

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC00600000054913

Vijay Shekhar

... Complainant

Versus

Veena Realcon Private Limited
MahaRERA Regn. No. P51800000016

... Respondent

Corum: Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant was represented by Ms. Anita Castellino, Adv.
Respondent was represented by Mr. Omkar Kulkarni, Adv.

Order

December 06, 2018

1. The Complainant has purchased an apartment bearing No. 603 - A in the Respondent's project 'Veena Serenity' situated at Chembur, Mumbai (*hereinafter referred to as the said project*) via agreement for sale dated June 23, 2015 (*hereinafter referred to as the said agreement*) by having paid a substantial consideration amount. First, the Complainant alleged that Respondent was to handover possession of the said apartment within 30 months, which has been extended to 40 months by which the possession was due on December, 2017. Second, he alleged that the Respondent has been demanding maintenance and other penalties for delay in making payments even though the possession of his apartment with Occupancy Certificate had not been handed over, in time. Third, he alleged that even though the Respondent has collected service tax from the Complainant he has failed to pay the same to the government and that the Respondent is denying to pass on the GST input benefit to the Complainant. The Complainant has, therefore, prayed that the Respondent be directed, to waive off maintenance charges including other penalties charged by him; to provide two puzzled car parking spaces and also to pass on the GST input tax credit to the Complainant.
2. On the first date of hearing, the learned counsel for the Respondent stated that he had offered possession of the Apartment for fit out via a letter dated December 01, 2017; and thereafter


has repeatedly raised demands on the Complainant for the remaining balance consideration amount and other charges, including maintenance charges, in accordance with the terms and conditions of the said agreement, which carries interest for failing to make timely payments, till date. He further stated that the said agreement for sale provides for a reasonable extension of the completion timeline for reasons beyond the control of the Respondent. Specifically, he submitted that the said project is a MHADA redevelopment project and due to certain dispute between MHADA and BMC, the OC was not being issued even after the Respondent having done all compliances in January 2018. Further, the learned counsel for the Respondent submitted that he was charging for allotment of covered car parking space, in accordance with the definition of a 'covered parking space' laid down under the rules and regulations of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the said Act*), to the Complainant. Finally, he submitted that the service tax collected by the Respondent has been appropriately paid to the government.

3. On the second date of hearing, the Complainant did not appear, in spite service of notice. He had sought an adjournment via an email dated October 23, 2018 stating that settlement negotiations were still under process. The learned counsel for the Respondent submitted that part occupancy certificate, which includes the apartment of the Complainant, has been obtained for the said project on October 12, 2018 and possession has thereafter been offered to the Complainant.
4. On the third date of hearing, both the parties informed the Authority that negotiations for an amicable settlement has failed on the point of calculation of interest for delay payable by both the parties. Further, the learned counsel for the Complainant submitted that she will not take possession of the apartment merely on a part occupancy certificate obtained by the Respondent for the said project, and raised contentions for the Respondent to explain the delay in obtaining the part Occupancy Certificate. The complaint was then adjourned for the Respondent to submit mitigating circumstances not attributable to him, for delay in completion of the said project.
5. On the final date of hearing, the learned counsel for the Complainant requested for an adjournment stating that she required time to respond on the written correspondence pertaining to the mitigating circumstances in the said project, since it was shared by the Respondent recently. Further, she contested orally, that the Respondent deliberately submitted an incomplete application to the concerned competent authority for the process



of obtaining Occupancy Certificate for the said project. She also demanded interest for delay in handing over possession of the apartment.

6. The learned counsel for the Respondent submitted that he filed an application on January 17, 2018 to the BMC for the process of obtaining part occupancy certificate and until he received the part occupancy certificate for the said project from MHADA, no OCs were sanctioned during the change amidst the two concerned competent planning authorities.
7. In the order passed on 23rd May, 2018 in Complaint no: CC00600000023946, MahaRERA had, after examining the mitigating circumstances in the project, directed the Respondent to handover possession of the apartment by July 31, 2018 failing which the Respondent is liable to pay interest to the Complainant from August 1, 2018 on the entire amount paid by the Complainant to the Respondent.
8. In view of the above facts, the Complainant is advised to take possession of his apartment without any further delay, since the part OC has already been received in October, 2018. The Respondent shall pay interest to the Complainant on the total amount paid by the Complainant to the Respondent, for the period starting from August 1, 2018 till October, 2018, when possession was offered to the Complainant after receipt of OC. The said interest shall be at the rate as prescribed under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules, 2017. Further, the Respondent shall pass on the GST input tax credit to the Complainant as applicable, if any.
9. Both the parties are liable to make payments to each other, after adjusting/setting-off the interest accrued against each other for their respective delays, as stipulated in para 2 and para 8, at the time of possession.
10. Consequently, the matter is hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA