

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

**Complaint No. CC00600000078195**

Rajeshwar Bhaskar Smarta & Another  
**Versus**

..... Complainants

Sanvo Resorts Private Limited  
Project Registration No. P52000000573

..... Respondent

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

Complainant appeared in person.

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

**ORDER**

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

1. The complainants have 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. 804, 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 Panvel, 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 the case of the complainants that they had booked the said flat for a total consideration amount of Rs. 44,72,520/-. The registered agreement for sale was executed between the complainants and the respondent on 12-10-2013. According to the said agreement, the respondent was liable to handover possession of the said flat to the

*Shetye*

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

4. The respondent filed its written submissions on record and disputed the claim of the complainants and stated that there is no intentional delay on their part. However, 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 competent authority. The respondent further stated that the complainants are defaulters in making payment as per the payment schedule indicated in the agreement for sale and have not paid an amount of Rs. 10,99,551/- towards the cost of the said flat and other charges; thereby breaching 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-18 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 it fails to complete the construction or offer possession in terms of the agreement for sale. Even as per section-19(6) of the RERA, the complainants have failed and neglected to pay the consideration amount as per the schedule. Hence, the complainants have 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 allottees are duly paid. However, in the present case, the complainants are defaulters in payment. Hence, they 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



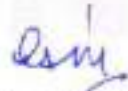
and above from the due date, thereby aggregating to 9 months. Moreover, the revised proposed completion date mentioned in MahaRERA website is 31-12-2019, which is yet to come.

7. With regard to the change in building plans, the respondent stated that the complainants, at the time of booking itself, were 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 they 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 then 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 in total around 565 days delay 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 record. In the present case, admittedly, there is delay in handing over possession of the flat to the complainants. The complainants are seeking interest from 1-1-2017, since the date of possession mentioned in the agreement for sale is December, 2016. However, on perusal of clause No. 15 of the said agreement, there is a grace period aggregating 9 months. Hence, the agreed date of possession in the agreement for sale is 30-09-2017 (including 9 months grace period). The complainant can seek interest for the delayed possession from 1-10-2017 only. However, the respondent has argued that there is no intentional delay on its part. The project got delayed due to the competent authority and other concerned departments in granting permissions such as CFO, NOC, occupancy certificate etc.. But, the respondent has not made out any case to show the steps it had taken to expedite the permissions from the concerned authorities at the relevant time, though being promoter of the said project, the

respondent was liable to get all requisite permissions from the concerned authorities including the competent authority within time line. Hence, for the delay, the complainants can not be held responsible, since they have put their 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 6 months in 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 the time, when the agreement for sale registered.

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, he is entitled to seek interest at prescribed rate under section 18 (1) of the RERA and the rules and regulations made there under on the actual amount paid by the allottee for every month of delay till the date of possession. In the present case, admittedly, the respondent has failed to handover possession of the said flat to the complainants on the agreed date. Hence the MahaRERA is of the view that the complainants are 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 complainants for interest beyond that period, cannot be considered by MahaRERA.

12. In view of above facts and discussion, the respondent is directed to pay interest to the complainant on amount paid by the complainants to the respondent from 1<sup>st</sup> April, 2018 (31-12-2016 date of possession as per the agreement for sale + 9 months grace period/extension as per clause No. 15 of the agreement for sale + 6 months grace 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 allottees 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-8 of the RERA.
14. With these direction, the complaint stands disposed of.

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