

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

Complaint No. CC006000000194774

Mr. Prashant Puthran

.... Complainant

Versus

Skystar Buildcon Private Limited

.... Respondent

MahaRERA Project Registration No. P51800002637

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

Ld. Adv. Tanuj Lodha appeared for the complainant.

Ld. Adv. Preet Chheda appeared for the respondent.

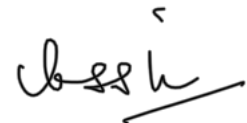
ORDER

(Wednesday, 20th April, 2022)

(Through Video Conferencing)

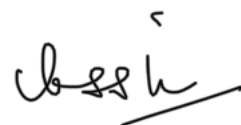
1. The complainant has filed this complaint seeking direction from MahaRERA to the respondent to refund the entire amount paid along with interest under the provisions of section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of a flat bearing no. 303, on 3rd floor, Wing B-3, Tower 1 of the respondent's registered project known as "**Sunteck City Avenue 2**" bearing MahaRERA registration No. **P51800002637** situated at Goregaon, Mumbai.

2. This complaint was heard finally on 08-12-2021 as per the

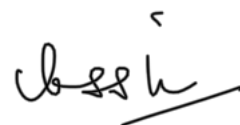


Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions if any. Accordingly, the parties appeared for the hearing and made the submissions. During the course of hearing, on request of the respondent, three days' time was granted to it to file reply on record of MahaRERA. With this directions, the matter was reserved for order.

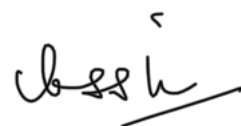
3. Pursuant to the said directions, the respondent filed its reply on record of MahaRERA on 20-12-2021. The same is taken on record in compliance of principles of natural justice. MahaRERA heard the submissions made by both the parties and also perused the available record. However, it was not possible to decide the matter expeditiously since the office work was severely impacted by Covid 19 pandemic, heavy workload of the subordinates and shortage of staff.
4. It is the case of the complainant that he booked the said flat by signing the application form dated 5-12-2013 for a total consideration Rs.1,50,27,558/-. However, the respondent has committed unfair practice as per section 7 of RERA by not stating the date of possession in the application form. Further, till date a total amount of Rs. 1,23,78,430/- i.e. more than 80% of the total consideration has been paid to the respondent towards the said flat till June 2020. However, the respondent commenced construction



only in December 2015. The respondent received commencement certificate on 1-03-2016 for the project. Further, the respondent has sent several demand notices to him from time to time and timely payments were made by him to the respondent as per the demand without any default or delay in the payments. However, till 2019 the respondent refused to provide a copy of agreement to the complainant. The complainant stated that the respondent asked him to visit his office in Mumbai to read and sign the agreement which was protested by him as he is an international client. He further stated that in 2017, in a meeting held with representatives of the respondent on 29/5/2017, when they blatantly refused to provide a copy of agreement for sale to him stating that it is against company policy to share the draft agreement for sale. The complainant stated that later vide email dated 22-03-2019 the respondent for the first time shared a copy of draft agreement which was blank and did not bear any date of possession and had several one sided clauses and the allottee has no say on it. Thereafter, the respondent vide its emails dated 16-04-2020 and 22-04-2020 informed that possession will be as per MahaRERA i.e. 30-10-2021. The complainant stated that at the time of booking, the respondent deliberately suppressed the fact that it did not have the height approval to construct the tower as mentioned in Clause W of draft agreement for sale. Even the flat was sold to him without the MCA approval. The respondent falsely and highhandedly demanded Rs. 2,72,126/- towards outstanding interest to which he has protested stating that backdated interest is charged and the same needs to be waived but till date it has not waived the same.



The complainant stated that as per section 46 of the Contract Act, even if no time for possession is stated, the possession must be given within a reasonable time. The complainant has relied upon the judgement in Kolkata West International City Pvt Ltd vs Devasis Rudra wherein the Hon'ble Supreme Court of India observed that ***"It would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession."*** The Hon'ble Court further observed that, ***"A buyer can be expected to wait for possession for a reasonable period. A period of seven years is beyond what is reasonable"***. The complainant has further relied on judgement in Pioneer Urban Land and Infrastructure Ltd vs Govindan Raghavan wherein the Hon'ble Supreme Court of India observed that ***"A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the Builder."*** The complainant stated that respondent has intentionally kept the complainant in dark for 7 years and have enjoyed money for 7 years by adopting fraudulent and deceptive practices while he has incurred loss of rental income due to delay in possession. Hence, the complainant prayed that the respondent be directed to refund to the complainant amount of Rs. 1,23,78,430/- along with interest as per sections 12 and 18 of RERA and the respondent's interest demand of Rs.



