

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI

Complaint No. CC006000000100552

Nilesh Sitram Sawant

.... Complainant

Versus

Mr. Paresh K. Mehta M/s Glomore Construction &

Mr. Bhupendra M. Doshi of Acme Housing India Pvt. Ltd Respondents

MahaRERA Project Registration No. P51800006404

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

Ld. Adv. Laxmi Singh appeared for the complainant.

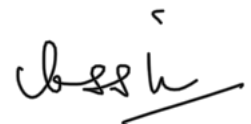
Ld. Adv. Kesharsingh Shekhawat appeared for the respondents.

ORDER

(Monday, 3rd January, 2022)

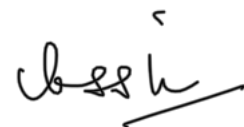
(Hearing Through Video Conferencing)

1. The complainant above named has filed this complaint seeking directions from MahaRERA to the respondents to handover possession of his flat along with 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 a flat bearing no. 2706 in the respondent's registered project known as "**Oasis-Tower 1**" bearing MahaRERA registration No. **P51800006404** located at Kandivali East, Mumbai.
2. This complaint was heard on 15/01/2020 in presence of both the parties, when the both the parties appeared for the said hearing and made showed their willingness to settle the matter amicably. Hence on request of both the parties, this complaint was transferred to MahaRERA Conciliation Forum.
3. However, the parties could not arrive any mutually agreeable terms and



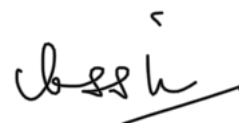
hence, this complaint was again referred to MahaRERA for further necessary action.

4. Thereafter this complaint was scheduled for hearing on 21-10-2021 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, both the parties appeared for the said hearing and made their submissions. The MahaRERA heard the submissions made by both the parties and also perused the available record.
5. In the present case, the respondent no. 1 is the promoter who has registered this project and the respondent No. 2 is the co-promoter who has jointly undertaken this project (hereinafter referred to as the respondent).
6. It is the case of the complainant that he has booked the said flat in the respondent's project on 18-02-2010. The said flat was booked for total consideration amount of Rs. 1,13,77,100/-. The registered agreement for sale was executed on 14-08-2018. According to the said agreement, the respondent was liable to handover possession of the said flat to him on or before 30-06-2019 excluding grace period of 6 months. The complainant further stated that the said booking was done in the year 2010 and till date he has paid an amount of Rs. 99,66,632 which amounts to 87% of the consideration value and the said amount is paid from the year 2010. The complainant further stated that the project got delayed due to non-compliance of government Rules and Regulations, lack of government permissions, paucity of fund etc. After commencement of RERA, the respondent has registered this project with MahaRERA and only thereafter it has registered the agreement for sale for which he has paid an amount of Rs. 8,87,400/- towards stamp duty and Rs. 30,000/- towards registration



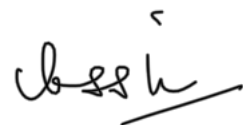
charges in the year 2018.

7. The complainant further stated that despite receiving substantial amount from him, the respondent has failed and neglected to handover possession of the said flat to him on the agreed date of possession mentioned in the agreement for sale and thereby caused delay and hence as per the provisions of section 18 of the RERA, he is entitled to claim interest for the delayed possession. The complainant further stated that he has paid the said amount by availing the bank loan and he paid interest even during the Covid-19 pandemic.
8. Moreover, the respondent is asking him to pay interest for late payment of Rs. 26,63,974 which is fraudulent and dishonest as the project was started in the year May, 2010 and got delayed on the part of the respondent for about more than 11 years which is a very unreasonable period. The complainant therefore prayed to cancel the delay payment interest charged by the respondent and prayed to allow this complaint.
9. In the present case, the MahaRERA has observed that the complainant has filed this online complaint before MahaRERA on 17-08-2019. However, till date, the respondent has not bothered to file its reply to this complaint, though the complaint is visible to the respondent in its project. Moreover, after issuance of the SOP dated 12-06-2020, the respondent was liable to upload its reply in digital form in this complaint. However, the respondent has not complied with the said direction. Furthermore, though the notice for this virtual hearing has been duly served upon it, the respondent appeared for the hearing through its advocate but has failed and neglected to file its reply. It shows that the respondent is not willing to contest this complaint. Hence, the MahaRERA has no other alternative but to proceed with the matter ex-parte against the respondent on merits.



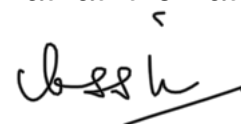
10. The MahaRERA has examined the arguments advanced by the complainant. The complainant being an allottee of this project filed this complaint seeking possession of his flat along with interest due to the delayed possession under section 18 of the RERA. There is a registered agreement for sale dated 14-08-2018 entered into between the complainant and the respondent. According to clause no. 12.1 of the said agreement, the respondent agreed to handover possession of the said flat to the complainant on or before 30-06-2019 with grace period of 6 months i.e. on or before 31-12-2019. To substantiate its contention, 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 complainant till date. It shows that the respondent has violated the provision of section 18 of the RERA.
11. Further, the MahaRERA has also noticed that in this project the MahaRERA has passed common order on 28-09-2021 in complaint No. CC006000000194290 along with other 10 connected complaints filed in this project by the other allottees and granted reliefs under section 18 of the RERA to the said allottees. The complainant being an allottee of this project is also entitled to seek similar reliefs at par with the other allottees.
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.”

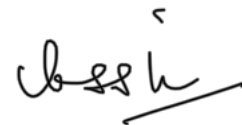
13. The aforesaid explicit provision under section 18 of the RERA clearly states that on failure of the promoter to handover possession of the flat to the allottee on the agreed date of possession mentioned in the agreements for sale, the allottee has two choices either to withdraw from the project or 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.
14. Likewise, in the present case, the complainant has decided to be in project, hence, they are entitled to seek interest for the delayed possession as provided under section 18 of the RERA.
15. In view of these facts, the respondent is directed to pay interest for the delayed possession to the complainant from 1-01-2020 till the actual date of possession with OC for every month on the actual amount paid by the complainant towards the consideration of the said flat at the rate of



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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.

16. However, in view of the mitigating circumstances beyond the control of the respondent promoter and also to ensure that the said project is not jeopardised due to the outflow of finances and is completed keeping in mind the interest of the other buyers of the said project at large, it is directed that the amounts of interest shall be paid by the respondent promoter to the complainants after obtaining the full occupancy certificate. Even, the respondent promoter at the time of possession of the flat to the complainant, may set off the outstanding dues with the interest amount payable by it to the said complainant and the balance amount if any, by either party be paid at the time of possession.
17. 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.
18. With the above directions, the complaint stands disposed of.
19. 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