

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI

1. Complaint No. CC006000000192256

Mrs. Rekha Radhakrishna Kowta ..Complainant

Versus

1. Conoor Builders Pvt. Ltd.
2. Ozone Lifestyle Projects Pvt. Ltd. ..Respondents

Along With

2. Complaint No. CC006000000193558

1. Mukesh Dusad
2. Shikha Dusad ..Complainants

Versus

1. Conoor Builders Pvt. Ltd.
2. Ozone Lifestyle Projects Pvt. Ltd. ..Respondents

MahaRERA Project Registration No. P51800002922

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

CA Ashwin Shah a/w. Adv. Sandeep Manubarwala appeared for the complainants.

Adv. Bishwajeet Mukherjee appeared for the respondent no. 1.

Adv. Abir Patel appeared for the respondent no. 2.

ORDER

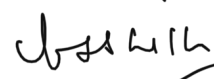
(15th Feb, 2021)

(Through Video Conferencing)

1. The complainants above named have filed these 2 complaints seeking directions from MahaRERA to the respondent to pay the interest for the period of delay under the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'RERA') in respect of booking of their respective flats, bearing nos. 52 & 125 respectively, in the respondent No. 1's project known as "The Gateway" bearing MahaRERA Registration No.P51800002922 at Andheri.

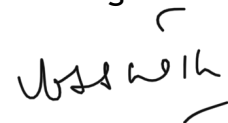
As per with

2. These complaints were heard on several occasions in presence of both the parties as per the Standard Operating Procedure dated 12th June 2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of the hearing and they were also informed to file their written submissions, if any. Accordingly, the parties appeared and made their submissions. During the hearing, the parties were also directed to file their respective replies/ written submissions on record of MahaRERA.
3. Further during the course of hearings, the MahaRERA passed an interim order in these complaints on 7th October, 2020 and directed the respondent No. 1 promoter to handover possession of the flats to the complainants on payment of outstanding dues within a stipulated period of 10 days thereof.
4. Pursuant to the said directions, the complainants have taken possession of their respective flats during pendency of these complaints and the matter was heard to the extent of the claims of the complainants towards interest under section 18 of the RERA.
5. Thereafter these complaints were heard on 29/12/2020, in presence of all parties concerned. After hearing the arguments advanced by both the parties, the parties were directed to file their respective written submission on record of MahaRERA within a period of two weeks.
6. Accordingly, the complainants have filed their respective written submissions on record of MahaRERA on 11-01-2021 and 12-01-2021. The same are taken on record. However, no further submissions have



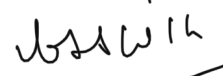
been filed by the respondents on record of MahaRERA. The MahaRERA heard the arguments of both the parties and also perused the available record.

7. It is the case of the complainants that they have booked the said flats in the project registered by the respondent No. 1. The said flats were booked for total consideration amount of Rs. 2,08,80,000/- and 2,05,28,000/- respectively. The registered agreements for sale was executed on 17-02-2018 between the complainants and the respondent No. 1 wherein the respondent No. 2 was a confirming party. According to clause No. 27(a) of the said agreements for sale, the respondent was liable to handover possession of the said flats to the complainants on or before 31st March 2019. The complainants have till date paid the entire consideration to the respondent. However, the respondent has failed and neglected to handover possession of the said flats to the complainants on the agreed date of possession mentioned in the agreements for sale. Further the respondent No. 2 through emails dated 12-03-2019 and 12-04-2019 has acknowledged the said delay and agreed to pay the interest for the delayed possession to them from 31-03-2019 till the actual date of possession. However, though the occupancy certificate was obtained for the said project on 5-06-2020, the respondents failed to handover possession of their flats along with interest for the delayed possession as agreed between them. However, they have been handed over possession of their flats as per the interim order dated 7-10-2020 passed by the MahaRERA on 30-10-2020 and 17-10-2020 respectively. Hence the present complaints have been filed seeking reliefs as prayed in these complaints.



