

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

Complaint No. CC006000000195424

Mr Ishwarlal Madhukarbhai Vanjara Complainant

Versus

M/s Kiyana Ventures LLP Respondent

Project Registration No. **P51800000579**

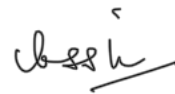
**Coram: Dr. Vijay Satbir Singh, Hon'ble Member – I/MahaRERA
Ld. Adv. Pratik Parmar I/b. Randive&Kadam Associates
appeared for the complainant.**

Ld. Adv. Suneet Tyagi appeared for the respondent.

ORDER

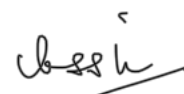
(9th April, 2021)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to refund the entire amount paid by him to the respondent due to the delayed possession under the provisions of section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') with respect to the booking of flat bearing no. 94 on the 9th floor, admeasuring 839 sq ft. in 'D' Wing of the respondent's registered project known as " **Kalpataru** Radiance D" bearing MahaRERA registration No. **P51800000579** situated at Goregaon (West) Mumbai.

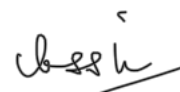


2. This complaint was heard finally on 8-03-2021 as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions, if any. Accordingly, both the parties appeared through their respective advocates and made their respective submissions. After hearing, both the parties were directed to file their respective written submissions on record of MahaRERA within a period of one week and the case was concluded. Pursuant to the said direction, the respondent filed its reply on record of MahaRERA. However, no submissions has been made by the complainant. The MahaRERA heard the arguments of the complainant and also perused the available record.

3. It is the case of the complainant that he booked the said flat in the respondent's project for total consideration amount of Rs. 2,09,39,590/- and at the time of booking he paid an amount of Rs. 62,87,063/-. Thereafter, a registered agreement was executed on 22.07.2015 between him and the respondent. Pursuant thereto, he has till date paid an amount of Rs. 2,20,17,197/- including Rs. 10,77,000/- towards the stamp duty and registration. He further stated that as per agreement for sale dated 22.07.2015, the respondent has assured the possession of said flat on or before June 2017 but it miserably failed to complete the project. The complainant stated that he found that the respondent has given the project completion date as



30.06.2023 but the speed of the project was slow and there was no response but unsatisfactory answers from the respondent whenever he tried contacting the respondent. Hence he had filed complaint No. CC006000000171744 before MahaRERA on 03.12.2019. In the said complaint with a view to settle the matter outside MahaRERA, the respondent promised to pay to the complainant Rs. 36,50,000/- compensation for delays upto 31 March 2020 plus Rs. 1,35,000/- per month for any delays beyond 1st April 2020 till the possession of the said flat. Furthermore, the respondent promised that the possession of the said flat shall be handed over latest by 31st December 2020. The respondent coerced him to withdraw the complaint after executing a memorandum of understanding (MOU) dated 05.03.2020. Accordingly, he had withdrawn the said complaint on the basis of terms and conditions mentioned in the said MOU. Thereafter, since the complainant did not get any clear answer regarding completion of the project and possession of the flat, he sent a letter dated 10.12.2020 to the respondent owing to the default in payments and possession of the flat to which there was no response. The respondent thereby has violated the MOU duly notarized and agreed between the parties by not paying compensation for the delay and not handing over possession of the said flat. Hence the complainant has filed this complaint seeking withdrawal from the project and refund under section 18 of the RERA along with interest as well as refund of stamp duty and registration charges together with compensation.



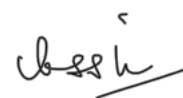
4. The respondent on the other hand has refuted the claim of the complainant and filed affidavit in reply stating that the complaint is devoid of any merits and the respondent has challenged the maintainability of the complaint on the ground that the same is premature. The respondent further stated that as per the agreement for sale dated 22nd July 2015 the date of possession was June 2017 which was subject to a grace period of nine months and further reasonable extensions as set out in clause 5.2 of the said agreement. It has further stated that in December, 2019 the complainant filed a complaint before MahaRERA under section 18(1) due to alleged delay in handing over possession however upon mutual settlement, a memorandum of understanding dated 5th March, 2020 was recorded by which the complainant decided to continue in the said project whereby the date of possession mentioned in the said agreement was mutually revised to 31st December, 2020 being the revised possession date. The respondent further stated that as agreed between the parties that the respondent gave credit notes and adhoc payments which have been recorded in the said MOU. It is stated that thereafter, on or about 20th March, 2020, due to outbreak of the global pandemic Covid 19 as per MahaRERA circular dated 18th May 2020 the date of possession mentioned in the said agreement was deemed to be extended by six months and hence in the present case the possession date was revised to 31st December, 2020 as agreed by the complainant in the said MOU is required to be read along with the said agreement. Hence as per the aforesaid circular the possession timeline now stands extended to 30th June, 2021 and hence the present complaint is premature. Further, it is