2,72,126/- be set aside as per section 11(4) of RERA. Further, the respondent be penalized for malpractices and adopting unfair or deceptive practices, false representations and fraud as per section 7 (1) (c) & (d) of RERA.

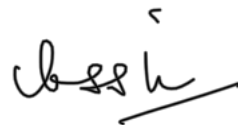
5. The respondent on the other hand has refuted the claim of the complainant by filing its affidavit in reply denying the contentions in the complaint. It has stated that it has duly procured the occupation certificate for the said flat on 18-08-2021. Further, the complainant is no longer an allottee of the said project since it has terminated the complainant's allotment with respect to the said flat by issuing a notice dated 10-07-2020 stating that he has wilfully defaulted to come forward for the execution and registration of the agreement for sale and it is constrained to cancel and terminate the booking and it is entitled to forfeit 10% of the booking amount and the complainant ceases to have any right, title and interest of any nature whatsoever in the said unit.
6. The respondent has referred to several letters and emails calling upon the complainant to complete the sale agreement by paying the outstanding dues failing which it would compel the respondent to terminate the complainant's allotment and forfeit 10% of the amounts paid by the complainant. The respondent has referred to the judgement of the MahaREAT in the case of Prem Chand vs. Indiabulls Real Estate Ltd. in Complaint no. CC005000000000683 observing that; ***Section 18 of RERA comes into picture only when the promoter fails to complete or he is unable to give***

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possession of the apartment .. Herein this case there is no document or any contention of the complaint showing the agreed date of possession...”

Thus, respondent is fully justified in forfeiting part sale consideration to off set the losses incurred by the conduct of complainant. Hence the complainant is entitled to no reliefs whatsoever and the complaint be dismissed with heavy costs.

7. The MahaRERA has examined the submissions made by both the parties and also perused the available record. By filing this complaint, the complainant is seeking refund along with interest and compensation alleging the violation of section 12 and 18 of the RERA.
8. Admittedly, there is no allotment letter or registered agreement for sale entered into between both the parties. However, there is booking application form dated 5-12-2013 duly signed by the complainant. However, it does not mention any date of possession. The complainant has alleged that the said booking was done under MOFA, when it was mandatory on the part of the respondent to mention the date of possession. However, the respondent has illegal not mentioned the same and thereby violated the provision of section 7 of the RERA. The complainant also alleged that despite paying more than 80% amount, the respondent has failed to execute the registered agreement for sale.

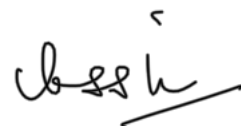


9. With regard to the claim agitated by the complainant before MahaRERA towards the refund along with interest and compensation under the provisions of RERA, the MahaRERA is prima facie of the view that the allottee is entitled to seek refund along with interest and compensation in case the promoter has violated the provisions of sections 12 and 18 of the RERA.

10. In case the MahaRERA proceeds to decide the claim of the complainant under section 12 of the RERA, the relevant provisions of section 12 are required to be perused which provides as follows:

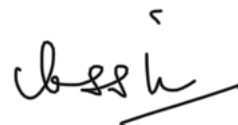
“12. Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act: Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.”

11. The aforesaid provision of section 12 provides that if the allottee



books any flat believing any false information contained in the notice /advertisement published by the promoter, and suffer from any loss damages in that event, the allottee is entitled to seek refund along with interest as prescribed under RERA. In the present case the complainant has not stated any violation of section 12 of the RERA showing any false notice /advertisement published by the respondent promoter, due to which he suffered from any sort of loss as contemplated under section 12 of the RERA. Hence, the MahaRERA cannot consider the claim of the complainant under section 12 of the RERA. Mere submission of the complainant that the respondent has misrepresented him about the permissions is not sufficient to claim refund along with interest under section 12 of the RERA. Moreover, the complainant has not produced any cogent documentary proof on record of MahaRERA to show that what action he has taken for non-execution of agreement for sale or not mentioning any agreed date of possession in said booking application form. If the reasonable period for handing over possession of the said flat would have been 3 years, then the complainant should have taken appropriate action at the relevant time when the said 3 years period got over in the year 2016, before the RERA came into force. Hence, the MahaRERA does not find any substance in the said allegations made by the complainant.

