

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

Complaint No. CC006000000110908

Mrs. Sarika Bharat More and Bharat Rajaram More

...Complainant/s

Vs

M/s. Sanvo Resorts Pvt Ltd

...Respondent/s

MahaRERA Project Registration No. **P52000000662**

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

The complainants appeared in person.

Ld. Adv. Prasanna Tare appeared for the respondent.

ORDER

(18th May, 2021)

(Through Video Conferencing)

1. The complainants have filed this complaint seeking directions from MahaRERA to the respondent to handover possession of their flat along with interest/compensation for the delayed possession under section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'RERA') with respect to the booking of a flat No. 1504, on 15th floors, in the respondent's project known as "**Marathon Nexzone Atlas 1**" bearing MahaRERA Registration No. **P52000000662** situated at Panvel, Dist-Raigarh.
2. This complaint was heard on several occasions in presence of both the parties and same was heard on 03-12-2020 as per the Standard Operating Procedure dated 12/06/2020 issued by MahaRERA for hearing of complaints through video conferencing.

The parties were issued prior intimation for the hearing and were also informed to file their written submission if any. Accordingly, the parties appeared and made their respective submissions. During the course of hearing both the parties showed their willingness to settle the matter amicably. Hence on requested of both the parties this complaint was referred to MahaRERA Conciliation Forum for further appropriate action. However the parties could not arrived at any mutually agreeable terms before the Conciliation Forum. Hence this complaint was again referred to MahaRERA on 25-04-2021 by the Conciliation Forum with remarks "settlement failed". Hence this complaint was again scheduled for hearing today , when both the parties appeared and made their respective submissions. The MahaRERA heard the arguments advanced by both the parties and also perused the available record.

3. It is the case of the complainant that they have purchased the said flat for a total consideration amount of Rs.59,71,884/-. The respondent has issued allotment letter for the said booking on 23-02-2014. Thereafter, the registered agreement for sale was executed on 21-03- 2016 and till date they have paid an amount of Rs.47,61,344/- to the respondent the balance payment being linked to progress of the construction. According to the said agreement, the respondent was liable to handover possession of the said flat to them on or before 31-12-2017. The complainants further stated that the respondent vide letter dated 12-07-2018 intimated them about the revised possession date and stated the reasons which led to the alleged delay in completion of the project to which they replied vide letter dated 17-01-2019 stating that the justification for the delay in handover of possession of the flat was not acceptable to them and called upon the respondent to handover the possession

of the said flat within a period of 10 days failing which they would seek appropriate compensation etc. The complainants stated that the possession of the above to said flat was to be delivered on or before December 2017 but to their severe shock they realised that as per the disclosures made by the respondent on the MahaRERA website the revised possession date is of December 2021 which has been done by the respondent without any just and sufficient cause. The complainants further stated that the promised amenities as per the said agreement for sale are also missing. A numbers of allottees have withdrawn from the same project and various orders have been passed by MahaRERA & Adjudicating Officer, MahaRERA, Mumbai, allowing interest on delayed possession of their flats for the same project. The complainants therefore stated that in terms of section 18(1) of RERA, the respondent is liable to pay interest and compensation for every month of delay till handing over of the possession of the said flat to the complainants and compensation for mental harassment and agony.

4. The respondent on the other hand has refuted the claim of the complainants by filing written arguments on record on 7-10-2020 stating that construction of Atlas, phase I is completed and Part occupancy certificate dated 9th June 2020 is received from the office of CIDCO-NAINA (City and Industrial Development Corporation The Navi Mumbai Airport Influence Notified Area). (Two Basements + Ground Floor (Stilt Parking) (Part) +1 Podium (Pt) + 20 upper Resi. Floors. It has stated that owing to various unforeseeable events, beyond its control, there were certain delays in receiving requisite and necessary approvals from various regulatory bodies for completing the said project. It has stated that inspite of the clear timelines mandated to grant the construction

permissions including all required approvals (pre-construction, during construction, and post construction) the planning authority has taken nearly 3.5 years long time to approval for this inordinate delay and the respondent is not liable to pay any compensation as claimed by the complainants and on account of the inordinate delay in procuring the regulatory approvals from various authorities, the respondent was constrained to revise the date of handing over the possession of the subject flat and in the circumstances the complainants are not entitled to any reliefs, and that the present complaint is liable to be dismissed with exemplary costs.

