

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,

MUMBAI

COMPLAINT No: CC006000000182103

Shri. Hiranman Valkya Chimane
Versus

.... Complainant

M/s. Sanvo Resorts Private Ltd

.... Respondent

MahaRERA Registration No - P52000000669

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

Adv. Rekha Howale appeared for the complainant.

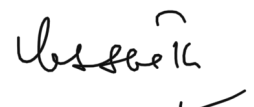
Adv. Prasanna Tare appeared for the respondent

ORDER

(19th January, 2021)

(Through Video Conferencing)

1. The complainant has filed this complaint seeking directions from the MahaRERA, to the respondent to handover possession along with interest for the delayed possession under the provision of section-18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "the RERA") in respect of booking of a flat bearing no. 2708 admeasuring 63.79 sq. mtrs. in the respondent's project known as "Marathon Nexzone Aura-2" bearing MahaRERA registration No. P52000000669 at Panvel, New Mumbai.
2. This complaint was heard on 9-11-2020 as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions, if any. Accordingly, the respondent appeared through its advocate, however, none appeared for the complainant. Hence on the said date of hearing, the MahaRERA heard the arguments of the respondent and the case was closed for order.



However, in compliance of principles of natural justice, the matter was again scheduled for hearing today, when both the parties appeared through their respective advocates and made their respective submissions. The MahaRERA heard the arguments of both the parties and also perused the record.

3. It is the case of the complainant that vide registered agreement for sale dated 21-12-2016, he purchased the said flat in the respondent's project for a total consideration of Rs.73,73,955/-. Till date, he has paid an amount of Rs 61,64,192/-to the respondent, however, the respondent has not handed over possession of the said flat to him. Hence the complainant prays to this Hon'ble Authority that the respondent be restrained and refrained by an interim order from creating any third party interest, rights in the disputed property and to pay 24% interest on the amount of Rs. 61,64,192/- until possession of the flat.

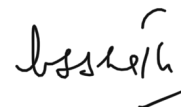
4. The respondent on the other hand refuted the claim of the complainant and filed affidavit in reply on 9-11-2020 denying the contents of the complaint. The respondent is constructing the building 'Aura' in two phases Aura I and Aura II in course of development of a larger layout of land situated at Village Kolkhe, Taluka Panvel in a phase-wise manner in a Rental Housing Scheme. The complainant booked the said flat for consideration amount of Rs. 7373,955/- plus other charges totalling to Rs. 85,82,677/- and an agreement for sale was executed on 21-12-2016. By the present complaint, the complainant has sought possession of the said flat along with interest. The agreement for sale itself provides for extension of time on account of notice or order from Government or local body which prevents the respondent from fulfilling its obligations and on account of events beyond the control of the respondent. Moreover there is no time limit to complete the development which

may take longer than contemplated therein. Further the purchaser has agreed to the amendments, revisions or modifications of the sanctioned plan. There was delay due to the sanctions and approvals from various authorities from 10th January 2013 till 9th June, 2020 viz. CIDCO-NAINA for amendment of plans & grant of part occupancy certificate, for commencement certificate from District Collector, Raigad, NOC from Fire Officer, grant of highway access permission from NHA (Panvel), grant of pipeline laying permission, water supply from MJP, Civil Aviation NOC, delay in construction permits and required approvals from the Planning Authority. The RCC structure of building 'Aura' is completed, overhead tank and lift machine room was completed and lift was functional for both Aura I and Aura II, tiling upto 25th floor, staircase and lobby work for the whole building is completed and part occupancy certificate is obtained from Planning Authority till 19th floor and handing over flats upto 19th floor is in progress. The respondent has given specific reasons to the complainant for the delay and hence deny that the complainant is entitled for any interest. Considerable amount of time was spent in obtaining requisite approvals and sanctions from the various authorities, the present circumstances clearly warrant an extension of time in delivering possession to the complainant which were beyond the control of the respondent and as per provisions of clause 15 of the agreement for sale. In the circumstances the complainant is not entitled for any relief and the complaint is liable to be dismissed.

5. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, the complaint is filed seeking interest 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 21-12-2016. According to the clause No. 15 of the said agreement the respondent promoter was liable to handover possession of the said flat

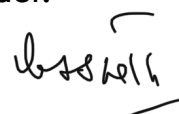
to the complainant on or before 31-12-2017 with grace period of 9 months i.e 30-09-2018. Admittedly possession of the flat is not given to the complainant. The respondent promoter has contended that the said delay occurred mainly due to notice or order issued by the Government or local body which prevented the respondent from fulfilling its obligations and on account of events beyond the control of the respondent.

