

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

Complaint No. **CC006000000192285**

Ms. Aparna Sharma

Complainant

Versus

M/s. Tata Value Homes

Respondent

M/s. Smart Value Homes (Boisar) Pvt Ltd.

MahaRERA Project Registration No. **P99000000997**

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

Ld. Adv. Gauri Tyagi appeared for the complainants.

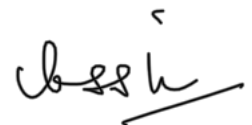
Ld. Adv. Neha Mehta appeared for the respondent.

ORDER

(Thursday, 09th September, 2021)

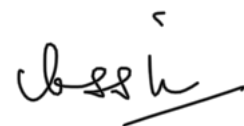
(Through Video Conferencing)

1. The complainant above named has filed this complaint seeking reliefs from MahaRERA to direct the respondent to refund the amount paid by her along with interest 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 bearing no. 304 on the 3rd floor in Tower-28 in the Building No.28 of the respondent's registered project known as "**New Haven Boisar II Phase II**" bearing MahaRERA registration No. **P99000000997** located at Boisar-East, Panchali, Dist. Palghar.
2. This complaint was transferred to this Bench from the Hon'ble Member-2 MahaRERA on 2-05-2021. Accordingly, the same was scheduled for hearing on 6-07-2021 and 18/08/2021 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, the parties appeared for the hearing and made their submissions. During the course of the said hearing, the complainant relied upon the judgment of Apex Court dated 2-04-2019. Hence after hearing the oral submissions made by the both the parties, the complainant was directed to file written submissions along with relevant judgements relied upon during the hearing and serve a copy thereof upon the respondent. The respondent was also directed to go through the same and file reply within a period of one week after which the final order would be passed. With the said directions, the hearing was concluded. However, despite the directions was given to both the parties, nothing has been submitted on record of MahaRERA till today. Hence, the MahaRERA heard the arguments of the parties and also perused the available record.

3. In the present case, the complainant has made formal application for joining M/s. Smart Value Homes (Boisar) Pvt Ltd who has registered this project with MahaRERA. However, the respondent M/s. Tata Value Homes filed its reply on record of MahaRERA and contested this complaint.
4. It is the case of the complainant that she has booked the said flat in the respondent's registered project for total consideration amount of Rs. 33,79,767/- excluding the stamp duty, registration charges and other charges. The respondent has issued an allotment letter for the said booking on 29/12/2015. The parties have entered into an agreement for sale on 23/02/2017. Till date, she has paid an amount of Rs. 29,08,643/- towards the consideration of the said flat and an amount of Rs. 2,21,728/- towards stamp duty/ registration/taxes etc. According to clause no. 4.2 (a) and (b)



of the said agreement for sale, the respondent was liable to handover the possession of the said flat by 31/05/2019 with grace period of 6 months i.e. 30-11-2019. The said agreement for sale also provides that upon failure of handing over of possession by the said date, the respondent is liable to pay interest @ 6% p.a. on the instalments paid by the complainant. However, since, the respondent failed to handover possession of the said flat, she cancelled the said booking vide letter dated 9-09-2019 and since the money was not refunded to her, she filed the present complaint before MahaRERA seeking relief under section 18 of the RERA on 24-01-2020. However, the respondent has obtained part occupancy certificate for the said project on 6-07-2020 i.e. after filing of this complaint. Hence, the complainant prayed to grant reliefs as sought for in this complaint.

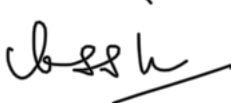
5. The respondent on the other hand has refuted the claim of the complainant in toto by filing written reply on record of MahaRERA. It has mainly stated that it has undertaken the development work of the project namely "New Haven Boisar II" on a portion of land bearing Survey no. 333 admeasuring approximately 74,270.00 sq. mts and 334/1 admeasuring 1,14,770.00 sq. mts or thereabouts situate, lying and being at Village Panchali, District Palghar. The complainant has booked the said flat and executed agreement for sale on 23-02-2017. According to the said agreement for sale the possession of the said flat was to be handed over to the complainant on 30-11-2019. However, before that date on 1-08-2019 it has obtained 100% work completion certificate of Building no. 28 wherein the flat was allotted to the complainant. Thereafter, on 27-08-2019 it has applied for OC to the District Collector and District Magistrate, Palghar. Hence there is no delay on the part of the respondent in handing over possession of the said flat to the complainant as alleged by the complainant. It has further stated that there was a delay on the part of the authorities to issue the O.C. The

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respondent further stated that due to the Covid -19 pandemic there was a nation wide lockdown declared by the Central Government which further delayed the grant of the OC and same was obtained for building No. 28 on 6-07-2020. It has further stated that it took great efforts to obtain the same however, in view of Covid-19 Pandemic and consequent nation-wide lockdown with effect from March, 2020, multiple activities were suspended adversely affecting the project execution. It has caused a delay in not just obtaining various statutory/ government related approvals but also the delivery of the same. It has therefore stated that the said situation squarely falls under the event of force majeure provided in the said agreement for sale. Even, the said situation has also been considered by the MahaRERA by issuing the Order Nos. 13 /2020 and 14/2020 dated 2-04-2020 and 18-05-2020 respectively.

