

**BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI
Complaint No. CC006000000141017**

Mr. Hitesh Hasmukh Bhupta & 2 Ors.

.... Complainants

Versus

M/s. Acme Housing India Pvt. Ltd.

M/s. Glomore Construction

.... Respondents

Project Registration No. **P51800001238**

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

Adv. Ganesh Waghmare appeared for the complainant.

Adv. K R Shekhawat a/w. Mr. Ronak Mehta appeared for the respondent.

ORDER

(18th February, 2020)

1. The complainants have filed this complaint seeking interest for the 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 respondents' project known as "**Oasis Tower 2**" bearing MahaRERA Registration No. P51800001238 situated at Kandivli (East), Mumbai.
2. This complaint was heard on several occasions and the same was heard finally today, when the parties appeared through their respective advocates and made their submissions.

Pleadings:

3. It is the case of the complainants that initially the complainants had purchased a flat bearing no 701 adm. 54.16 sq.m. carpet area in the respondents' project. The registered agreement for sale was executed on 2nd May, 2015. Thereafter, the complainants were desirous of having bigger flat and hence they purchased another flat No. 3403 adm. 85.55 sq.m. carpet area and a deed of exchange dated 26th July, 2018 was

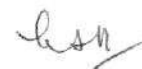
registered with the respondents. According to the said deed of exchange, the respondents agreed to hand over the possession of the said flat on or before 30-06-2019. However, till date the possession has not been given to the complainants. Hence, the complainants have approached MahaRERA seeking interest for the delayed possession under section- 18 of the RERA.

4. The respondents on the other hand resisted the claim of the complainants by filing affidavit on record. The respondents have stated that initially the complainant had booked flat No. 701 and the registered agreement for sale was executed on 2nd June, 2015. According to the said agreement, the respondents were liable to hand over the possession of the flat to the complainants on or before December, 2019 with grace period of six months i.e. 30-06-2020. Thereafter in the year 2018, the complainants changed the said flat and purchased bigger area flats bearing No. 3403 on 34th floor and executed the deed of exchange on 26th July, 2018. By executing the said deed of exchange, the respondents have advanced the date of possession for six months from 31-12-2019 to 30-06-2019.
5. As per the terms and conditions of the said deed of exchange the respondents were entitled to seek six months' grace period and therefore they stated that the agreed date of possession for handing over the said flat to the complainants was 31st December 2019. The respondents further stated that they are ready to complete the said project with occupancy certificate on or before June, 2020 and the possession will be handed over to the complainants.
6. With regard to the alleged delay, the respondents have cited various reasons which is covered under force majeure as mentioned in the agreement for sale. The respondents have further stated that the said

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project was delayed due to factors which were beyond their control, such as :

- a) TDR issue which arose due to fresh notification dated 29.12.2016 for utilisation of TDR;
 - b) The dumping ground issue i.e. in PIL No. 217 of 2009 filed by Mr. Pandurang Patil before the Hon'ble High Court wherein the Hon'ble High Court was pleased to pass an order 26th February, 2016 whereby the direction as given to the MCGM and /or State not to grant any permission on the proposals submitted from 1st March, 2016. The new requirement of SWM NOC which was mandated pursuant to the order of Hon'ble Supreme Court dated 15th March, 2018 passed in SLP (Civil) D 23708 of 2017 filed by Maharashtra Chamber of Housing Industries;
 - c) Due to demonetization, the labourers on site could not be paid in cash on daily wages due to non-availability of cash flow which led to stoppage of work for four months;
 - d) Implementation of RERA;
 - e) GST impact;
 - f) Shortage of sand, cement and ready-mix concrete; and
 - g) Other issues.
7. In view of the aforesaid ground the respondents prayed that the date of possession specified in clauses mentioned in the agreement for sale/deed of exchange be extended for 30 months and showed their willingness to hand over possession to the complainants on or before June 2020 and hence prayed for dismissal of this complaint.



Findings and Reasons:

8. The MahaRERA has examined the arguments of both the parties as well as the record. In the present case, the complainants have approached MahaRERA seeking interest for the delayed possession from June 2019 till the actual date of possession. There was a registered agreement for sale entered into between the complainants and the respondents dated 2nd May, 2015 for a flat No. 701. According to the said agreement, the respondents were liable to hand over possession of the flat to the complainants on or before 31st December, 2019 with a grace period of six months which comes to 30th June, 2020. Thereafter, complainants availed and booked flat No. 3403 on 34th floor and accordingly the deed of exchange dated 26th July, 2018 was executed between the complainants and respondents wherein the respondents have advanced date of possession for six months from 31st December, 2019 till 30-06-2019. Since the possession is not given yet, the complainants are seeking interest for delay from 30th June, 2019 till the possession of the flat.
9. The respondents, on the other hand, have disputed the claim on the ground that in the original agreement executed with respect to flat originally booked by the complainants the date of possession with the grace period comes to 30th June, 2020 which is yet to come and the complaint is premature. However, both the parties have subsequently executed the changed deed for the purchase of new flat on 26th July, 2018 whereby the date of possession was advanced by six months. As the deed of exchange is silent about the grace period the same cannot be considered as per the previous agreement. It shows that the respondents have violated the provisions of section-18 of the RERA.
10. With regard to the reasons for delay cited by the respondents, the MahaRERA feels that the said reasons cannot be accepted at this stage as the reasons for delay mentioned by the respondents are not covered under the force majeure clauses mentioned in the registered agreement

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for sale and there is no fault on the part of complainants who have put in hard earned money for booking of the said flat. Moreover, all these constraints were well known to the respondent when the deed of exchange was executed on 26/7/2018 and accordingly the date of possession was decided. The respondents are therefore liable to pay interest to the complainants for the delayed possession in accordance with section-18 of the RERA.

11. In view of the aforesaid facts, the respondents are directed to pay interest to the complainants on the money received by them from 1st July, 2019 till actual date of possession of the flat at the rate of Marginal Cost Lending Rate (MCLR) of State Bank of India (SBI) plus 2% as prescribed under the provisions of section-18 of the RERA. Since the project is nearing completion, the MahaRERA directs that the actual amount payable to the complainants towards the interest shall be adjusted with the balance amount payable by the complainants, and the remaining amount, if any, shall be paid at the time of possession.
12. With these direction, the complaint stands disposed of.



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