

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

Complaint No. CC006000000089896

Aditya Sachdeva and Vrishali Mahindroo Sachdeva ... Complainants

Versus

Acme Housing India Private Limited ... Respondent

MahaRERA Project Registration No. P51800001238

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

Ld. Adv. Ranawat i/b Ld. Adv. Janu Gulati appeared for the complainant.

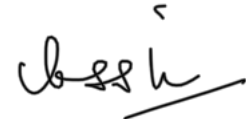
Ld. Adv. Harshad Bhadbhade a/w Mr. Ronak Mehta appeared for the respondent.

ORDER

(Friday, 8th April 2022)

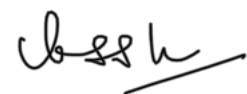
(Through Video Conferencing)

1. The complainants have filed this complaint seeking directions from MahaRERA to the respondent to handover the possession of the flat and also to pay interest for the delayed possession 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 the flat bearing No. 3103 on 31st floor (earlier booked flat No. 3103 on 31st floor) in the respondent's registered project known as "**Oasis - Tower 2**" bearing MahaRERA registration



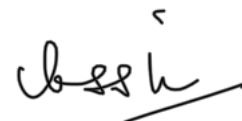
No. **P51800001238** located at Kandivali East, Mumbai.

2. This complaint was heard on 11-02-2020, and vide an interim order this complaint was referred to Ld. Adjudicating Officer/ MahaRERA Mumbai for further appropriate action since the complainants sought interest and compensation under the provisions of section 18 of the RERA.
3. Thereafter this complaint was again referred to MahaRERA by the Ld. Adjudicating Officer/MahaRERA on 16-04-2021 in view of the order passed by the Hon'ble Maharashtra Real Estate Appellate Tribunal in case of Mr. Pankaj Agarwal.
4. Accordingly, this complaint was heard finally on 12-01-2022 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 and made their submissions. The MahaRERA heard the submissions of the parties and also perused the available record. However, it was not possible to decide the matters expeditiously since the office work was severely impacted by Covid 19 pandemic, heavy workload of the subordinates and shortage of staff.
5. It is the case of the complainants that they have purchased the said flat in the respondent's project by executing a registered agreement



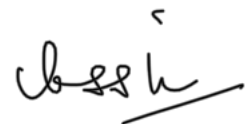
for sale dated 8-12-2017. The said flat was booked for total consideration amount of Rs. 1,98,27,757/-. Accordingly, he has paid substantial amount to the respondent by availing home loan. According to the said agreement for sale the respondent was liable to handover possession of the said flat to them on or before 30-06-2018 excluding the grace period of 6 months. However, the respondent has not handed over possession of the said flat to them on the agreed date of possession. The respondent during the pendency of this complaint has obtained the occupancy certificate on 27-03-2021, however, it has not provided the possession to them. Hence, the complainants are seeking possession of their flat along with interest for the delayed possession from 01-01-2019 till the actual date of possession under section 18 of the RERA.

6. The respondent on the other hand has refuted the claim of the complainant by filing its reply on record of MahaRERA. It has further stated that as per clause no. 12.1 the registered agreement for sale dated 8-12-2017, the possession of the flat was to be handed over to the complainants on or before 30-06-2018 excluding the grace period of 6 months subject to the force majeure and other factors as stated therein. Further as per clause no. 12.5 of the said agreement, it is entitled to seek reasonable extension of time in the possession date in the event of occurrence of any of the event specified therein.
7. The respondent further stated that the project got delayed mainly due to: i) delay in resolving the TDR issue, ii) Demonetization due to which, it could not pay money in cash to labours and to normalize the



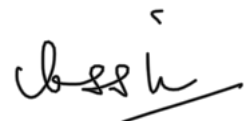
situation it took around 4 months' time, iii) Media widely broadcasted that third wave is awaited, labour never returned, iv) implementation of RERA from 1-05-2017 to 14-08-2017 when it registered this project with MahaRERA, v) implementation of GST during the period of July, 2017 till December, 2017, vi) shortage of sand and cement and ready mix- concrete during the period of 2013-2014 and there was ban on sand mining between the year 2017-2018, vii) suspension of work due to covid-19 pandemic resulted in shortage of labourers and considering that the MahaRERA taking into consideration the pandemic situation has issued two orders on 18-05-2020, 13-04-2021 and 6-08-2021 for the said period as force majeure reasons, and the said reasons have been covered under clause no. 12.5 of the agreement for sale. viii) delay in obtaining part OC as it was applied on 30-05-2019 and same is obtained on 2-08-2021, ix) substantial delay caused due to amendment in Development Control Regulation, x) Supreme Court judgement- Act has been introduced to complete the project financial though not part of the reply, but is uploaded on MahaRERA web page. The respondent promoter further stated that there is no intentional delay on its part in completion of this project.

8. The respondent further stated that MahaRERA considering these pandemic situation has given extension of one year period for completion of this project. The respondent has further stated that while registering this project with MahaRERA he has mentioned the completion date of this project as 31-12-2019, which was extended by the MahaRERA till 31-12-2020, which was subsequently extended due to covid-19 pandemic till 14-10-2021. Further, it has received part



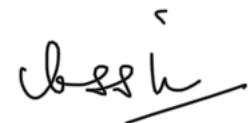
occupancy certificate uptill 30th floor on 2-08-2019 and full occupancy certificate was obtained on 27-03-2021. Hence, the present complainants have not made out any case for interest for the delayed possession under section 18 of the RERA. It has intimated the said full occupancy certificate to the complainant on 30-03-2021. The complainants have not taken possession of the said flat. Hence, it has prayed for dismissal of this complaint.

9. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, the complaint is filed mainly seeking possession of the flat along with the interest for the delayed possession under section 18 of the RERA. Admittedly, there is a registered agreement for sale dated 8-12-2017 entered into between the complainants and the respondent promoter. According to the said agreement, the respondent promoter was liable to handover possession of the said flat to the complainant on or before 30-06-2018 excluding grace period of 6 months and with grace period of 6 months 31-12-2018. The complainants have uploaded a copy of the said agreement for sale on record of MahaRERA. Admittedly, possession of the flat was not given to the complainants on the said date of possession mentioned in the said agreement for sale, which shows that the respondent promoter has violated the provision of section 18 of the RERA.
10. The respondent though has filed its reply on record, has failed to explain the delay caused in this project. It has merely stated that the project got delayed due to the reasons cited in aforesaid para no.7



such as demonetization, implementation of RERA and GST, Covid-19 pandemic, shortage of sand and cement, amendment in Development Control Regulation etc.

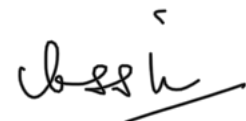
11. The aforesaid contentions of the respondent promoter cannot be accepted at this stage as the said reasons of delay cited by the respondent are not covered under the force majeure clause. Even, the Covid-19 pandemic occurred in the year 2020, i.e. after the date of possession in the agreement for sale got expired. Hence the respondent would not be entitled to seek benefit of the said ground for extending the date of possession mentioned in the agreement for sale.
12. 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 agreements with the home buyers. Hence it was the duty of the respondent promoter to get all permissions in time and to complete the project in a time bound manner. If the project was getting delayed for the reasons cited by the respondent, in that event, the respondent should have approached the complainants allottees and should have informed the said delay to them and should have revised the date of possession mentioned in the agreement for sale. However, no such steps seem to have been taken by the respondent. Hence the reasons for delay cited by the respondent cannot be accepted as plausible explanation.



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

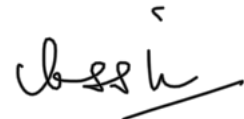
14. "18 (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, —(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or(b) due to discontinuance of his business as a developer 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."

15. The aforesaid explicit provision under section 18 of the RERA clearly specifies that on failure of the promoter to handover possession of the flat to the allottee on the agreed date of possession mentioned in the agreements for sale, the allottee has two choices either to withdraw from the project or to continue in the project. If the allottee intends to withdraw from the project, the promoter on demand of the allottee is liable to refund the entire amount paid by the allottee along



with interest and compensation as prescribed under RERA. If the allottee is willing to continue in the project, in that event, the promoter is liable to pay interest for the delayed possession.

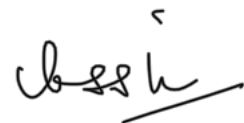
16. Likewise, in the present case, the complainants have decided to be in project, hence, they are entitled to seek interest for the delayed possession as provided under section 18 of the RERA.
17. It is very clear from the above discussion that the reasons cited by the respondent for the delay in completion of the project do not give any plausible explanation for the said delay caused in the project. Moreover, all reasons of delay cited by the respondent promoter occurred prior to the execution of the said agreement for sale with the complainants and even after the date of possession mentioned in the said agreement has lapsed. Hence, the said reasons of delay are not acceptable. Moreover, most of the reasons cited by the respondent promoter such as demonetization, TDR issue, implementation of RERA /GST etc are not covered under the force majeure clause mentioned in the said agreement for sale executed between the complainants and the respondent promoter. Hence, the MahaRERA prima facie feels that the respondent promoter has violated the provisions of section 18 of the RERA.
18. However, in the present case, the MahaRERA has noticed that the respondent promoter has completed the construction and obtained occupancy certificate (OC) on 27-03-2021 and also offered the possession of the said flat to the complainants on 30-03-2021. It



shows the respondent promoter has complied with its statutory duty cast upon it under section 18 of the RERA towards interest for the delayed possession on the date of OC and the possession was offered to the complainant. Hence the MahaRERA is of the view that the complainant are not entitled to seek any interest after the date of OC obtained for this project.

19. In view of the above facts and discussion, the following order is passed:

- a. The respondent promoter is directed to handover possession of the said flat to the complainants within a period of one month from the date of this order.
- b. The respondent is also directed to pay interest for the delayed possession to the complainants from the agreed date of possession i.e. 1-01-2019 till the date of full occupancy certificate i.e. 27-03-2021 on the actual amount paid by the complainants towards the consideration of the said flat at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2% as prescribed under the provisions of section 18 of the RERA and the Rules made thereunder.
- c. Needless to state here that the actual amount as provided under section 18 of the RERA means the amount paid by the complainants towards the consideration of the said flat only, excluding the stamp duty, registration charges and taxes etc. paid to the government.



d. With regard to the payment of interest to the complainants, 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.

21. With the above directions, the complaint stands disposed of.

22. The certified copy of this order will be digitally signed by the concerned legal assistant of the MahaRERA. It is permitted to forward the parties a copy of this order by e-mail.