5. The respondent has further filed its affidavit in reply on record stating that the promoter shall hand over quiet, vacant and peaceful possession of the said flat after obtaining the occupation certificate provided that all amounts due and payable are first duly paid to it. It has stated that according to the said agreement for sale, it shall be entitled to reasonable extension of time being a period of 6 months and above the said due date thereby aggregating to 9 months provided the developer shall also be entitled to further reasonable extension of time if completion of the said building is delayed on account of the clauses mentioned therein namely, non availability of steel, cement, other building material, water or electric supply, war, civil commotion or any terrorist attack., any notice, order, rule, notification of the government and/or public or local or competent authority and/or any change in law which prevents him to fulfil its obligations , strike, lock out bandh., Act of god which includes earthquake, cyclone, tsunami, flooding any other nature disaster., any event beyond the reasonable control of the developer, any delay on account of injunction and/or prohibition order of court., any delay in getting the occupation from

the concerned authorities. The respondent stated that the complainants are well aware of the said facts and the same was agreed by them vide terms of the said agreement. It has given reasons for delay i.e. delays in grant of approvals by the planning authority – 1) commencement certificate by the District Collector, Raigad, 2) grant of permissions by CIDCO-NAINA, 3) grant of highway access permission of the National Highways Authority of India (NHAI), Panvel, grant of pipeline laying permission, grant of water supply permission, Civil Aviation NOC and on account of all this, there was delay cause in completing the project and hence the complainants are entitled to any relief.

6. The complainants on 8-10-2020 have uploaded an order of this Bench in complaint no. CC006000000056586 held on 18-03-2019 in the matter of Mrs. Neha Samir Bagwe & Ors vs. M/s Sanvo Resorts Pvt Ltd in which it was held that the respondent's arguments that delay in getting permission of NHAI for access and permissions and water Supply also do not justify the delay. In fact, he was aware of these constraints when he signed the agreement. Moreover, the construction work didn't stop due to delay in getting these permissions. The Civil Aviation authority had already given permission to construct upto 27th floor which included complainant's flat. The complainants are therefore entitled to interest under the section 18 of the RERA and the respondent be directed to pay interest to them. The complainants have further uploaded order of Hon'ble Member & Adjudicating Officer in complaint no. CCO060000000054694 in the matter of Rahul Harish Ghole & anr vs. Sanvo Resorts Private Limited holding that the respondents have taken the plea that the Highway Authorities permitted to have an access from the Panvel Highway in 2016, though, they applied

for it in 2008. They have applied for laying pipeline permission in 2008 but it appears that the respondents did not clarify over proposed plans of Highway widening. Similarly, the permission for MJP water tapping was sought on 14.11.2016. The same is the case regarding the height rise permission. So these reasons of delay do not appear to be genuine. The complainants are entitled to get their amount with interest at 10.5% per annum and they are entitled to get Rs. 20,000/- towards the cost of the complaint also. The complainant on 3-05-2021 have also uploaded an order passed by Shri Madhav Kulkarni. Ld. Adjudicating Officer, MahaRERA in complaint no. CC006000000079307 Mrs. Kavita Praveen Gogia Vs. Sanvo Resorts Private Limited in which it was held respondent to pay interest to the complainants and other costs.

7. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, the complaint was filed seeking interest and compensation for the delayed possession under section 18 of the RERA. Admittedly, there is a registered agreement for sale entered into between the complainant and the respondent promoter dated 21-03-2016. According to the said agreement, the respondent promoter was liable to handover possession of the said flat to the complainant on or before 31-12-2017 with grace period of 9 months i.e. by 30-09-2018 and admittedly possession of the flat is not given to the complainants. The respondent promoter has contended that the said delay occurred mainly due to the delay on the part of the various authorities the project got delayed for 3.5 years such as 1) commencement certificate by the District Collector, Raigad, 2) grant of permissions by CIDCO-NAINA, 3) grant of highway access permission of the National Highways Authority of India (NHAI),

