 2011 replied that the survey nos. of the project were not available in their CRZ Map as they had not prepared the layout of that area.
9. Thereafter, the respondents moved an application before NMMC on 17th August, 2011 to issue NOC for CRZ. After sending reminders vide letters

dated 3.2.2012, 10.12.2012 & 19th March 2013, the NMMC clarified vide letter dated 11th June 2013 that the concerned area did not fall in the CRZ-II Zone.

10. The Authority also felt it necessary to summon the officers of NMMC to verify the delay in their office. They appeared before this authority on 05.01.18 and informed that the delay had happened at the level of NMMC. Subsequently, they submitted a letter dated 11.1.2018 on record of this authority duly signed by the Assistant Director of Town Planning, NMMC in which it has been clarified that Western India Pvt. Ltd., the owners of the plot had submitted application for CRZ-II NOC on 17th August 2011. However, the NMMC gave required documents on 11.06.2013, i. e. after a gap of around one year and eight months.
11. On the basis of the NOC given by the NMMC and the other documents, the SEIAA gave environmental clearance on 30th July 2013 for the said project. Meanwhile, the respondent continued the construction work till 20,000 sq m., but he had to stop it in May 2012 due to delay in the environmental clearance. He could start it again after July 2013 when he got the clearance by the SEIAA and commencement certificate by the planning authority subsequently.

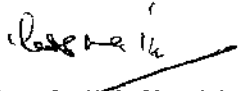
Water connection and electricity connections-

12. Another factor mentioned by the respondent for the delay in the project is that he failed to get water and electricity connections for construction purpose and this was due to the dispute between the MIDC and NMMC. The said ground can not be accepted as justified ground for delay, since it was the duty of the respondent to take appropriate steps before he started the construction work on site. These constraints were also well known to him when he signed the agreement with the home buyers carrying the date of possession.



Conclusions

13. It is clear from the above analysis that the project got delayed partly because of the delay at the level of NMMC and SEIAA to give environmental clearance for the said project. In the registered agreements for sale executed between the complainants and the respondents, it has been clarified in Clause Nos. 14, 18 & 19 that the date of possession would be extended further if the project gets delayed due to force majeure and reasons beyond control of the promoter such as, delay caused on the part of govt., semi-govt., NMMC, Revenue Authority or any other concerned Authority/local bodies in granting necessary permissions/sanctions, NOC that shall be required by the promoters from time to time. Considering the disruption in construction work for a period of more than a year and other constraints, it is reasonable to extend the date of possession by a year and half to calculate the promoter's contractual liability under section-18 of RERA Act, 2016. The promoter/respondent is, therefore, liable to pay interest to the allottees from July 1, 2017.
14. After the commencement of provisions of Real Estate (Regulation and Development) Act, 2016, which came into effect from 1st May 2017, the home buyers were entitled to claim interest under section 18 for the delay till the possession of the flat is handed over.
15. In view of above facts of this case, the respondent is directed to pay interest to the complainant from 1st July 2017 till the actual date of possession 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.
16. Accordingly, the complaints stand disposed of.


(Dr. Vijay Satbir Singh)
Member 1, MahaRERA