8. The respondent No. 1 (respondent promoter), on the other hand has refuted the claims of the complainants by filing 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 the relevant clause of the registered agreement for sale executed with the complainants. The respondent further stated that the present complaints are liable to be dismissed on the ground of non-joinder of necessary party as respondent. As the complainants are 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 complainants clearly mentions that the obligations to procure all requisite permissions of the said building are with M/s. A.H. Construction. In spite thereof, the complainants have not joined it as a party respondent to these complaints. On this ground itself, the present complaints are liable to be dismissed. Further, before the execution of the agreement for sale, the complainants were informed that the present project is part of the Slum Rehabilitation Scheme which requires permissions from various government and semi governmental authorities and by accepting the said fact, they have signed the said agreements. Hence now they cannot make any grievance with regard to the alleged delay.

9. 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 referred to as the 'owner') which is the 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. According 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 led to amalgamation of the said two plots. Thereafter the owner sought approval 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 about the progress of the project to the complainants. Hence the respondent prayed for dismissal of these complaints.

10. The respondent No. 2 also filed its reply on record of MahaRERA and resisted the claims of the complainants against it. In the said reply the respondent No. 2 has stated that there is no violation of any provision of RERA by it and hence the present complaints filed against it by the complainants are not maintainable. Further the complainants have approached MahaRERA seeking reliefs under clause No. 27 of the agreements for sale executed between the parties. In the said clause the respondent No. 1 promoter is entitled to seek reasonable extension on the grounds stated in the said clause. However, it is not under obligation to handover possession of the said flats to the complainants. It has further stated that it is not a confirming party to the said agreements.

11. In addition to this, it has further stated that the occupancy certificate has been obtained for this project on 5-06-2020 and possession has also been handed over to the complainants. Moreover, it is appointed as development manager for the project by the respondent No. 1 by executing the Development Management Agreement dated 1-03-2017.

Joseph

Though, its name is reflected in the project as promoter, it is only a development manager, whose rights and obligations are restricted to the clauses specified in the said agreement dated 1-03-2017. Hence no reliefs could be granted against it in these complainants. It has further stated that the monies paid by the complainants have been utilized for the project and hence there is no cause of action for filing these complaints on any count against it, as it is not liable to pay any interest to the complainants under section 18 of the RERA. Hence, it has prayed for dismissal of these complaints against it.

12. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case the respondent no. 1 is the promoter who has registered this project with MahaRERA and the respondent No. 2 is also shown as co-promoter of this project having revenue sharing in this project. It is the confirming party to the agreements for sale executed between the complainants and the respondent no. 1 promoter.

13. The present complainants have approached MahaRERA seeking interest and compensation for the delayed possession under section 18 of the RERA. Admittedly, there are registered agreements for sale entered into between the complainants and the respondent promoter. According to the said agreements, the respondent promoter was liable to handover possession of the said flats to the complainants on or before 31/03/2019 and admittedly possession of the flat was not given to the complainants on the agreed date of possession mentioned in the said agreements.

14. The respondent no.1 has contended that mainly delay was caused by the owner M/s. A.H. Construction in whose name all permissions stand

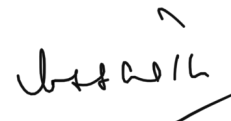


which caused delay in getting PRC updated as per the IOA conditions put by the competent authority viz SRA. The respondent promoter further contended that the said owner has not been joined as party respondent to these complaints. Hence the present complaints are liable to be dismissed for non-joinder of the necessary party.

15. With regard to the issue raised by the respondent promoter for non-joinder of M/s. A.H. Construction, the owner as party respondent to this complaint, the MahaRERA is of the view that as it is, the said owner is not party to the registered agreements for sale dated 17-02-2018 executed between the complainants and the respondent promoter. Moreover, admittedly, the complainants have paid entire money to the respondent promoter. Hence, by accepting the same, the respondent promoter 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 these complaints.

