

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

Complaint No.CC006000000090025

Mr. Ramimder Singh

.... Complainant

Versus

M/s. Viva Group

.... Respondent

Project Registration No. **P99000008341**

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

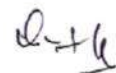
The complainant appeared in person.

Adv. Aruna Chaurasia appeared for the respondent.

ORDER

(19th November, 2019)

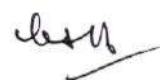
1. The complainant has filed this complaint seeking directions from the MahaRERA to the respondent to handover immediate possession of his flat with occupancy certificate and to pay interest for the delayed possession from January, 2016 till the date of possession with occupancy certificate @ 18% from 01-06-2015 till the actual date of possession as provided under Section-18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA") in respect of booking of a flat in the respondent's project known as **"Viva City-A-2"** bearing MahaRERA registration No. P99000008341 situated at Virar (West), Dist. Palghar. The complainant further prayed for compensation if the area of the flat is lesser than 515.26 sq. ft. as mentioned in the registered agreement for sale.
2. This complaint was heard on several occasions and the same was heard finally today. During the hearings, both the parties sought time to settle the matter amicably. However, in spite of several meetings, the parties could not arrive at any mutually agreeable terms. Hence this complaint was heard on merits.



3. It is the case of the complainant that in the year 2011, he had booked a flat admeasuring 820 sq. ft. saleable area in the respondent's project for a total consideration amount of Rs. 26,23,120/-. The registered agreement for sale was executed on 05-09-2012. According to the said agreement for sale, the respondent was liable to handover possession of the said flat to the complainant on or before May, 2015. Though he has paid an amount of Rs. 22,29,703/-, the respondent has not given possession of the said flat to the complainant. Hence, the complainant has filed this complaint seeking interest for the delayed possession from 1st June, 2015 till the actual date of possession with occupancy certificate. The complainant further sought compensation as the area of the flat is lesser than what is agreed in the agreement for sale.
4. The respondent, on the other hand, has filed reply on record of MahaRERA and disputed the claims of the complainant. The respondent stated the said project has almost completed on site and it will apply for occupancy certificate soon and will complete the project as per the revised completion date mentioned in MahaRERA i.e. June, 2020. The respondent further stated that the project has got delayed due to the reasons which were beyond its control such as demonetisation due to which there was no sale and hence, it caused less cash flow, material were not available, delayed permissions from the competent authority/ environment authority for environment clearance etc., For the said delay, it has already paid compensation to the complainant for 6 months. With regard to the area of the flat, the respondent has stated that it has purchased additional FSI and the same has passed on to the old allottees of this project by giving additional area in their flats without charging any additional money. It is also ready to execute supplementary agreement for sale with those allottees for the said additional area including

the complainant. Now, the complainant is getting saleable area of 940 sq. ft. area instead of 820 sq. ft. mentioned in the agreement for sale.

5. Further there is an outstanding due of Rs. 1,31,897/- not paid by the complainant as per the schedule of payment and hence, he is also liable to pay interest for the delayed payment as prescribed under the RERA. The respondent, therefore, disputed the claim of the complainant for lesser area and requested for dismissal of this complaint. In addition to this, there is an outstanding dues of Rs. 1,31,897/- not paid by the complainant as per the schedule of payment and hence, he is also liable to pay interest for the delayed payment as prescribed under the RERA. It further stated that payment of interest to the complainant would affect this project as there are around 200 allottees who are waiting for the completion of this project.
6. The MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case admittedly, there is a registered agreement for sale executed between the complainant / allottee and the respondent / promoter in which date of possession is mentioned as May, 2015 and till date the possession is not given to the complainant, though substantial amount has been paid by him. It shows that the respondent has violated the provisions of section-18 of the RERA. To justify the case of delay, the respondent has argued that the project got delayed due to the delay on the part of competent authority / MOEF, which failed to grant permissions in time and also the demonetization and lack of building materials for constructions due to which the project got delayed. The respondent has paid some sort of compensation for 6 months period to the complainant for the said delay. Now the respondent has shown willingness to complete the project and to handover possession of the flat to the complainant shortly.



7. The reasons cited by the respondent cannot be accepted at this stage as the same are not covered under the force majeure clause. There is no fault on the part of the complainant, who has put his hard earned money for purchasing the said flat in the respondent's project. The respondent has not given any plausible reasons for the alleged delay. Further, being promoter of this project, the respondent should have taken appropriate steps on time for obtaining the required permissions from the concerned authorities being promoter of this project at the relevant time.
8. Even if all the factors pointed out by the respondent due to which the project got delayed are taken into consideration, there was enough time for the respondent to complete the project before the relevant provisions of RERA came into force on 1st May, 2017. The respondent is, therefore, liable to pay interest to the complainant for delay in accordance with the provision of section-18 of RERA.
9. In view of above facts and discussion, the respondent is directed to pay interest to the complainant from 1st May, 2017 till the actual date of possession at the rate of Marginal Cost Lending Rate (MCLR) plus 2% as prescribed under the provisions of Section-18 of the RERA. Since the project is nearing completion, the payment of interest at this stage would cause further delay in the project. Hence, the respondent would be at liberty to defer the said payment till the date of possession with occupancy certificate. Hence, the amount of interest payable by the respondent to the complainant shall be adjusted with the outdating dues payable by the complainant to the respondent and the balance can be paid at the time of possession with occupancy certificate.

10. With regard the claim of lesser area in the flat raised by the complainant, the MahaRERA is of the view that as on date the possession is not given to the complainant. Hence, the said issue is premature as on today. The complainant is entitled to get the area of a flat as agreed in the agreement for sale. If the area of the flat is more/ lesser than the same shall be dealt with on prorated basis.

11. With these directions, the complaint stands disposed of.



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

