

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI

Complaint No. CC006000000171459

Mr. Bharat Gharat ..Complainant

Versus

M/s. Conoor Builders ..Respondent

MahaRERA Project Registration No. P51800002922

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

CA Mr. Ashwin Shah a/w Adv. Sandeep Manobarwala appeared for the complainant.

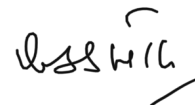
Adv. Nitin Tabhane a/w Adv. Saroj Agarwal appeared for the respondent.

ORDER

(03rd November, 2020)

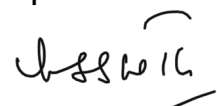
(Through Video Conferencing)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to handover immediate possession of the flat along with interest for the delayed possession under section 18 of the Real estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of booking of a flat No. 92, in the respondent's registered project known as "The Gateway" bearing MahaRERA registration No. P51800002922 at Andheri (West) Mumbai.
2. This complaint was heard on several occasions in presence of both the parties and same was heard finally today as per the Standard Operating Procedure dated 12-06-2020 issued by the 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 have filed their respective written submissions on record and they appeared



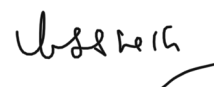
for hearing today. In the present case, the MahaRERA has passed an interim order on 15-09-2020 whereby directions were given to the respondent to handover possession of the flat to the complainant within a period of 10 days on payment of outstanding dues by the complainant and to decide the other issue raised by the complainant towards the interest for the delayed possession under section 18 of the RERA and the case was adjourned for further date. Pursuant to the direction of MahaRERA, the possession of the flat has already been handed over to the complainant on 15-10-2020. Hence today, the complaint is heard on the issue of the interest for the delayed possession raised by the complainant under section 18 of the RERA.

3. It is the case of the complainant that he has booked the said flat for total consideration amount of Rs. 2,20,33,000/-. The registered agreement for sale was executed on 11-02-2016. According to the said agreement, the respondent was liable to handover possession of the said flat to him on or before 31st December 2016. Though he has paid substantial amount of Rs. 2,10,24,108/- and an amount of Rs. 2,11,518 and other amounts towards the GST, Service tax etc., the respondent has failed and neglected to handover possession of the said flat to him on the agreed date of possession mentioned in the agreement for sale. Thereby the respondent has violated the provision of section 18 of the RERA. Hence the complainant is entitled to seek interest for the delayed possession from 1-1-2017 till the actual date of possession i.e. 15-10-2020. The complainant further stated that without giving any intimation unilaterally, the respondent has extended the date of completion of the project from 31-12-2016 till 31-12-2019, which is further extended till 31-03-2020 while registering the project with MahaRERA. Hence he has given legal notice to it through his advocate on 6-09-2019. The complainant further stated that the respondent has not



stated any justified reasons for the said delay and just stated that due to the litigation filed by the land owner viz M/s. A.H. Construction, the project got delayed. The complainant further stated that there is no privity of contract between the complainant and M/s. A.H. Construction and he has paid entire money to the present respondent hence, it is liable to pay interest for the delayed possession under section 18 of the RERA. The complainant relied upon the judgments/orders given by the apex courts in case of Vaidehi Akash Housing Pvt Ltd and Goregaon Perl CHS and stated that the owner is not liable to pay interest for the delayed possession since he has no privity of contract with the owner. The complainant therefore denied the grounds of delay stated by the respondent and prayed to allow this complaint.

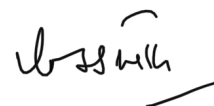
4. The respondent on the other hand has refuted the claims of the complainant by filling its reply on record. The respondent has stated that due to genuine and unavoidable difficulties faced by it owing to the land owner M/s. A.H. Construction the project got delayed and hence it is entitled to seek reasonable extension / relief under clause no. 17(a) of the registered agreement for sale executed with the complainant. The respondent further stated that the present complaint is liable to be dismissed on the ground of non-joinder of necessary party as respondent. As the complainant is aware of the fact that M/s. A.H Construction is owner as well as promoter of the said property as the agreement for sale signed between it and the complainant clearly mentions that all the obligations to procure all requisite permissions of the said building is of M/s. A.H. Construction. In spite of this, the complainant has not joined it as party respondent to this complaint. On this ground itself, the present complaint is liable to be dismissed. Further before the execution of the agreement for sale, the complainant was informed that the present project is part of the S.R. Scheme which requires permissions from



various government and semi governmental authorities and by accepting the said fact, he has signed the said agreement. Hence now he cannot make any grievance with regard to the alleged delay. Even as per clause No. 17(a) of the said agreement, it is entitled to seek reasonable extension if the reasons are beyond its control.