16. With regard to the reliefs sought by the complainants against the respondent No. 2, the MahaRERA has noticed that by virtue of the Development Management Agreement entered into between the respondent promoter and the respondent No. 2, dated 1-03-2017, the name of the respondent No. 2 has been mentioned as co-promoter in the project registered by the respondent promoter having revenue sharing. The complainants are seeking interest for the delayed possession jointly from both the respondents. In this regard the MahaRERA has perused the definition of promoter as defined under section 2(zk) of the RERA, which reads as under:

2(zk). **Promoter means:**

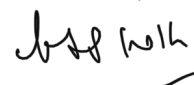
A handwritten signature in black ink, appearing to read 'Jaspreet Singh', with a horizontal line underneath.

- (i) *a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*
- (ii) *a person who develops land into a project, whether or not the person so constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*
- (iii) *any development authority or any other public body in respect of allottees of—*
 - (a) *buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government;*
 - (b) *plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or*
 - (iv) *an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or*
 - (iv) *any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or (vi) such other person who constructs any building or apartment for sale to the general public. Explanation.—————made thereunder.”*

Joshi

17. The aforesaid definition of promoter provides that the promoter is person who develops the land on behalf of the owner for selling purpose. However, in the present case, the respondent No. 2 has been appointed as project manager by the respondent No. 1 for construction purpose on its behalf. Further, the respondent No. 2 has signed the said agreements with the complainants as confirming party and not as vendor/seller/owner of the land. Further on bare perusal of clause 27 (a) of the said agreements for sale clearly states that the respondent no. 1 , who is vendor is liable to handover possession of the said flats to the complainants. Hence, if the definition of the promoter as defined under provision of RERA is read with the terms and conditions of the agreements for sale executed between the parties, the respondent No. 2 does not appear to be liable for handing over possession of the said flats to the complainants. Hence, the MahaRERA holds that the respondent No. 2 cannot be held liable for any violation of section 18 of the RERA.


18. With regard to the above issues as contended by the respondent promoter in response to the complaints, the MahaRERA feels that the reasons cited do not justify delay. As a promoter, having sound knowledge in the real estate sector, it 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 it should have approached the competent authorities and the court of law for expediting the required permissions for completion of this project. However, it has not taken appropriate action. The respondent promoter was aware of all the constraints of the project at the time of execution of agreements for sale with a definite date of possession. Hence the said justification cannot be accepted by the MahaRERA.



19. Further, if the project was getting delayed due to the aforesaid reasons cited by the respondent promoter, then it should have informed the same to the complainants and should have revised the date of possession in the agreements at that relevant time by executing the rectification deed with the complainants or should have offered refund of the amount to the complainants, if the said delay was not acceptable to them. From the record, it prima facie appears that no such steps have been taken by the respondent promoter. Hence now it cannot take advantage of the said reasons of delay. The respondent promoter has contended that it had informed the said delay to the complainants from time to time and complainants have shown their co-operation for the said delay. However, no proof in this regard has been submitted on record of MahaRERA.

20. In addition to this, the MahaRERA has also noticed that the respondents have accepted the alleged delay and made correspondence with the complainants several times agreeing to pay the interest for the delayed possession under section 18 of the RERA. This has not been denied by the respondents while filing their respective written submissions on record of MahaRERA.

21. 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 credible 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. Since these agreements for sale have been executed between the parties after the RERA came into force and hence the respondent promoter is liable to pay interest for

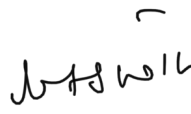


the period of delay in accordance with the terms and conditions of agreement.

22. In view of above facts and discussion, the respondent promoter is directed to pay interest to the complainants from 01/04/2019 for every month till the date of occupancy certificate i.e. 5-06-2020 on the actual amount paid by the complainants at the rate of Marginal Cost of fund based 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 thereunder.

23. With the above directions, these complaints stand disposed of.

24. The certified copy of 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