

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

**Complaint No. CC006000000194207**

Vivek Bholanath Chaturvedi and Anr

.... Complainants

***Versus***

M/s. Glomore Constructions

.... Respondent

**MahaRERA Project Registration No. P51800006404**

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

Ld. Adv. Ram Upadhyay appeared for the complainants.

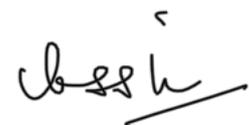
Ld. Adv. Harshad Bhadbhade a/w. Ld. Adv. Kesharsingh Shekhawat appeared for the respondent.

**ORDER**

(Thursday, 17<sup>th</sup> February 2022)

(Through Video Conferencing)

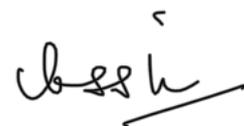
1. The complainants above named have filed this complaint seeking directions from MahaRERA to the respondents to pay interest for delay in handing over the possession under the provisions of section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of booking of a flat bearing no. 3105, on the 31<sup>st</sup> floor of Tower- I admeasuring 68.62 sq. mtr. carpet area along with one car parking 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 09-08-2021 and the same was heard finally on 02-12-2021 as per the standard operating procedure dated 12/06/2020 issued by MahaRERA for hearing of complaints through video conferencing. Both the parties were issued prior notification and were asked to file their respective submissions before MahaRERA. Accordingly, both the parties appeared through their respective advocates/ representatives and showed their willingness to settle the matter amicably through MahaRERA Conciliation Forum. Hence, on request of both the parties, this complaint was referred to MahaRERA Conciliation Forum for further necessary action.



3. Both the parties, though appeared before the MahaRERA Conciliation Forum, however they could not arrive at any mutually agreeable terms. Hence this complaint was again referred to MahaRERA on 27-10-2021 by the MahaRERA Conciliation Forum, with a remarks“Conciliation Failed”.
4. Accordingly, this complaint was heard by MahaRERA on 2-12-2021, when both the parties appeared and made their respective submissions, after which the following roznama was passed:

***“Both the parties are present. Heard the submissions. During the course of hearing the learned advocate for the respondent submitted that the complaint is not filed in proper format and hence the respondent could not file its detailed reply. However, the complainant stated that two to three times the hearing was conducted on this complaint and even the matter was listed for hearing before MahaRERA Conciliation Forum. Hence, the issue involved in the complaint is very well known to the respondent. Heard the submissions of the parties. Order is reserved”.***

5. The MahaRERA has examined the submissions made by both the parties and also perused the available record.
6. During the course of hearing held on 2-12-2021, the respondent has raised an objection with respect to filing of this online complaint stating that the same is not filed in proper format along with all the enclosures.
7. Considering the same, the MahaRERA has perused the online complaint filed by the complainants along with the supportive documents uploaded by them. On bare perusal of the same, prima facie it appears that the complainants are seeking reliefs mainly under section 18 of the RERA for possession of their flat along with interest for the delayed possession alleging the date of possession in the agreement for sale dated 19-10-2018 to be 30-06-2019.
8. In this regard before dealing with the facts in this complaint, it is pertinent to



examine “possession” as contemplated under section 18 of the said Act:

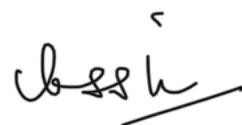
**“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —**

**(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 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:**

**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.”**

9. However, from the plain reading of Section 18 of the said Act, it is clear that if the promoter fails to handover possession as per the terms of the agreement for sale by the specified date therein, the allottee has a choice either to withdraw from the said project or stay in the project. Further, in case the allottee chooses to withdraw from the said project, he is entitled to claim refund with interest including compensation against the promoter and in case the allottee chooses to stay in the said project he is entitled to claim interest for the delay till handing over possession.
10. The aforesaid provisions of Section 18 of the RERA clearly provides the date of possession specified in the “agreement for sale”. Further, section 18 of the RERA, mandates that the agreement for sale should have been executed. This agreement for sale has not been submitted before the MahaRERA for deciding the claims of



the complainants on merits. In the absence of the agreements for sale, it is not possible to conclusively prove that the provisions of Section 18 of the RERA have been violated.

11. In addition to this MahaRERA Order No.11 dated 23-10-2019, the clause No. 1 clearly state as under:

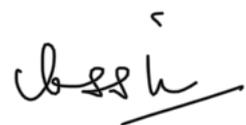
***“When a complaint is being lodged for seeking individual relief, the aggrieved person must provide for following details as part of the Complaint:***

- ***Building No./Wing No./ Flat No./Shop No./ Unit No.:***
- ***List names of all owners/ joint owners:***
- ***Total Consideration value (Rupees):***
- ***Money paid till date:***
- ***Date of allotment or booking:***
- ***Date of Agreement (if any):***
- ***Date of possession in the agreement (if any):***
- ***For a failure to do so, MahaRERA may treat the said complaint as not maintainable.”***

12. Thereafter, the MahaRERA again issued the SOP vide Circular No: 27/2020 dated 12-06-2020 for hearing of the complaints through online system, whereby it was made mandatory for both the parties to submit their relevant documents through online system. The complainants in case who have filed this complaint on 30-09-2020, subsequent to the said SOP dated 12-06-2020 should have filed this complaint in proper format as per the SOP dated 12-06-2020. However, it has not been done in this case.

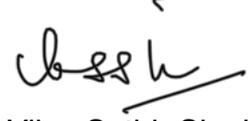
13. In view of these facts, the MahaRERA cannot proceed to decide the claims of the complainants under section 18 of the RERA without the mandatory document viz the agreements for sale.

14. In view of these facts, the present complaint stands dismissed for being incomplete and not filed in proper format as per Order No.11 dated 23-10-2019 and SOP dated 12-06-2020. The complainants are at liberty to file fresh



complaint in proper format along with the relevant documents.

15. 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**