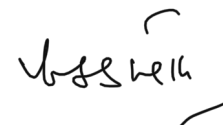
5. In addition to this, the respondent further stated that all the permissions pertaining to this project stands in the name of M/s. A.H. Construction, which is owner of the project land. As per registered development agreement dated 25-03-2013, the owner granted the development rights pertaining to the free sale component to it on certain terms and conditions. Accordingly to the same, the owner was to get the Property Register Card (PRC) updated as per the IOA dated 4-11-2009 issued by the SRA. However, the said owner delayed in procuring the single subdivided PRC for rehab and free sale component and finally it made amalgamation of the said two plots. Thereafter the owner sought approval for it from the Collector, MSD on 31-12-2019. Based on the said compliance, the occupancy certificate was obtained for the project on 5-06-2020 by the said owner. The respondent further stated that from time to time it has updated the progress of the project to the complainant and he never raised any objection for it. Also, he sought certain changes in his flat through his email dated 4-09-2017, which was also done by it without charging any additional money. The respondent further stated that since the complainant was aware of all constraints, he cannot raise any grievance regarding the date of possession. Hence the respondent prayed for dismissal of this complaint.

6. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, the complaint was



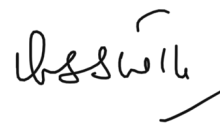
filed seeking interest and compensation for the delayed possession under section 18 of the RERA. Admittedly, there is a registered agreement for sale entered into between the complainant and the respondent promoter dated 11-02-2016. According to the said agreement, the respondent promoter was liable to handover possession of the said flat to the complainant on or before 31-12-2016 and admittedly possession of the flat is not given to the complainant. The respondent promoter has contended that the said delay occurred mainly due to the delay on the part of the owner M/s. A.H. Construction in whose name all permissions stands caused delay in getting PRC updated as per the IOA condition put by the competent authority viz SRA. The respondent further contended that the said owner has not joined as party respondent to this complaint. Hence the present complaint is liable to be dismissed for non-joinder of the necessary party.

7. With regard to the issue raised by the respondent for non-joinder of M/s. A.H. Construction, the owner as party respondent to this complaint, the MahaRERA is of the view that there is no privity of contract between the complainant and the said owner as it is not a party to the registered agreement for sale dated 11-02-2016 executed between the complainant and the respondent. Moreover, admittedly, the complainant has paid entire money to the respondent. Hence, by accepting the same, the respondent cannot shift its statutory liability being promoter of the project to the owner. Hence the MahaRERA is of the view that the owner M/s. A.H. Construction is not necessary party to this complaint.
8. 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 any satisfactory 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 owner was delaying the permissions, in that event the respondent could have approached the competent forum 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. Further the MahaRERA observed that the respondent was aware of the fact that as per the development agreement 25-03-2013, signed by it with the owner, the owner was liable to procure all requisite permissions for development when it registered the agreement for sale with the complainant stipulating the date of possession. Moreover, if there is dispute between the owner and the respondent, the complainant is no way concerned with the same. Further the respondent has executed the agreement for sale with the complainant allottee and hence after accepting the money from the complainant, it cannot shift its liability to the owner M/s. A.H. Constructions. Hence the said justification cannot be accepted by the MahaRERA.

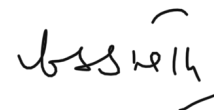
9. Further, if the project was getting delayed due to the aforesaid reasons cited by the respondent, then the respondent should have informed the same to the complainant and should have revised the date of possession in the agreement at that relevant time by executing the rectification deed with the complainant or should have offered refund of the amount to the complainant, if the said delay was not acceptable to him. From the record, it prima facie appears that no such steps have been taken by the respondent. Hence, it cannot take advantage of the said reasons of delay at this stage. The respondent contended that it has informed the said delay to the complainant from time to time and complainant has shown his co-operation for the said delay.



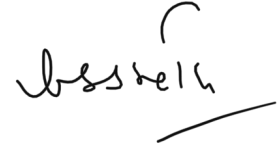
10. It is very clear from the above discussion that the reasons cited by the respondent for the delay in completion of the project do not give any satisfactory explanation. Moreover, the payment of interest on the money invested by the home buyers is not a penalty, but a type of compensation for the 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 is therefore liable to pay interest for the period of delay in accordance with the terms and conditions of agreement.

11. The respondent has relied upon clause No. 17(a) of the said agreement for sale registered with the complainant on 11-02-2016,, wherein it is entitled for reasonable extension in the date of possession due to any delay which was beyond its control. In this regard, the MahaRERA is of the view that the said agreement was executed between the parties when the provision of MOFA were in force. As per the MOFA, the promoters were entitled to seek an extension of 6 months for any force majeure reasons. Likewise in this case even if the reasons cited by the respondent are considered by the MahaRERA, it is entitled to seek only 6 months' extension as per the provisions of MOFA in the date of possession mentioned in the agreement for sale from 31-12-2016 till 30-06-2017.

12. In view of above facts and discussion, the respondent is directed to pay interest to the complainant from 1st July, 2017 for every month till the date of occupancy certificate on the actual amount paid by the complainant 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.



13. With the above directions, this complaint stand disposed of.



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