12. With regard to the relief sought by the complainant under section 18 of the RERA, the MahaRERA has referred the relevant provision of section 18 of the RERA, which reads as under:



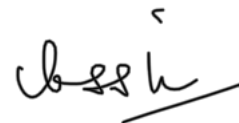
“18(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, —

(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:

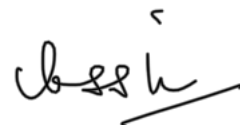
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”

13. The aforesaid provision of section 18 (1) provides that if the promoter fails to handover possession of the flat to the allottee on the agreed date of possession mentioned in the agreement for



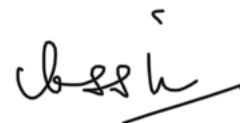
sale, in that event, the allottees can seek refund along with interest and compensation. If the allottee chooses to be in the project, he is entitled to seek only interest for the delay in possession.

14. With regard to the relief sought by the complainant under section 18 of the RERA, the MahaRERA is of the view that admittedly there is no agreement for sale registered between the parties nor any allotment letter is being issued by the respondent for the said booking to show any agreed date of possession. Moreover, in the application form signed by the complainant dated 5-12-2013, no date of possession has been mentioned. The complainant by filing this complaint is seeking refund along with interest for the delayed possession under section 18 of the RERA on the ground that the respondent has failed to complete the said project within the reasonable time.
15. In this regard, the MahaRERA has prima facie noticed that the said booking in this case was done under the provisions of MOFA, when it was mandatory for the promoter not to accept more than 20% amount of the total consideration, without first registering the agreement for sale. However, the respondent has admittedly accepted around 80% of the total consideration amount and till date there is no registered agreement for sale. It shows that the respondent has violated the provisions of section 4 of the MOFA and even after commencement of RERA on



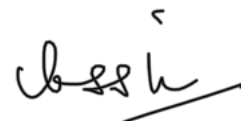
1-05-2017 , the respondent continued the said violation of section 13 of the RERA and failed to execute the registered agreement for sale with complainant. It shows the respondent has violated the provision of both section 4 of MOFA as well as section 13 of the RERA.

16. In addition to this, the MahaRERA has also noticed that complainant paid substantial consideration to the respondent for the flat booked by him in the year 2013. However, he is waiting for his home even after 9 years. Normally a project should be complete in 3-5 years as held by the Hon'ble Apex Court in its various judgements. Such an inordinate delay is neither permissible nor justifiable by any stretch of imagination. The complainant is therefore entitled to have reliefs under section 18 of RERA. Needless to say, the provision to claim refund with interest also exists under the Maharashtra Ownership of Flats Act (MOFA) under which the said booking was done by the complainant.
17. In addition to this, the MahaRERA, in absence of any agreed date of possession in application form signed by the complainant in the year 2013, and even in absence of agreement for sale and allotment letter, the MahaRERA may consider the proposed date of completion of the project mentioned by the respondent while registering this project with MahaRERA. In this case, the respondent has proposed the date of completion of this project



