

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

Complaint No. CC006000000193084

Mr. Aniket Deelip Alashe and Mrs. Rajashree Deelip Alashe
.... Complainants

Versus

M/s. Acme Housing India Pvt. Ltd. Respondent

Project Registration No. **P51700000778**

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

Adv. Tanuj Lodha appeared for the complainants.

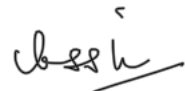
Adv. K. R. Shekhawat appeared for the respondent.

ORDER

(4th May, 2021)

(After Hearing Through Video Conferencing)

1. The complainants have filed this complaint seeking directions from MahaRERA to the respondent to pay interest for delayed possession under section-18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA") with respect to the booking of a flat in the respondent's project known as "**Alphinia**" bearing MahaRERA Registration No. **P51700000778** at Thane.
2. This complaint was heard on several occasions and same is heard on 01-03-2021 as per the Standard Operating Procedure dated 12th June 2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of the hearing and they were also been informed to file their written submissions, if any. Accordingly, both the parties appeared for the said hearing and made their submissions. The MahaRERA heard the arguments of both the parties and also perused the available record.



3. It is the case of the complainants that in the year 2014, they have booked the said flat for a total consideration amount of Rs.97,98,480/- by way of a registered agreement for sale entered into between them on 23-12-2014. According to the said agreement, the respondent had agreed to hand over the possession of the said flat on or before 31st December, 2017. The complainants have paid an amount of Rs.1,11,27,934/ so far but the respondent has failed to hand over the possession of the said flat to them and hence the present complaint has been filed seeking relief under section-18 of the RERA. However, they have taken possession of their flat during pendency of this complaint on 30-08-2020 subject to final outcome of this complaint.
4. The respondent, on the other hand, has resisted the claim of the complainant in its reply on record of MahaRERA by raising various defences in it. It is the case of the respondent that according to the registered agreement for sale entered into between them, the date of possession was 31st December, 2017 with grace period of six months. However the said date of possession was subject to certain terms and conditions. As per clause no. 9.2 of the said agreement for sale, the only option available to the complainants if the possession is not given on the agreed date was to terminate the agreement for sale and demand refund of money with 9% interest. However, the complainant did not opt for the said clause of the agreement for sale. Moreover the said clause further provides for extension subject to force majeure conditions and there are certain reasons which were beyond the control of the respondents which delayed the project for around 18 months, such as,
- i) Stay order in PIL No.36 of 2016 before the Hon'ble High Court filed by one Mr. Mangesh Shelar with regard to the shortage of water supply. In the said PIL, the Hon'ble High Court vide order dated 5/5/2017 restraining the Thane Municipal

Corporation from granting further construction permissions and occupancy certificate in respect of the project at Ghodbunder Road by which the present project is also affected since it is in the same vicinity;

- ii) Demonetization and implementation of RERA and GST which resulted in cash crunch and therefore the labourers could not be engaged for carrying out the site work since they were working on daily wages and no cash was available. Further, the respondent was busy in undertaking the compliance for the project registration with MahaRERA after implementation of RERA. Besides, the GST policy was not clear on the manner of its applicability to housing sector due to which the project got delayed.
 - iii) Shortage of sand, cement and ready mixture concrete during the year 2013-14 and also there was a ban on sand mining, which also caused delay in the completion of the project.
 - iv) Though it had applied for occupancy certificate on 29-11-2019, the competent authority has granted the same on 3-03-2020 and thereby there was delay for 4 months.
- 5) The respondent further stated that it has now completed the project and has obtained occupancy certificate on 3-03-2020 and possession was also offered to the complainants after which the complainants have filed this complaint seeking reliefs under section 18 of the RERA, which is not maintainable after grant of occupancy certificate. Hence, it has prayed for dismissal of this complaint.
- 6) The complainants have filed their rejoinder to the reply filed by the respondent and have denied the averments made by the respondent and stated that the respondent has accepted

substantial amount from them and hence cannot take excuse of force majeure. The respondent has violated the terms and conditions of the agreement for sale. The complainant further stated that the Hon'ble Maharashtra Real Estate Appellate Tribunal as well as the Hon'ble High Court of Judicature at Bombay in their various orders has clearly held that the promoter is liable to pay interest for the delayed possession under section 18 of the RERA to the allottee, if the possession is not given in accordance with the terms and conditions mentioned in the agreement for sale.

