

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

Complaint No. CC006000000100379

Mrs. Apoorva Patni & Anr ..Complainants
Versus
M/s. M/s Reddy Builders & Anr ..Respondents

MahaRERA Project Registration No. P51800006729

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

Adv. Rishikesh Soni a/w Adv. Ayush Shah appeared for the complainants.
Mr. Kamal Bhageria appeared for the respondents.

ORDER

(11thSeptember, 2020)
(Through Video Conferencing)

1. The complainants have filed this complaint seeking directions from MahaRERA to the respondents to execute a registered agreement for sale under section 13 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA') and also to pay interest for the delayed possession under section 18 of the RERA in respect of booking of seven flats in the respondents' project known as "**34 Park Estate**" bearing MahaRERA registration No. **P51800006729** situated at Goregaon West, Mumbai.
2. This complaint was heard finally on 8.9.2020 as per the SOP dt. 12.6.2020 issued by the MahaRERA for hearing of the complaints through video conferencing. Both the parties have been issued prior intimation of the hearing and they have also been informed to submit their written submissions if any. Accordingly, the parties appeared for the said hearing and they have also filed their respective written submissions. After hearing the arguments of the parties, the complainants were directed to file their rejoinder if any within a period of two days on record of MahaRERA and the case was closed for order. Accordingly the complainants have filed their rejoinder on record of MahaRERA on 10-09-2020. The same is taken on record.



3. It is the case of the complainants that they have booked in seven flats in the respondent's project comprising flat no.305, 306 and 606 in Wing A , flat nos. 2205 and 2305 in wing B, and flat 2201 and 2301 in wing C of the said building. In the year 2015, the respondent no.2 approached the complainants and accordingly the complainants have booked the said flats and paid total amount of Rs.55,43,390/- aggregating to 5% amount for each flat by signing seven separate booking forms and allotment letters. The respondents have issued the payment receipt acknowledging the said booking amount. Thereafter on 16th July, 2015, the complainants paid additional 20% amount for each flat aggregating to Rs.2,33,49,446/-. The respondent No.2 issued final letter of reservation dated 4th September, 2015 and in total the complainants have paid 25% amount for each flat in the year 2015 itself. The respondent obtained the commencement certificate for the sale building on 2nd June 2015. Thereafter there was no progress on site except for some excavation work. In the year December 2017, the respondent no.2 assured the complainants that it would be bringing an external funding partner to complete the construction work. However no steps have been taken by the respondent no.2 thereafter. Further, on 21.11.2018 the respondent no.2 informed the complainants that it would be jointly developing the project with Chandok Realty Pvt Ltd and also assured that registered agreement for sale would be executed shortly. However, no consents have been obtained from the complainants for the joint development. Thereafter, the complainants vide email dated 28.01.2019 again enquired the respondent no.2 about the progress of the project. Since no reply was received the complainants issued legal notice to the respondents. The complainants stated that since last four years, no action has been taken by the respondents after accepting an amount of Rs. 2,88,92,836/-. Now while registering the project with MahaRERA the respondents have shown the proposed completion of this project as 31.07.2027 and revised completion dated of the project as 31.01.2028 which is not acceptable to the complainants. The complainants therefore stated that the respondents have given false and incorrect information

about date of possession and hence they are entitled to seek interest under section 12 of the RERA. Hence the complainants have filed this complaint seeking directions for execution of the registered agreement for sale and also for interest for the delayed possession under section 18 of the RERA.

4. In the rejoinder filed on record, the complainants have reiterated the submissions made in this complaint and further stated that the respondents cannot contemplate the bifurcation between the provisional allottees and regular allottees. Till date, though they have paid 25% advance towards the consideration, yet the respondents have not executed the agreements for sale with them and thereby violated the provision of section 13 of the RERA. Therefore the respondents cannot deny their claim of interest for the delay in handing over possession of the of the flats to them. Though the date of possession is not mentioned in the letters of reservation, the respondents were bound to execute the agreements for sale. The respondents therefore must not be permitted to take benefit of their own faults. Further they want to remain in the project and therefore under section 18(1)(b) they are entitled to seek interest since there is admitted delay. With regard to the violation of section 12, the complainants have stated that the respondent No. 2 approached them with the model of the said project and gave various false assumption and on that basis they invested their hard earned money. Further as per section 15 the respondents have not provided the 2/3rd consent for transfer of the project to third promoter. Hence the complainants prayed to allow this complaint.
5. The respondents on the other hand have refuted the claims of the complainants by filing written submissions on record of MahaRERA on 29.08.2020. The respondents have stated that they are developing a large residential SRA project for rehabilitation of total 1025 slum dwellers in three rehab buildings. LOI was issued on 28.10.2009 for 620 eligible slum dwellers and 121 PAP. Subsequently 284 additional slum

