

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

Complaint No. CC006000000161333

Mr. Nikhil Chopra

.... Complainant

Versus

M/s. Palava Dwellers Pvt. Ltd.

.... Respondent

Project Registration No. P51700000124

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

Complainant appeared in person.

Adv. Mahendra Singh appeared for the respondent.

ORDER

(13th March, 2020)

1. The complainant has filed this complaint seeking direction from the MahaRERA, to the respondent, to refund the amount paid by him to the respondent along with interest under section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA") in respect of booking of a flat bearing no. F - 301, on the 3rd floor, admeasuring 734 sq. ft. (carpet area), in wing F, in the respondent's project known as "**Palava Lagoon A to F**" bearing MahaRERA registration No. P51700000124 situated at Kalyan, Dist. Thane.
2. This complaint was heard on several occasions and the same was heard finally on 25/02/2020, when both the parties appeared and made their respective submissions. During the course of hearing, the parties sought sufficient time to file their written submissions and in compliance of principles of natural justice the same was granted by the MahaRERA.
3. It is the case of the complainant that, he had purchased the said flat in the respondent's project on 21/06/2014 for a total consideration of



Rs. 58,39,938/-. The registered agreement for sale was executed between them on 01/09/2014. According to the said agreement for sale, the respondent was under obligation to hand over the possession of the said flat to him on or before 28/02/2018, which was mentioned as the final possession date. However, the respondent failed and neglected to do so. He further stated that, the respondent offered possession of the flat only on 21/03/2018 and never allowed him to visit the site. The respondent forced him to take the possession of the flat, after the issuance of the possession letter by the respondent. However, the respondent did not provide all the amenities which were promised in the registered agreement for sale. He further stated that, the area of the flat has also differed from the area mentioned in the agreement for sale. He is also unsure about the land title certificate and other litigations in this project. Therefore the complainant filed the present complaint seeking refund of the amount paid to the respondent along with interest.

4. The respondent resisted the claim of the complainant by filing reply on record by raising preliminary objection for maintainability of this complaint and stated that, the complaint is frivolous and no cause of action is disclosed by the complainant to file the same. It further stated that, it has completed the project as per the various clauses of the agreement for sale executed between the complainant and it. As per the clause 11.1 of the said agreement for sale, it was liable to hand over fit out possession of the said flat 28-02-2017, with grace period of one year i.e. 28-02-2018. It was liable to obtain the occupancy certificate within a further period of 1 year i.e. 28-02-2019. As per the clause 11.2 of the said agreement for sale, it could avail the grace period to complete the project. The respondent further stated that, as per the said clauses the respondent was supposed to hand over the possession of the

said flat with occupancy certificate on or before 28/02/2020. However, it has handed over the same to the complainant with occupancy certificate in the month of March 2018, which is within the stipulated time period. It has obtained the occupancy certificate on 12th March, 2018 and the possession has been handed over the same month. The respondent therefore sought dismissal of the said complaint.

5. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, the complainant is seeking the refund of the amount paid to the respondent along with interest since the respondent has failed to hand over the possession of his flat within a stipulated period of time mentioned in the agreement for sale. The respondent has stated that, it has completed the project and has obtained the occupancy certificate on 12th March, 2018 and has already handed over the possession of the flat to the complainant vide possession letter dated 21/03/2018.
6. In the present case, admittedly, the possession has already been given to the complainant and same is accepted by him in the month of March, 2018. After more than one and half years from the date of possession, the complainant has approached MahaRERA seeking refund of the entire amount along with interest under section 18 of the RERA.
7. In this regard it is necessary to read the provisions of section 18 of RERA, which reads as under:

“Sec 18: (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a

developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

----- he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”

8. As per the aforesaid explicit provisions of the RERA, it is clear that the provisions of section 18 will apply only if the promoter fails to complete the project and hand over the possession of the flats to the allottees. However in the instant case, the respondent has completed the project and obtained the occupancy certificate on 12th March, 2018 and also handed over possession of the flat to the complainant along with occupancy certificate. Therefore, the provisions of section 18 of RERA will not be made applicable in this case and the complainant cannot seek refund of the amount paid by him to the respondent in such a completed project.
9. In view of the aforesaid facts, the MahaRERA does not find any merits in this complaint. Hence the claim of the complainant for refund on the reasons cited hereinabove stands rejected.



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