

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

Complaint No. CC006000000078691

Mrs Nirmala J Veera

Mr. Jayantilal Veera

..... Complainants

Versus

M/s. Silvex Constructions Pvt Ltd.

..... Respondents

Project Registration No. **P51800003009**

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

J. T. Veera appeared for the complainant.

Adv. Saylee Rajpurkar appeared for the respondent.

ORDER

(26th December, 2019)

1. The complainants have filed this complaint seeking directions from MahaRERA to the respondent to give possession of the flat and to pay interest for the delayed possession as per 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 No.1902 on 19th floor in the respondent's project "**Silver Park**" bearing MahaRERA registration No. P51800003009 situated at Mulund (W), Mumbai.
2. This complaint was heard on several occasions, when both the parties appeared and made their submissions. During the hearing held on 25/10/2019, the respondent was directed to file written submissions within a period of two weeks. Accordingly, the respondent has now filed its written submissions on record of MahaRERA and this complaint was finally heard on 06/12/2019.
3. It is the case of the complainants that they have booked the said flat for a total consideration amount of Rs. 1,25,00,000/ and the registered agreement for sale was executed on 09/06/2017. According to the said agreement, the

Dr. V. S. Singh

respondent was liable to handover the possession of the said flat to the complainants on or before December 2017. Though the complainant has paid an amount of Rs. 1,25,00,000/- till date, they have not received possession of their flat. Hence, the present complaint has been filed seeking relief under Section-18 of the RERA.

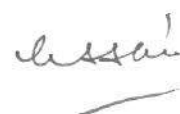
4. The respondent has filed their reply and resisted the claim of the complainants and stated that the project has completed and applied for the occupancy certificate to the concerned competent authority, which is under process. It further stated that, before the revised completion date mentioned in the MahaRERA i.e. 31/12/2019, it will obtain the same. The respondent stated that, it has executed registered agreement for sale with the complainants and the complainants have agreed to make a payment as per the payment schedule mentioned in the agreement for sale. However, the complainants have failed to pay the amount payable as per the stage of the construction as on June 2017. However, the complainants requested them to execute the registered agreement for sale under MOFA and in good faith, the respondent has executed agreement for sale with the complainants on 19/06/2017, wherein the complainants have agreed to make a payment of entire consideration on or before completion of construction by leaving amount of Rs. 4,00,00/-, which is payable at the time of possession.
5. After execution of the registered agreement for sale, the complainants made default of around 192 days in making timely payment. The respondent, therefore, called upon the complainants to make payment of dues latest by 17/03/2017; but, the complainants failed to make the said payment. Therefore, the complainants are liable to pay interest for the delayed payment as prescribed under the RERA.
6. With regard to the possession of the flat, the respondent stated that, as per the said agreement for sale they agreed to deliver the possession on or

before 31/12/2017 subject to any reason which is beyond their control as set out in clause-10 of the said agreement for sale. Further as per clause- 11 of the said agreement, the complainants were at liberty to terminate the agreement by giving prior notice if the respondent failed to deliver the possession of the said flat on or before the agreed date. The complainants have not tried the said remedy. The respondent further states that, it has undertaken the said re-development project 'Nahur Vivekanand CHSL' having 160 tenements. In the said project 9 disgruntled members have created several obstacles in the re-development work by filing false litigations in various courts and by filing false applications before MHADA, MCGM etc. due to which the project got delayed. In addition to this, demonetization happened in the year 2016 and advent of GST slowdown the project progress due to which they could not deliver possession of the said flat to the complainants on the agreed date of possession.

7. Further, the respondent stated that, the few members of the society has approached competent authority namely MCGM and recorded their written objection to the grant of occupancy certificate. Therefore, it is facing difficulties in procuring the occupancy certificate. The complainants were aware of all such facts even they are aware of the revised completion date mentioned in MahaRERA website i.e. 31/12/2019. The complainants for the first time on 23/02/2019 have demanded the possession of the said flat along with interest on the payment towards consideration, stamp duty, registration fee, VAT, service tax, GST etc.
8. The respondent replied the said letter on 06/03/2019 and denied its liability to pay interest as demanded and informed the complainants that the occupancy certificate is under process. The complainants have not replied to the said letter. Moreover, it tried to settle the matter with the complainants and accordingly, sent revised calculation sheet indicating the payment dues payable by the complainants through e-mail. The complainants through an e-mail dated 25/06/2019 disputed the said calculation and hence, the

settlement could not happen. In the light of these facts, the respondent prayed for dismissal of this complaint.

9. The MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case admittedly, there is a registered agreement for sale executed between the complainants / allottees and the respondent / promoter in which the date of possession was mentioned as 31-12-2017. However, till date the possession is not given to the complainants, though substantial amount has been paid by them. It shows that the respondent has violated the provisions of section-18 of the RERA.
10. To justify the case, the respondent / promoter has argued that the project got delayed due to demonetization, GST and various litigations filed by the few disgruntle members of Nahur Vivekanand CHS Ltd due to which it could not obtain the occupancy certificate for the said project though the project was physically ready on site. Hence, the project got delayed and said the reasons were beyond its control. The respondent further contended that the as per clause No.11 of the said agreement for sale, there is a provision that if the respondent failed to handover possession of the said flat to the complainants on or before the agreed date of possession, then the complainants/ allottees were liable to seek refund of the entire amount along with simple interest. However, in the present case, it prima facie, appears that the complainants have not exhausted the said remedy available in the agreement for sale signed by both the parties.
11. The reason cited by the respondent cannot be accepted at this stage as the same are not covered under the force majeure clause. Even if the reasons for the said delay has been accepted being a re-development project, the respondent could be entitled to seek 6 months grace period in handing over possession of the said flat to the complainants.



12. Therefore, the respondent promoter is directed pay interest to the complainants on the amount paid by them from 1st July, 2018 till the actual date of possession 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.
13. With regard to other issues raised by the respondent for default in making timely payment by the complainants, the MahaRERA is of the view that as per the provisions of the RERA, in case of any default on the part of either by the allottees or the promoter, they are liable to pay interest as per the rate prescribed under RERA. The respondent can, therefore, recover interest for any default on the part of the complainants.
14. With these directions, the complaint stands disposed of.



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