dwellers were declared as eligible by the competent authority on various dates. The complainants have been provisionally allotted seven flats vide letter of reservations dated 04.09.2015. In para 6 of the said letter of reservations, it was clearly stated that the complainants were provisionally allotted the said flats with the rights to change the design and layout of the flat which is clearly agreed by the complainants as per various letters of reservation dated 04.09.2015. With regard to the relief sought by the complainants under section 13 of the RERA the respondents have stated that they are agreeable to execute the registered agreement for sale as per the provisions of section 13 of the RERA in respect of the said flats with the possession date of 4.5 years in wing A or B from the date of such agreement as may be mutually agreed by the parties. The respondents further stated that the complainants were provisionally allotted the said flats under the pre-launch booking at concessional rate taking into consideration the delay that may be caused in completing the project, as the approvals from various authorities for the project had to be obtained. In view of the said provisional allotment and the right of the respondents to cancel the allotment as provided in the letter of reservation, the respondents cannot be forced to obtain consent of the complainants before entering into any agreement for joint development, obtaining funding etc. with respect to the said project with any other developer. By way precautionary measures the respondents have already obtained the consent from more than 2/3rd allottees as required under section 15 of the RERA and a copy of the said declaration to that effect has already been filed on MahaRERA website. The respondents further stated that it has obtained all the approvals from the competent authority and the same are uploaded on MahaRERA website. With regard to the interest for delayed possession under section 18 of the RERA the respondents have stated that no interest is to be payable to the complainants as they were provisionally allotted the flats under the prelaunch booking at a concessional rate taking into consideration the delay that may be caused in completing the project. Therefore there is no question of paying any interest for delayed



possession to the complainants. The respondents therefore prayed for dismissal of this complaint.

6. The MahaRERA has examined the arguments advanced by both the parties as well as the record placed on record by the parties. By filing this complaint, the complainants have approached MahaRERA seeking mainly two reliefs under section 13 and 18 of the RERA. The complainants have contended that they have booked total 7 flats and paid 25% amount towards cost of each flats. The respondents have not denied the allotment of 7 flats to the complainants nor denied the payment made by the complainants. Though the respondents have stated that the said allotment of flats made to the complainants were provisional allotment done vide 7 separate letters of reservation dated 4-09-2025, they have not denied the payment made by the complainants as well as their rights as allottees in this project. Hence the MahaRERA holds that the complainants are allottees in this project registered by the respondents and as such there is no ambiguity on this issue. The MahaRERA has also observed that though the booking was done when the provision of MOFA were in force and if the respondents have failed to execute the agreements for sale with them the complainants should have taken appropriate steps under the relevant provision of MOFA by approaching the appropriate forum at that time and should not have waited till date.

7. However, the respondents during the course of hearing have showed their readiness and willingness to execute the agreements for sale with the complainants since all permissions are in place with them now and by mentioning the date of possession of 4 years and 6 months from the date of agreement for sale. Hence the MahaRERA feels that as on date the prayer sought by the complainants under section 13 does not survive.



8. With regard to the claim of the complainants for interest for the delayed possession under section 18 (1) (b) of the RERA, the MahaRERA is of the view that there are 7 letters of reservation dated 4-09-2015 issued by the respondents for booking of the said flats. On perusal of the same, it prima facie appears that there is no date of possession mentioned in the said letters of reservation issued by the respondents and even admittedly there are no agreements for sale entered into between the parties showing any agreed date of possession.

9. In this regard, the MahaRERA has perused the provision of section 18 of the RERA which reads as under:

“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”

10. The aforesaid provision of section 18 provides that if the promoter failed and neglected to handover possession of flat/unit in accordance with the terms and condition agreement for sale or as the case may be duly completed by the date specified in the agreement for sale or as the case

may be, the allottee is entitled to seek interest for the delayed possession under section 18 of the RERA.

11. In the present case, admittedly there is no agreement or sale entered into between the parties nor any date of possession is mentioned in the letters of reservation dated 4-09-2015 issued by the respondents. Hence the MahaRERA feels that there is no date of possession agreed upon by and between the parties for handing over possession of the flats to the complainants. Hence, the MahaRERA feels that there is no violation of section 18 of the RERA by the respondents. Therefore, the complainants are not entitled to claim any interest under section 18 (1)(b) of the RERA for the delayed possession as alleged by the complainants. The complainants cannot therefore rely upon the provisions of section 18 in part, however it has to be read as a whole.

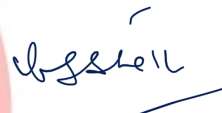
12. With regard to the other issue raised by the complainants for violation of provision of section 15 of the RERA, the MahaRERA is of the view that since the name of M/s. Chandok Realtors Pvt Ltd has been added as co-promoter of this project, there is no question of any violation of section 15 of the RERA, and MahaRERA has taken the said action in compliance of provision of section 15 of the RERA and the Rules and Regulation made thereunder. Therefore, the complainants cannot allege that there is violation of section 15 of the RERA as the respondent has also taken the consent of the required number of allottees.

13. With regard to the violation of section 12 of the RERA alleged by the complainants, the MahaRERA feels that no incorrect information about the date of possession is given by the respondents as there is no advertisement produced on record by the complainants to substantiate their claim that false information has been provided by the respondents whereby they suffered from any loss under section 12 of the RERA. Hence the issue could not be substantiated by the complainants.

14. In view of the aforesaid facts, and circumstances of this case, the MahaRERA feels that in the present case since the complainants have paid more than 10% amount towards the cost of each flat, the respondents are liable to execute the agreements for the sale with the complainants under the provision of section 13 of the RERA. Hence, the MahaRERA directs the respondents to execute the registered agreements for sale with the complainants in accordance with the letters of reservation issued on 4-09-2015 within a period of 30 days.

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




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