

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

Complaint No.CC006000000141031

Mrs. Khyati Shah

.... Complainant

Versus

1. M/s. Rajsanket Realty Limited

2. ICICI Bank

..... Respondents

Project Registration No. **P51800012243**

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

Adv. Nitya Shah appeared for the complainant.

Adv. Sumitra Kajale appeared for the respondent.

ORDER

(8th January, 2020)

1. The complainant has filed this complaint seeking directions to the respondent to refund the entire amount paid by the complainant along with interest under the provisions of Section-18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA") in respect of booking of a flat in the respondent's project known as "**Raj Infinia**" bearing MahaRERA registration No. P51800012243 situated at Malad (West), Mumbai.
2. This matter was heard on several occasions and the same was heard finally today, when both the parties were appeared through their respective advocates.
3. It is the case of the complainant, that she has purchased the said flat in the respondent's project by executing registered agreement for sale for a total consideration amount of Rs. 1,98,14,750/-. The agreement for sale was registered on 06/09/2013. The said flat was booked under the subvention scheme whereby the complainant was required to pay initial amount of 20% out of the total consideration amount and remaining 80% was to be paid by the respondent No.2-ICICI Bank. As per the said subvention scheme, the complainant was to pay 20% amount to the respondent No. 1 after execution

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of the agreement for sale, 75% amount was to be paid by the respondent No.2-bank to the respondent No. 1 at the time of execution of agreement for sale. The balance 5% was to be paid by the respondent No.2-bank to the respondent No. 1 to the respondent No. 1 while handing over the possession of the flat to the complainant. In the said agreement for sale the date of possession was not mentioned and thereby the respondent had violated the provisions of MOFA.

4. Thereafter, the respondent No.1 had registered the project with MahaRERA and unilaterally proposed the date of completion of the project as December 2022. The complainant stated that, till date she has not been handed over the possession of the said flat by the respondent even the respondent has stopped paying pre-EMI as per the terms and conditions of the subvention scheme on March, 2019 though it was the obligation of the respondent No.1 to repay the same. Therefore, the complainant has been receiving several demand letters from the respondent No. 2 Bank to pay the outstanding amount of interests defaulted by respondent No. 1 from April 2019. Due to the delay caused by the respondent in handing over possession of the said flat to her, the complainant issued letter through advocate dated 20/07/2019 and terminated the said agreement for sale and demanded all the amount paid along with interest.
5. Since the complainant has waited for possession for almost 6 years and the respondent No. 2 has started criminal proceedings against her for non-payment of interest which was supposed to be paid by the respondent No. 1. The complainant has relied upon various judgements given by MahaRERA as well as Hon'ble Supreme Court of India, whereby it is held that, the reasonable period for completion of the said project is three years from the date of agreement for sale. In the present complaint, the agreement for sale was executed in the year 2013 and therefore, the respondent was expected to complete the project by 2016. However, the possession of the said flat is not ready yet. Therefore, the complainant has decided to withdraw from the



project. However, she has clarified that she is not pressing for refund with compensation and hence, prayed MahaRERA to decide her complaint.

6. The respondent, on the other hand, has disputed the claim of the complainant by filling reply on record. The respondent stated that, the present project has undertaken by them under the Slum Rehabilitation Scheme. Since the project is of varying of large magnitude and the complainants were aware that, the possession of flat would take a longer time, the date of possession was not mentioned in the agreement. However, while registering this project, on MahaRERA website, the respondent has disclosed the date of possession and completion of this project as 31/12/2022.
7. The respondent No. 1 further stated that, as per the terms and conditions of the agreement for sale, they continued to make payment on account of interest on the loan disbursed by the respondent No. 2 viz. ICICI Bank under the subvention scheme and she never objected for the same or she raised any query with regard to the date of completion as mentioned on the MahaRERA website. The respondent No.1 has admitted that, there is a default on the part of them to make payment to the bank towards the interest amount on behalf of the complainant. However, they sought time to pay the EMI to the bank. Further, with regard to the delay, the respondent No. 1 has stated that, there is no question of delay as the date of completion is given on MahaRERA website by it and the said date is yet to come. The complainant has raised the grievance is in respect of interest payment to be made to the respondent No. 2 bank. The respondent further stated that, it has paid the interest on behalf of the complainant since the date of agreement till March, 2019 and has already incurred expenditure.
8. The MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case, the complainant is an allottee, who has purchased a flat in the respondent's project under the subvention scheme by executing registered agreement for sale dated 06/09/2013 and admittedly, there is no agreed date of possession mentioned in the agreement for sale.



The complainant is now seeking refund of the amount along with interest for more than 5 years as she has not been given the possession of her flat and also the respondent has stopped paying EMI to the bank.

9. In the present case, MahaRERA has observed that, the agreement for sale was executed under the provisions of MOFA, wherein it was mandatory to mention the date of possession in the agreement. However, the respondent has violated the said provisions of MOFA. On such act of omission on the part of the respondent, the complainant should not suffer. Further, there is an agreement executed between the parties under subvention scheme, wherein the respondent No. 1 agreed to pay EMI to the respondent No. 2 till the possession is handed over to the complainant. However, they stopped paying EMI from March, 2019. Therefore, the said date as per the agreement should have been considered as the date of possession for handing over flat to the complainant.

10. In this regard, the MahaRERA has perused the provision of Section-18 of the RERA, which provides that :

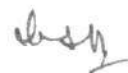
“If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(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”:



11. According to the said provision of law, if the promoter fails to handover possession of the flat to the allottee, as per the agreed date of possession mentioned in the agreement for sale, then on demand of the allottee, the promoter is liable to refund the amount to the allottee.
12. In the present case, the date of possession was not mentioned in the agreement for sale but the respondent No. 1 agreed to pay the monthly EMI to the respondent No. 2 till the possession is given to the complainant. Since, it has stopped paying EMI from March, 2019 the same can be taken as the date of possession. It shows that the respondent has failed to handover possession of the flat to the complainant when they stopped the EMI from March, 2019 and even till this date, the possession is not given. Hence, the complainant, who is an allottee is entitled to seek relief under section-18 of the RERA and the refund sought by the complainant, under section -18 of the RERA is justified.
13. In view of the aforesaid facts the MahaRERA directs as follows:
 - a) The respondent No, 1 to refund the 20% amount paid by the complainant towards the cost of the said flat along with stamp duty and registration charges paid by her within a period of three months from the date of this order.
 - b) The respondent No. 1 is further directed to directly deal with the bank under subvention scheme for remaining amount payable to the respondent No. 2 viz., ICICI Bank as the complainant is not liable to pay anything to the respondent No. 2.
14. With the above directions, the complaint stands disposed of.



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