

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

Complaint No. **CC006000000193694**

Pratibha Bahulkar

...Complainant

Versus

Rajguru Developers Private Limited

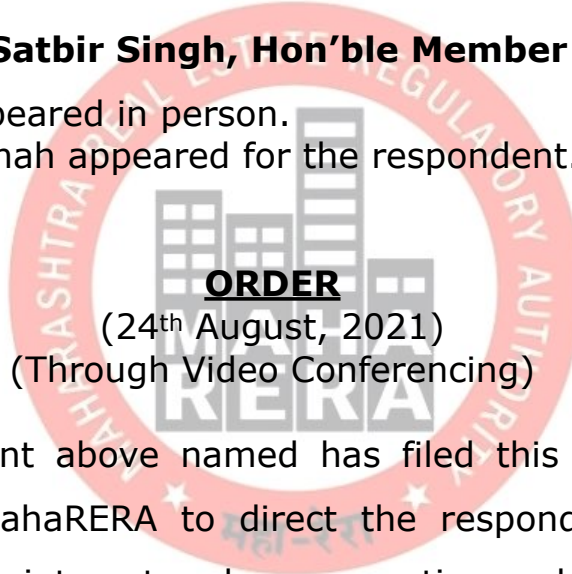
...Respondent

MahaRERA Project Registration No. **P51800007125**

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

The complainant appeared in person.

Ld. Adv. Sheelang Shah appeared for the respondent.



ORDER

(24th August, 2021)

(Through Video Conferencing)

1. The complainant above named has filed this complaint seeking reliefs from MahaRERA to direct the respondent to hand over possession with interest and compensation under the provisions of section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of a flat in the respondent's registered project known as "**Raj Altezza**" bearing MahaRERA registration No. **P51800007125** at Mulund(W), Mumbai.
2. This complaint was transferred from Conciliation Bench, Mumbai 3 on 18/06/2021 and accordingly, the same was scheduled for hearing on 12-08-2021 as per the Standard Operating Procedure

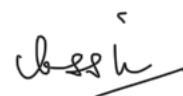
dated 12-06-2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions, if any. Accordingly, both the parties appeared for the hearing and made the submissions.

3. During the course of hearing, the complainant stated that the matter was settled before the Conciliation Forum, however, she does not agree with the said settlement agreement. Hence the complainant sought order on merits from MahaRERA.
4. Hence, after hearing the arguments advanced by both the parties, the MahaRERA directed that respondent to file its reply within a week period, after which the final orders would be passed. However, the respondent has failed to comply with the said direction and has not filed any reply till date. Hence, the MahaRERA heard the arguments of the parties and also perused the available record.
5. It is the case of the complainant that she entered into agreement for sale with the respondent on 8-12-2017 and the building proposed to be constructed on the said property was expected to be completed and possession of the said flat/premises was expected to be delivered by 31-12-2019. However, till date, no possession has been handed over to her and the respondent promoter has failed to abide by same within the stipulated time

period mentioned in the said agreement for sale. Hence the complainant seeks interest for delayed possession as per the RERA rate for every month of delay from the date of possession i.e from 31-12-2019 till the actual date of possession. The complainant further prays to direct the promoter to resume the pending project work at the earliest and begin the internal work of remaining ready flats, and further to obtain commencement certificate (CC) of 24th - 28th floor at the earliest.

6. In addition to this, the complainant further stated that the matter was heard by the Conciliation Forum, whereby the respondent has stated that the settlement amount would be paid to her after handing over possession of the said flat to her, which is not acceptable to her. But since she is only working in the family, the said proposal is not acceptable to her. The complainant stated that the respondent should have paid it on monthly basis. Hence the complainant prayed MahaRERA to pass order on merits.

7. In the present case, the MahaRERA has observed that the complainant has filed this online complaint before MahaRERA on 10-08-2020. However, till date, the respondent has not bothered to file its reply to this complaint, though the complaint is visible to the respondent in its project. Moreover, after issuance of the SOP dated 12-06-2020, the respondent was liable to upload its reply in digital form in this complaint. However, the respondent has not complied with the said direction. Furthermore, though the notice for this virtual hearing has been duly served upon it, the

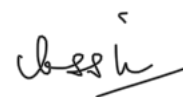


respondent appeared for the hearing through its advocate and stated that the possession would be given to the complainant on or before 30-06-2022. However, though the direction was given to file its reply, it has failed to submit the same. It shows that the respondent is not willing to contest this complaint. Hence, the MahaRERA has no other alternative but to proceed with the matter on merits.

8. The MahaRERA has examined the arguments advanced by the complainant. The complainant being an allottee of this project filed this complaint seeking possession along with interest due to the delayed possession under section 18 of the RERA. There is a registered agreement for sale dated 08-12-2017 entered into between the complainant and the respondent. According to clause No. 66 of the said agreement for sale, the respondent agreed to handover possession of the said flat to the complainant on or before 31-12-2019. To substantiate her contention, the complainant has produced the relevant page of the agreement for sale on record of MahaRERA. Admittedly, the possession has not been handed over to the complainant till date. It shows that the respondent has violated the provision of section 18 of the RERA.

9. In this regard, it is necessary to peruse the provision of section 18 of the RERA, which reads as under:

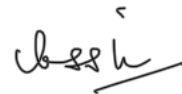
"18 (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—(a) in



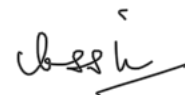
accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottee, 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."

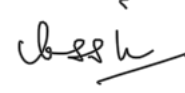
10. The aforesaid explicit provisions under section 18 of the RERA clearly, provides that on failure of the promoter to handover possession of the flat to the allottee on the agreed date of possession mentioned in the agreement for sale, the allottee has two choice either to withdraw from the project and have refund along with interest and compensation or to continue in the project and have interest for every month of delay till actual date of possession as prescribed under the provisions of RERA and the relevant Rules made there under.



11. Likewise, in the present case, since the respondent has failed to handover possession of the flat to the complainant on the agreed date of possession mentioned in the agreement for sale and as the complainant is willing to continue in the project, the complainant is entitled to seek interest for the delayed possession as provided under the provision of section 18 of RERA.
12. In view of above facts and discussion, the respondent is directed to handover possession of the flat to the complainant by obtaining the Occupancy Certificate. The respondent is also directed to pay interest for every month of delay to the complainant on the actual amount paid by her towards the consideration of the at the rate of SBI's Highest Marginal Cost Lending Rate (MCLR) 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 from the agreed date of possession mentioned in the agreement for sale i.e. 1-1-2020 till the actual date of possession.
13. With regard to the payment of interest to the complainant, the MahaRERA further directs that the respondent promoter is entitled to claim the benefit of "moratorium period" as mentioned in the Notifications / Orders Nos. 13 and 14 dated 2nd April, 2020 and 18th May, 2020 issued by the MahaRERA and the Notification/ Order which may be issued in this regard from time to time.
14. With the above directions, the complaint stands disposed of.



15. The certified copy of the order will be digitally signed by concerned Legal Assistant of MahaRERA and it is permitted to send the same to both the parties by e-mail.



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