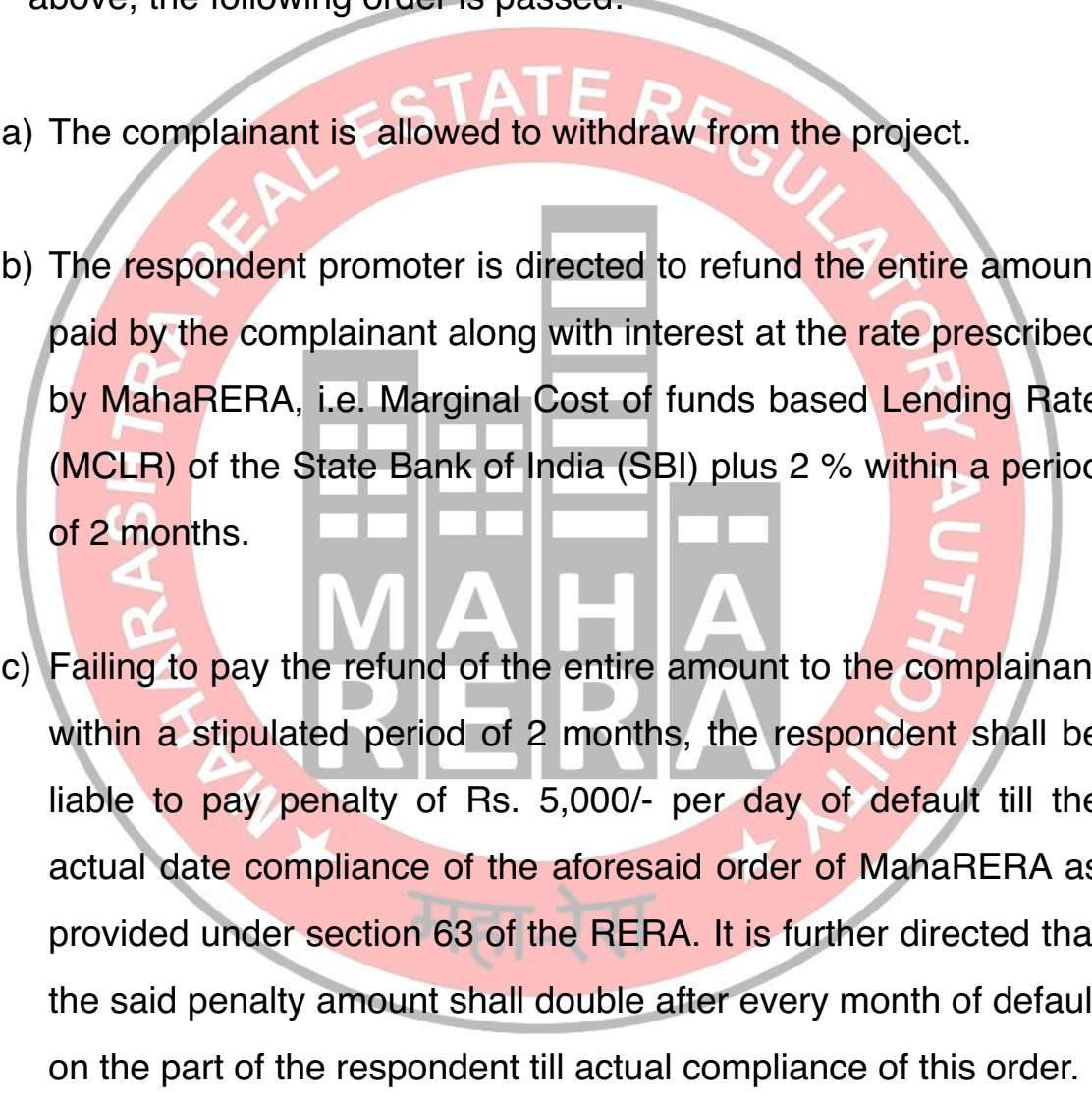
as 13-04-2021. Even on that date, the project was incomplete and the OC was obtained by it only on 18-08-2021.

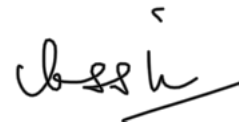
18. Further, the MahaRERA has also noticed that complainant has put his hard earned money for booking of the said flat and paid substantial amount to the respondent. The respondent even after accepting the monies from the complainant failed to perform its duties and liabilities as a promoter of the MahaRERA registered projects even after RERA came into force in the year 2017 for executing the agreement for sale till the year 2019 as it has for the first time sent the draft agreement for sale to the complainant and kept the complainant in lurch by taking huge amount and tormented the complainant viciously from the year 2013. Even after commencement of RERA, the respondent did not even bother to get the agreement for sale registered with the complainant. Even, the respondent went ahead and unilaterally, terminated the said booking for non execution of agreement for sale after payment of such huge amount. .
19. The respondent in its reply filed on record has not stated any justified reasons for the delay in non-execution of the registered agreements for sale In the matter of Neelkamal Realtors Vs. State of Maharashtra & Ors in Writ Petition No. 2737 of 2017 decided on 6th December, 2017, the Hon'ble Court discussed the eventualities creeping in and the suffering of the allottees/flat purchasers. Complying the said observations in the judgment it



squarely meets that complainant' allottee need to be compensated by way of interest for any inaction on the part of the respondent promoter.

20. In view of the facts and circumstances of this case as discussed above, the following order is passed:

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- The logo of the Maharashtra Real Estate Regulatory Authority (MahaRERA) is a large, semi-transparent watermark in the background. It features a circular border with the text 'MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY' in English and 'महाराष्ट्र वास्तव्य नियामक प्राधिकार' in Marathi. In the center is a stylized building icon with the word 'MAHARERA' written across it.
- a) The complainant is allowed to withdraw from the project.
 - b) The respondent promoter is directed to refund the entire amount paid by the complainant along with interest at the rate prescribed by MahaRERA, i.e. Marginal Cost of funds based Lending Rate (MCLR) of the State Bank of India (SBI) plus 2 % within a period of 2 months.
 - c) Failing to pay the refund of the entire amount to the complainant within a stipulated period of 2 months, the respondent shall be liable to pay penalty of Rs. 5,000/- per day of default till the actual date compliance of the aforesaid order of MahaRERA as provided under section 63 of the RERA. It is further directed that the said penalty amount shall double after every month of default on the part of the respondent till actual compliance of this order.
 - d) 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

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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 these 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.

