

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

Complaint No. CC006000000193270

Mr. Sushant Karkera ..Complainant
Vs
M/s. Conoor Builders Pvt Ltd ..Respondent

MahaRERA Project Registration No. P51800002922

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

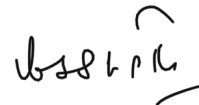
CA Mr. Ashwin Shah a/w Adv. Sandeep Manobarwala appeared for the complainant.

Adv. Anil D'souza a/w Adv. Saroj Agarwal appeared for the respondent.

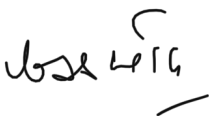
ORDER

(28th December, 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. 73, 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 on 3-11-2020 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 the said hearing. After hearing the arguments of both the parties, the case was closed for order.



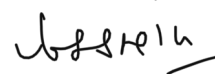
3. Thereafter, the respondent through email has requested to re-hear the matter as it wants to bring on record certain material facts. Hence, on request of the respondent, this matter was rescheduled for hearing today. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions, if any. Accordingly, both the parties appeared and made their additional submissions. The MahaRERA heard the arguments advanced by both the parties and also perused the record.
4. With regard to the request made by the respondent during the course of hearing today while requesting for hearing, the respondent has mainly stated that the complainant has not joined M/s. A.H. Construction as party respondent to this complaint, though it is co-promoter joined in this project. Hence it is misjoinder of party. Hence, the respondent sought direction to complainant to take corrective steps in this regard. The complainant denied the said contention raised by the respondent on the ground that the re-hearing is not permissible in this case since the respondent has already raised this issue in its reply filed on record. Hence, the complainant opposed the said relief sought by the respondent.
5. In this regard, the MahaRERA has perused the record viz the reply filed by the respondent on record. In the said reply, it seems that the said issue has already been raised by the respondent while justifying its case. Hence no new facts brought on record of MahaRERA by the respondent, which has not been raised before MahaRERA at the time of final hearing held on 3-11-2020. Hence the request of the respondent for re-hearing in this case stands rejected.



6. In the present case, the MahaRERA has passed an interim order on 07-10-2020 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. Accordingly the complainant has taken possession of his flat during the pendency of this complaint. Hence, the complaint was heard substantially on the issue of the interest for the delayed possession raised by the complainant under section 18 of the RERA..
7. It is the case of the complainant that he has booked the said flat for total consideration amount of Rs. 2,18,89,000/-. The registered agreement for sale was executed on 26-11-2014. 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. 1,93,30,438/- which amounts to 85% of the total consideration, 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. 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 6-06-2020. With regard to the reasons of delay stated that the respondent in its reply filed on record, the complainant has stated that the respondent has not stated any justified reasons for the said delay and it has 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.

8. 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 thereof the complainant has not been joined it as a 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.

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 refer to as the owner) who 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 to 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. Hence the respondent prayed for dismissal of this complaint.

10. 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 26-11-2014. 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 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 been joined as party respondent to this complaint. Hence the present complaint is liable to be dismissed for non-joinder of the necessary party.

11. 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 26-11-2014 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.

12. 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 he launched the project and signed the agreement with the home buyers. Moreover, if the owner was delaying the permissions, in that event they could have approached the competent forums 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 26-11-2014, hence it should have mentioned the

reasonable 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 aware of all the constraints of the project at the time of execution of agreement for sale and hence it should have mentioned the reasonable time in the agreement for sale executed with the complainant. 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 on the owner M/s. A.H. Constructions. Hence the said justification cannot be accepted by the MahaRERA.

13. 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 its own inaction citing the said reasons of delay. 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. However, no proof in this regard has been submitted on record of MahaRERA.

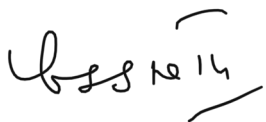
14. It is clear from the above discussion that the reasons cited by the respondent for the delay in completion of the project do not give any satisfactory explanation. Moreover, the payment of interest on the money invested by the home buyers is not a penalty, but a type of compensation for the delay 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.

15. Even if all the factors pointed out by the respondent due to which the project got delayed are taken into consideration, in the present case the MahaRERA is of the view that the respondent has relied upon clause No. 17(a) of the said agreement for sale registered with the complainant on 26-11-2014, 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 justifications cited by the respondent is accepted 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.

16. 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.

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


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

