

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

Virtual Hearing held through video conference as per
MahaRERA Circular No.: 27/2020

COMPLAINT NO: CC006000000195781

VIRENDRA SINGH MANHAS

...Complainant/s

Vs

SKYSTAR BUILDCOM PRIVATE LIMITED

...Respondent/s

MahaRERA Project Registration No. P51800001281

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA

Complainant present

Advocate Preet Chheda for the Respondent

Order

July 27, 2021

1. The Complainant is a home buyer and an Allotee within the meaning of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016 and the Respondents are Promoters/Developers within the meaning of Section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016. The Respondents have registered their project "SUNTECK CITY AVENUE 1" under section 5 of the Real Estate (Regulation and Development) Act, 2016 ("RERA") bearing MAHARERA Registration No. P51800001281 (hereinafter referred to as the "said Project").
2. The Complainant is seeking the following reliefs:
 - a. *"The Promoter must handover the Possession of the relevant Residential Unit immediately to the Allotee by fixing the exact Delivery Date of the Unit and,*
 - b. *The Promoter to Pay Interest at the rate of 12% p.a. for the delayed period w.e.f. from 01-04-2020 onwards on all Sums (Rs.2,19,05,200) received from the the Allotee as per Clause 25 of the said Sale Agreement dated 04-10-2019 within a*

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month along with Interest at the rate of 24% p.a. in case the resultant payment of interest is delayed further."

3. On 15.06.2021, the following roznama was passed by this Authority:

"Both the Parties are present and confirm that the possession date was 31.03.2020. The Advocate for the Respondent submits that on account of the lockdown a grace period of six (6) months was availed which ended on 30.09.2020.

The Complainant submits that even today after expiry of the grace period he has still not received any possession of the flat. The Complainant further submits that his flat is on the 27th floor and the Occupation Certificate is received only until the 25th floor which is confirmed by the Advocate for the Respondent. The Complainant seeks early possession of his flat and interest accrued due to such delayed possession.

The Complainant emphasises that the booking was done for the flat in the month of October 2019 under the limited booking offer whereby the possession was sacrosanct and the Complainant has paid a premium price for the same. The registration is valid until September 2021.

Heard the Parties, the matter is Reserved for Order."

4. The submissions of the Complainant are as follows:

- a. Vide an agreement for sale dated 04.10.2019, an apartment No. 2702 on the 27th floor, in wing 'A' of the in the said Project for a consideration of Rs.2,16,00,000/- (hereinafter referred to as "**said apartment**") was agreed to be purchased by the Complainant (hereinafter referred to as "**said agreement**").
- b. As per the said agreement, the date of possession is stated as 31.03.2020 without mentioning any grace period.
- c. The Complainant has booked the said apartment under the 'Limited Period Offer' scheme and has paid almost Rs. 2,19,05,200/- of the total consideration amount towards the said apartment.
- d. That the Complainant has not defaulted in making payments towards the said apartment, nor has breached any terms & conditions of the said agreement nor has ever refused to make full & final payment of the said apartment. Further, there has been no Force Majeure event which would have compelled the Respondent not to adhere the delivery date of possession i.e. 31.03.2020.

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e. Thus, the Respondent is duty bound to compensate the Complainant for the delay caused in handing over possession of the said apartment on account of which the Complainant has been incurring heavy unavoidable rental expenditure at Mumbai & Delhi.

5. The Respondent submits as follows:

a. That the present complaint seeks a compensation for alleged delay in handing over possession of the said apartment which as per section 71 of the said Act, power to adjudicate the disputes on payment of compensation for delayed possession is exclusively conferred in the Hon'ble Adjudicating Officer and not any other Authority. Thus, question of payment of compensation for alleged delayed possession under section 18 of the said act can only be entertained by the Hon'ble Adjudicating Officer.

b. The date of possession as stated by the Respondent in the affidavit in reply dated 22.03.2021 @para7 is also 31.03.2020 and that the Respondent was further entitled to a grace period of 6 months on equitable grounds.

c. That the Respondent has applied for an extension of its project registration and the same has been granted till September 2021.

d. That from March 2020 till September 2020, the MahaRERA Authority has issued order No. 14/2020 dated 18.05.2020, whereby a blanket force majeure period was declared for all projects in Maharashtra owing to the global pandemic of COVID-19.

e. That part occupation certificate has been obtained for A Wing till 25 floors.

6. From the submissions of the Complainant & the Respondent the issue that remains to be decided in this matter is that -

a. Whether this Authority has the power to decide matters pertaining to interest on delayed in possession under section 18 and what is the jurisdiction of the Adjudicating Officer under section 71 of the said Act?

b. Whether the Complainant is entitled to claim interest for the delay in handing over possession of the said apartment?

7. Before dealing with the facts in this complaint, it is pertinent to examine "possession" as contemplated under section 18 of the said Act:

"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."

8. Further section 71 – Power to adjudicate:

"(1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard."

9. Firstly, from the plain reading of section 18 it is clear that if the Promoter (Respondent herein) fails to handover possession as per the terms of the agreement for sale by the specified date therein, the Allottee (Complainant herein) has a choice either to withdraw from the said Project or stay with the Project. Further, in case the Allottee (Complainant herein) chooses to stay and not withdraw from the said Project, he is entitled to claim interest for every month of delay till handing over possession at such rate as may be prescribed from the Promoter (Respondent herein).

10. Thus, in the present complaint, the following observations are noteworthy:

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- a. The agreement for sale was entered on 04.10.2019 whereby the date of possession was 31.03.2020. This fact is confirmed by the Respondent in their affidavit in reply dated 22.03.2021 @para7.
- b. However, it is in this month that the global pandemic Covid-19 outbreak was announced and lockdown orders were passed by the Government. In view thereof MahaRERA issued a circular No. 14 dated 18.05.2020 provided for a force majeure period i.e. "*The Force Majeure period will be treated as a "moratorium period" for the purpose of calculating interest under section 12, 18 19(4) and 19(7) of the Act*" which period starts from 15.03.2020 to 14.09.2020. It is pertinent to note here that this force majeure period shall not be applicable to the Respondent herein since the Respondent has not handed over possession of the said apartment immediately upon the completion of the moratorium period. Further the possession of the said apartment is still not handed over to the Complainant.

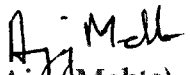
11. Firstly, from the plain reading of section 71, it is clear that only for the purpose of adjudicating compensation under section 12, 14, 18 and 19, the Authority shall appoint and/ or refer (*if already appointed*) the matter to an Adjudicating Officer who shall adjudicate compensation amount. However, in the present complaint the issue of compensation is not sought by the Complainant in the relief, it is only interest on delayed possession which the Complainant is seeking. Thus, the answer to **issue No. a** herein above is in **negative**.

12. From the aforesaid observations it is clear that the Complainant can choose to not withdraw from the said Project and is entitled to claim interest for every month of delay till handing over possession at such rate as may be prescribed from the Respondent. The Complainant is entitled to claim interest for the delay caused in handover of the said apartment from 01.04.2020. Thus, the answer to **issue No. b** herein above is in **affirmative**.

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FINAL ORDER

Thus, the present complaint is allowed and the Complainant is entitled to claim interest from 01.04.2020 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* till the hand over of possession of the said apartment.


(Ajay Mehta)
Chairperson, MahaRERA