

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

**Complaint No. CC006000000078459**

Sonali Vasudeo Tipre

..... Complainant

**Versus**

Sanvo Resorts Private Limited

... Respondent

Project Registration No. **P52000000573**

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

Complainant present in person.

Adv. Prasanna Tare a/w Adv. Akshada Shetty appeared for the respondent.

**ORDER**

(3<sup>rd</sup> October, 2019)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to handover possession of the flat along with occupancy certificate and also to pay interest for the delayed possession as provided under section-18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "the RERA") in respect of booking of a flat No. 803, in building No. S-1 in wing -C of Altis building in the respondent's project known as "**Marathon Nexzone**" bearing MahaRERA registration No. P52000000573 at Parvel, Navi Mumbai.
2. This matter was heard on several occasions and the same was heard finally on 19-08-2018 when both the parties appeared and made their submissions. Further, though the parties sought time to settle the matter amicably, they could not arrive at any mutually agreeable terms. Hence the matter is decided on merits.
3. It is a case of the complainant that she had booked the said flat for a total consideration amount of Rs. 44,72,520/-. The registered agreement for sale was executed between the complainant and the respondent on 24-03-2014. According to the said agreement, the respondent was

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liable to handover possession of the said flat to the complainant on or before December, 2016. The complainant has paid an amount of Rs.41,59,347/- to the respondent till now. However, the respondent has failed and neglected to handover possession of the said flat to the complainant. Hence, the present complaint has been filed.

4. The respondent filed their written submissions on record and disputed the claim of the complainant and stated that there is no intentional delay on its part. The project got delayed due to the reasons which were beyond its control. The respondent further stated that the project under reference is complete in all respects and it has obtained part occupancy certificate upto 24<sup>th</sup> floor on 2-05-2019 from CIDCO- NAINA being the competent authority. The respondent further stated that the complainant is a defaulter in making payment as per the payment schedule mentioned in the agreement for sale and has not paid an amount of Rs. 10,99,551/- towards the cost of the said flat and other charges and thereby breached the terms and conditions of the agreement for sale as well as the provisions of RERA. Hence the present complaint is not maintainable under section-8 of the RERA.
5. In addition to this, the respondent further stated that under section-18 of the RERA, the promoter is liable to pay interest/compensation, if the promoter fails to complete the flat or offer possession in terms of the agreement for sale. Even as per section-19(6) of the RERA, the complainant has failed and neglected to pay the consideration amount as per the terms and conditions of the agreement. Hence the complainant has no right to file the present complaint.
6. The respondent further stated that as per clause No. 15 of the agreement, the respondent was liable to handover possession on or before December, 2016, provided that the amounts due and payable by all the allottee is duly paid. However, in the present case the complainant is defaulter in payment. Hence, she cannot file this



complaint. The respondent further stated that as per the said clause, the respondent was entitled to get reasonable extension of time of 6 months and above the said due date thereby aggregating to 9 months. Moreover the revised proposed completion date mentioned in MahaRERA web site is 31-12-2019, which is yet to come.

7. With regard to the change in building plans, the respondent stated that the complainant at the time of booking itself was aware that the respondent is proposing to construct 33 or more upper floors above 27<sup>th</sup> floor under the said rental scheme sanctioned by the competent authority. Hence, now she cannot make grievances about the same.
8. Regarding the delay, the respondent has stated that it applied for CFO, NOC in March, 2018 and got the same on 4-09-2018 i.e. after 162 days and applied for occupancy certificate on 11-09-2018, which they received on 2-05-2019 i.e. after lapse of 325 days. The respondent, therefore, stated that there was a delay of 565 days for granting permissions by various authorities because of which the respondent should not be held responsible. The respondent, therefore, requested for dismissal of this complaint.
9. The MahaRERA has examined the arguments advanced by both the parties as well as their written submissions. In the present case, admittedly, there is delay in handing over possession of the flat to the complainant. The complainant is seeking interest from 1-1-2017, since the date of possession mentioned in the agreement for sale is December, 2016. However, on perusal of the clause No. 15 of the said agreement, there is grace period aggregating 9 months. Hence the agreed date of possession in the agreement for sale is 30-09-2017 (including the 9 months grace period). Hence the complainant can seek interest for the delayed possession from 1-10-2017. However, the respondent has argued that there is no intentional delay; however, the project got delayed due to the competent authority and other

authorities in granting permissions such as CFO, NOC, occupancy certificate etc., However, the respondent has not made out any case to show what steps it had taken to expedite the permissions from the concerned authorities at the relevant time, being promoter of the said project, the respondent was liable to get all requisite permissions from the concerned authorities including the competent authority within the given time line. Hence for the delay, the complainant can not be held responsible. She has put her hard earned money in booking of the said flat and waiting for the possession since then. However, even if the MahaRERA considers the said reasons cited by the respondent being mitigating circumstances, the respondent can seek extension of six months only of the date of possession in the agreement for sale executed between both the complainant and the respondent, which was also permissible under the MOFA, prevailing at that time.

10. The provision of section 18(1) of the RERA, provides that on promoters' failure to give possession on the date specified in the agreement for sale, if the allottee is willing to continue in the project, the allottee is entitled to seek interest at prescribed rate under section-18 (1) of the RERA on the actual amount paid by the allottee for every month of delay till the actual date of possession. In the present case, admittedly, the respondent has failed to handover possession of the said flat to the complainant on the agreed date. Hence the MahaRERA is of the view that the complainant is entitled to get interest for the delayed possession under section-18 of the RERA.

11. Further the MahaRERA also 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 the judgment dated 6<sup>th</sup> December, 2017 passed in W.P.No. 2737 of 2017. The respondent is liable to pay interest for the period of delay in accordance with the terms and conditions of




agreement. The MahaRERA further clarify that since the part occupancy certificate has been obtained for the said project on 2-05-2019, the claim of the complainant for interest beyond that period, can not be considered by MahaRERA.

12. In view of above facts and discussion, the respondent is directed to pay interest to the complainant on the amount paid by the complainant to the respondents from 1<sup>st</sup> April, 2018 (31-12-2016 date of possession as per the agreement for sale + 9 months grace period as per clause No. 15 of the agreement for sale + 6 months' grace/extension period) till the date of part occupancy certificate i.e. 2-05-2019 at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2% as prescribed under the provisions of Section-18 of the RERA.

13. The MahaRERA has further observed that there is registered agreement for sale executed between the parties and the same has binding effect on both the complainant allottee as well as the respondent/promoter. All the terms and conditions including that of payment is to be made as per the payment schedule mentioned in the agreement. For any breach in payment, both are entitled to claim same interest as provided under section-18 of the RERA.

14. With these directions, the complaint stands disposed of.

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