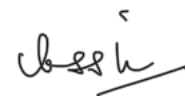
Panvel, grant of pipeline laying permission, grant of water supply permission, Civil Aviation NOC. As per the agreement for sale, it can seek extension in the date of possession mentioned in the agreement for sale executed and duly signed by the complainants. In this regard, the MahaRERA is of the view that even if the contention of the respondent is accepted, nothing has been brought on record by the respondent to show that it has ever communicated the said reasons of the delay to the complainants. If the project was getting delayed due to the said delayed permissions, then the respondent should have informed the same to the complainant and should have revised the date of possession in the agreement at that relevant time or should have offered refund of the amount to the complainants, if the said delay was not acceptable to them. The record further shows that the respondent informed about the delay in handing over possession of the said flat to the complainants on 12-07-2018. However, the complainants relied the said letter and shown their disagreement for the revised date of possession. Hence, now it cannot take advantage of the said reasons of delay.

8. The MahaRERA is also of the view that as a promoter, having sound knowledge in the real estate sector, the respondent was fully aware of the market risks when it had launched the project and signed the agreement with the home buyers. Moreover, if the project was getting delayed due to the new policy and delayed permissions by the concerned authorities, the respondent should have informed the said facts to the complainants to make them aware of the said constraints in the project before the date of possession in the agreement for sale gets over. However, no such steps seem to have been taken by the respondent. Further, the MahaRERA feels that being a promoter of the project, it was the duty of the respondent

promoter to obtain the necessary permissions from the competent authority in time. The allottees have nothing to do with the same. Moreover ,each case has its own merits and therefore the respondent promoter can not rely upon any judgement given by the Appellate Tribunal in this project. However, the MahaRERA clarify that whatever orders which would be passed by the apex courts would be made applicable to this case as and when decided finally.

9. It is clear from the above discussion that the reasons cited by the respondent for the delay in completion of the project do not give any plausible explanation. Moreover, the payment of interest on the money invested by the home buyers is not a penalty, but a type of compensation for the delay as has been clarified by the Hon'ble High Court of Judicature at Bombay in its judgment dated 6th December, 2017 passed in W.P. No. 2737 of 2017. However, after commencement of RERA the promoter is liable to pay interest for the delayed possession under section 18 of the RERA.

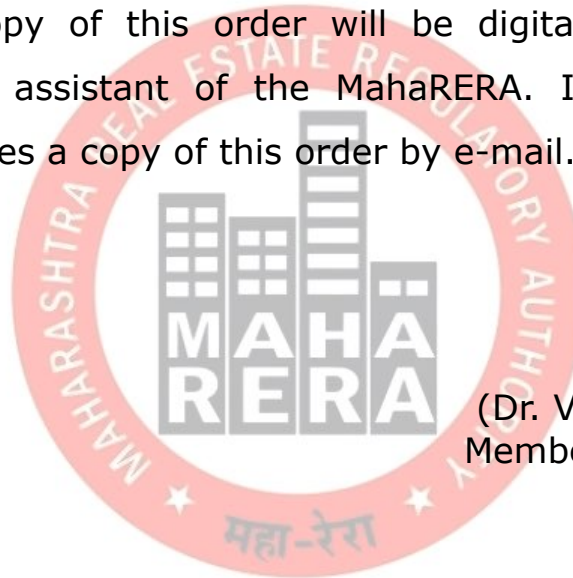
10. In view of above facts and discussion, the respondent is directed to pay interest to the complainant from 1st October, 2018 for every month till the date of part occupancy certificate is obtained for this project on the actual amount paid by the complainants at the rate of Marginal Cost of funds based Lending Rate (MCLR) of SBI 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.



11. With regard to the payment of interest to the complainants, the MahaRERA further directs that the respondent promoter is entitled to claim the benefit of "**moratorium period**" as mentioned in the Notifications /Orders Nos. 13 and 14 dated 2nd April, 2020 and 18th May, 2020 issued by the MahaRERA and the Notification/Order which may be issued in this regard from time to time.

12. With the above directions, both the 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