

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

**Complaint No. CC006000000171612**

Cyril Harold Moraes ..Complainant

Vs

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.

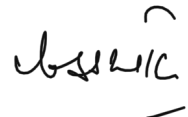
Adv. Nitin Tabhane a/w Adv. Saroj Agarwal appeared for the respondent.

**ORDER**

(03<sup>rd</sup> November, 2020)

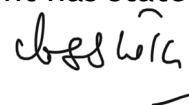
(Through Video Conferencing)

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 bearing No. 111, 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. The MahaRERA heard the arguments advanced by both the parties and also perused the record.



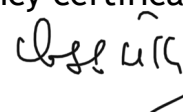
3. It is the case of the complainant that he has booked the said flat for total consideration amount of Rs. 2,84,05,000/-. The registered agreement for sale was executed on 24-04-2015. According to the said agreement, the respondent was liable to handover possession of the said flat to him on or before 31st December 2016. Though he has paid substantial amount of Rs.2,72,68,800/- , 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. 18-10-2020, since the respondent has handed over possession of the flat on 18-10-2020. 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 it 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 responded 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 Pearl 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 owner 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 that 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.

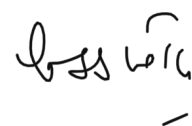
5. In addition to this, the respondent further stated that all the permissions pertaining to this project stand in the name of M/s. A.H. Construction, (hereinafter refer to as the owner) which is owner of the project land. As per registered development agreement dated 25-03-2013, the owner granted the 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 sub-divided PRC for rehab and free sale component and finally it caused 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 time to time it has updated the progress of the project to the complainant and he never raised any objection for it. Hence the respondent prayed for dismissal of this complaint.

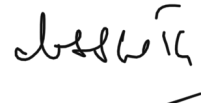
6. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, the complaint was filed seeking interest and compensation for the delayed possession under section 18 of the RERA. Admittedly, there is a registered agreement for sale entered into between the complainant and the respondent promoter dated 24-04-2015. 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 stand 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 been 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 party to the registered agreement for sale dated 24-04-2015 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 plausible explanation. As a promoter, having sound knowledge in the real estate sector, the respondent was fully aware of the market risks when it launched the project and signed the agreement with the home buyers. Moreover, if the owner was delaying the permissions, in that event it could have approached the competent authority including the court of law for expediting the required permissions for completion of this project. However, no such step seems to have been taken by the respondent. Further the MahaRERA observed that if 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, at the time of execution of registered agreement for sale with the complainant on 24-04-2015. Accordingly, it has mentioned the time for completion of the said project and for handing over possession of the flat to the complainant at the relevant time of execution of the said agreement with the complainant. Further, there is dispute between the owner and the respondent and the complainant is no way concerned with the same. The respondent was well aware of all the constraints of the project at the time of execution of agreement for sale executed with the complainant in which it stipulated the date of possession. 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 of 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 now it cannot take advantage of the said reasons of delay.

10. It is 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 for denying the reliefs sought by the complainant. Moreover, the payment of interest on the money invested by the allottees 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 6<sup>th</sup> 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 24-04-2015, 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 accepted by the MahaRERA, it is entitled to seek only 6 months' extension to the date of possession in the agreement for sale as per the provisions of MOFA, i.e. from 31st Dec 2016 to 30th June 2017.

12. In view of above facts and discussion, the respondent is directed to pay interest to the complainant from 1<sup>st</sup> 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, the complaint stands disposed of.



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