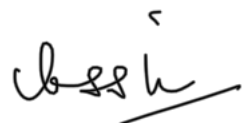
6. The respondent further stated that in the month of June, 2019 the complainant had enquired about compensation for the said delay when she was made aware of the status of the said project and application filed for OC. However, she expressed her desire to cancel the said agreement for sale before the extended date of completion of the said project i.e. 30-11-2020. Further after obtaining OC, vide email dated 5-09-2020, she was informed about the OC and for possession. However, she has failed to take possession of the said flat. However, just to abuse the process of law and to have wrongful gain the complainant has filed this complaint. Hence, the respondent prayed for dismissal of this complaint.

7. The MahaRERA has examined the arguments advanced by both the parties and also perused the available record. In the present case by filing this complaint, the complainant has approached MahaRERA seeking relief

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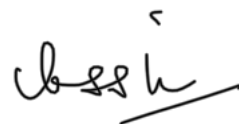
under section 18 of the RERA towards the refund of the entire amount paid by her along with interest due to delay caused by the respondent promoter in handing over possession of the flat on the agreed date of possession. The said contention of the complainant has been denied by the respondent promoter on the ground that the complainant sought refund before the date of possession gets over on 30-11-2019, it has already applied for OC and it has also contended that the OC for project got delayed mainly due to the Covid-19 pandemic.

8. As far as the delay caused in the project, the MahaRERA has observed that as per clause no. 4.2(a) and (b) the possession of the said flat was to be handed over to the complainant with grace period of 6 months i.e. on 30-11-2019. Admittedly, the possession of the said flat was not handed over to the complainant on the agreed date of possession. The respondent though alleged that before the said date of possession, it has completed the project and applied for OC on 27-08-2019. However, the OC got delayed due to Covid-19 pandemic.
9. In this regard, the MahaRERA is of the view that being a promoter of the project, it was the duty of the respondent promoter to obtain the necessary permissions from the competent authority including the OC and the allottees have nothing to do with the same. Further, all the reasons cited by the respondent for the alleged delay such as Covid-19 pandemic has occurred in the year 2020 i.e. after the agreed date of possession mentioned in the agreement for sale has lapsed. The respondent had sufficient time to complete the project before the agreed date of possession i.e. 30-11-2019. Moreover, when the complainant approached MahaRERA by filing this complaint, the project was incomplete and there was no OC obtained for the project. It shows that the respondent has not given any justifiable reason as



to why possession could not be handed over to the complainant on or before 30-11-2019. Even if the contentions of the respondent are accepted, nothing has been brought on record by the respondent to show that it has ever communicated the said reasons of the delay to the complainant. If the project was getting delayed due to the reasons cited by the respondent on the part of the concerned authorities, then the respondent should have informed the same to the complainant and should have revised the date of possession in the agreement at that relevant time. From the record, prima facie it appears that no such steps have been taken by the respondent. Hence, now it cannot take advantage of the said reasons of delay.

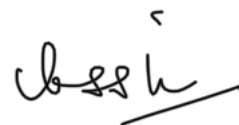
10. With regard to the above issues as contended by the respondent in response to the complaint, the MahaRERA feels that the reasons cited by the respondent do not give plausible explanation. As a promoter, having sound knowledge in the real estate sector, the respondent was fully aware of the market risks when he launched the project and signed the agreement with the home buyers.
11. The complainants being allottees of this project filed this complaint are seeking refund of the entire amount paid by them along with interest due to the delayed possession under section 18 of the RERA. There is a registered agreement for sale dated 23-02-2017 entered into between the complainant and the respondent wherein the respondent agreed to handover possession of the said flat to the complainants on or before 30-11-2019. To substantiate her contentions, 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 complainants till date. It shows that the respondent has violated the provision of section 18 of the RERA.



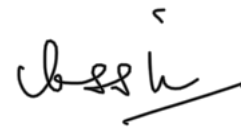
12. In this regard, it is necessary to peruse the provision of section 18 of the RERA, which reads as under:

“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.”

13. The aforesaid explicit provisions under section 18 of the RERA clearly, provide 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, on demand of the allottee, if the allottee is willing to withdraw from the project, the promoter is liable to refund the entire amount to the allottee along with interest as prescribed under the provisions of RERA and the relevant Rules made there under.



14. 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, the complainants are entitled to seek refund under section 18 of the RERA.
15. In view of the above facts and discussion, the respondent is directed to refund the entire amount paid by the complainant towards the consideration of the said flat along with interest 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 date of payment till the actual realisation of the said amount to the complainants.
16. 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.
17. With the above directions, the complaint stands disposed of.
18. 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