6. With regard to the above issues as contended by the respondent in response to the complaint, the MahaRERA feels that the reasons cited by the respondent do not give credible explanation. As a promoter, having sound knowledge in the real estate sector, the respondent was fully aware of the market risks when he launched the project and signed the agreement with the home buyers. Moreover, if the concerned authority was delaying the permissions, in that event it could have approached the competent forums including the court of law for expediting the required permissions for completion of this project. However, no such steps seem to have been taken by the respondent.
7. Further, the MahaRERA has noticed that in the agreement for sale the parties have agreed to extend the date of possession for further 9 months, which is mentioned as a grace period. Assuming that the reasons cited by the respondent for the alleged delay have been accepted, the respondent is entitled to seek such 9 months extension from 31-12-2017 i.e. 30-09-2018. However, on the said extended date of possession also, the respondent has failed and neglected to handover possession of the flat to the complainant.
8. In addition to this, the MahaRERA is also of the view that being a promoter of the project, it was the duty of the respondent to obtain



the necessary permissions from the competent authority. The allottee has nothing to do with the same.

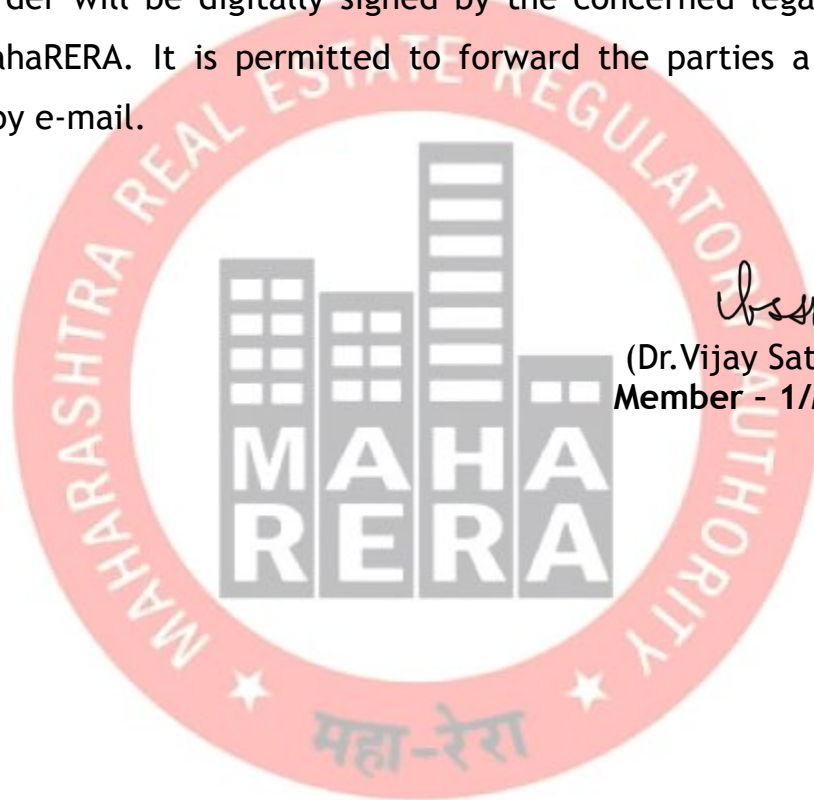
9. Further, if the project was getting delayed due to the aforesaid reasons cited by the respondent, then the respondent should have informed the same to the complainant and should have revised the date of possession in the agreement at that relevant time or could have given the option of refund to the complainant as specifically mentioned in clause No. 15 of the said agreement for sale dated 21-12-2016 executed between the parties. From the record, it prima facie appears that no such steps have been taken by the respondent. Hence now it cannot take advantage of the said reasons of delay. Hence the MahaRERA is of the view that the respondent has violated the provision of section 18 of the RERA.
10. It is therefore clear from the above discussion that the complainant is entitled to reliefs for delay under RERA. 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. The respondent, after commencement of RERA, is liable to pay interest for the period of delay in accordance with the provisions of section 18 of the RERA.
11. In view of aforesaid facts and discussion, the respondent is directed to pay interest to the complainant from 1st October, 2018 for every month till the actual date of possession on the actual amount paid by the complainant towards the cost of the said flat at the rate of Marginal Cost 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.




12.The claim of the complainant to grant interest at the rate of 24% p.a stands rejected, since the said claim is not permissible under the provision of section 18 of the RERA and the relevant Rules and Regulations made there under.

13.With the above directions, the complaint stands disposed of.

14.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