stated that as per the terms of the MOU, the respondent was liable to pay the agreed compensation/discount only on intimation of possession of the said flat. However, the complainant requested for payment of the adhoc discount accumulated till March 2021 within a week from the date of the letter contrary to the agreed terms of the MOU. It is further stated that the MOU has to be read as a whole and harmoniously and the complainant cannot pick and choose suitable terms which are favourable to him and unilaterally modify the other terms. The respondent stated that present complaint be dismissed being premature as the date of possession of the said flat has not yet arrived which is duly agreed in the MOU dated 5th March, 2020 which is valid, subsisting and binding upon the parties.

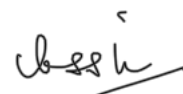
5. The MahaRERA has examined the submissions made by both the parties and also perused the available record. By filing this complaint, the complainant is seeking refund of the entire paid by him for violation of section 18 of the RERA alleging the delay in handing over possession of the said flat to him. The respondent on the other hand has refuted the said claim of the complainant mainly on the ground that the said claim is premature as on date.
6. Admittedly, the complainant is an allottee in the respondent's project and has purchased the said flat by executing a registered agreement for sale dated 22-07-2015. According to the said agreement, the possession of the said flat was to be handed over to the complainant on or before 30-06-2017 with grace period of

9 months. Since the possession was not given to the complainant, he approached MahaRERA by filing complaint for violation of section 18 of the RERA. In the said proceeding the complainant settled the matter amicably with the respondent and executed MOU dated 5-03-2020, whereby both the parties agreed to certain terms and conditions. Based on the said settlement arrived at between the parties, the complainant withdrew the earlier complaint no. CC006000000171744. Accordingly, the said complaint was disposed of by the MahaRERA vide its order dated 06-03-2020.

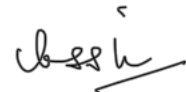
7. Now by filing this fresh complaint, the complainant has again approached MahaRERA seeking another relief under section 18 of the RERA towards refund along with interest alleging that the respondent promoter has adhered to comply with the terms and the conditions of the said MOU dated 5-03-2020.
8. However, on perusal of the said terms and condition agreed upon by the parties in the said MOU, it appears that the respondent has agreed to handover possession of the said flat on or before 31-03-2020 and also to pay an amount of Rs. 36,50,000/- plus additional discount of Rs. 1,35,000/- per month from the date of 1st April, 2020 till the respondent intimates the possession of the said flat to the complainant.



9. It is true that the possession of the said flat was not handed over to the complainant on the revised date of possession i.e. 31-03-2020. The respondent has alleged that due to Covid-19 pandemic the same got delayed. The said contention raised by the respondent has substance since the State as well as the Central Government declared lockdown from mid of March, 2020. Even the MahaRERA, considering the said pandemic situation has extended the time for completion of the projects by considering it as force majeure reasons by issuing various circulars. Now the respondent by filing this complaint has agreed to handover possession of the said flat to the complainant on or before 30-06-2021. The MahaRERA therefore feels that there is substance in the submissions made by the respondent. Moreover, the complainant by signing the MOU dated 5-03-2020 has already accepted the compensation cum discount offered by the respondent till the date of possession. Hence, the MahaRERA is of the view that the complainant by accepting the said compensation offered by the respondent which is payable by the respondent at the time of possession cannot now approach MahaRERA seeking refund under section 18 of the RERA.
10. Considering the aforesaid facts of this case, the MahaRERA feels that the present complaint is premature at this stage. However, the complainant would be at liberty to approach MahaRERA in case the respondent fails to handover possession of the said flat by 30-06-2021.



11. With the above observations, the complaint stands disposed of.
12. The certified copy of this order will be digitally signed by the concerned legal assistant of the MahaRERA. It is permitted to forward the same to both the parties by e-mail.



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