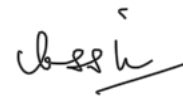
- 7) The MahaRERA has examined the arguments advanced by both the parties as well as record. In the present case, admittedly, there is a registered agreement for sale executed between the complainant / allottee and the respondent / promoter in which the date of possession with grace period of six months was mentioned as 30th June, 2018 and till date, the possession is not given to the complainants, although they have paid substantial amount towards the construction of the same. The respondent has mainly contended that the project has got delayed due to the stay order dated 5.5.2017 passed by the Hon'ble High Court in PIL No. 36 of 2016, demonetization and implementation of RERA and GST the non payment of outstanding dues by the allottees, shortage of sand, cement and road mixing concrete between 2013-14 the project got delayed.
- 8) The MahaRERA is also of the view that as a promoter, having sound knowledge in the real estate sector, the respondent was fully aware of the market risks when it had launched the project and signed the agreement with the home buyers. Moreover, if the project was getting delayed due to the new policy issued by the competent authority or the internal disputes between the partners, the respondent should have informed the said facts to the complainants to make them aware of the said constraints in the project. However, no such steps seem to have been taken by the

respondent. Further, the MahaRERA feels that being a promoter of the project, it was the duty of the respondent promoter to obtain the necessary permissions from the competent authority in time. The allottees have nothing to do with the same.

- 9) With regard to the reasons cited by the respondent, the same are general in nature and do not provide any satisfactory explanation to account for the delay. However, in the present case, the agreement for sale has been entered into between the complainant and the respondent under the prevailing provisions of MOFA. Even if all factors pointed out by the respondent due to which the project got delayed as stipulated under clause No. 9.2 of the said agreement for sale are taken into consideration, the respondent is entitled to get six months grace period in the date of possession to complete the project for handing over possession of the said flat to the complainants till 30-06-2018 which was permissible under the provisions of MOFA and as per the agreement. However, after the provisions of the RERA came into force on 1st May, 2017 the promoter is liable to pay interest for the delay in accordance with the provisions of section-18 of the RERA. Moreover, the payment of interest on the money invested by the home buyer is not a penalty, but a type of compensation for delay as has been clarified by the High Court of Judicature at Bombay in the judgement dated 6th June, 2017 passed in Writ Petition No. 2737 of 2017. The respondent is therefore liable to pay interest for the period of delay in accordance with the terms and conditions of the agreement for sale.
- 10) In the present case, it is noticed by the MahaRERA that the complainants have filed this complaint before MahaRERA on 20-06-2020 after the respondent promoter has completed the project and obtained the occupancy certificate for the project including the complainants' flat on 03-03-2020 and also offered possession of the same to the complainants. Thereby, the

respondent has complied with its liability cast upon it under section 18 of the RERA. However, the complainants have not taken possession of the same though it has been offered by the respondent and same is finally taken on 30-08-2020 during pendency of this complaint. In this regard, the MahaRERA feels that as per the provisions of section 19(10) of the RERA, the allottees are liable to take possession of the flat within a period of 2 months from the date of occupancy certificate. However, the complainant has violated the provision of section 19(10) of the RERA. Hence, the MahaRERA feels that the complainants post occupancy are not entitled to seek any relief under section 18 of the RERA.

- 11) In view of the aforesaid facts and discussion, the respondent is directed to pay interest to the complainants from 1st July, 2018 for every month till the date of occupancy certificate i.e. 3-03-2020 on the actual amount paid by the complainants at the rate of Marginal Cost Lending Rate (MCLR) of SBI 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.
- 12) With these directions, the complaint stands disposed of.
- 13) 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