

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

**Complaint No. CC006000000196029**

Ankush Avinash Gadi

.... Complainant

***Versus***

Skystar Buildcom Private Limited

.... Respondent

**MahaRERA Project Registration No. P51800001281**

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

The complainant appeared in person.

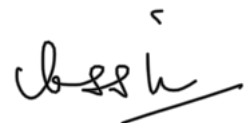
Ld. Adv. Preet Chheda appeared for the respondent.

**ORDER**

(Friday, 28<sup>th</sup> January 2022)

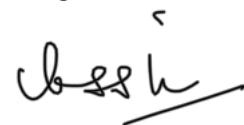
(Hearing Through Video Conferencing)

1. The complainant above named has filed this complaint seeking directions from MahaRERA to the respondent 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 a flat bearing no. A-2701 in the respondent's registered project known as "**Sunteck City Avenue 1**" bearing MahaRERA registration No. **P51800001281** located at Goregaon, Mumbai.
2. This complaint was heard on 15-06-2021 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



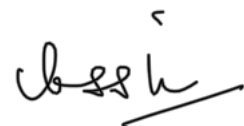
submissions, if any. Accordingly, the parties appeared for the said hearing and made their submissions. During the course of the said hearing both the parties expressed their willingness to settle the matter amicably. Hence, this complaint was referred to MahaRERA Conciliation Forum for further appropriate action.

3. However, the parties could not arrive at any mutually agreeable terms before the MahaRERA Conciliation Forum. Hence, this complaint was again referred to MahaRERA on 27-07-2021 by the Conciliation Forum with the remarks "Conciliation Failed".
4. Thereafter, this complaint was scheduled for hearing on 22-12-2021, when both the parties appeared and made their respective submissions. After hearing the parties, the respondent was directed to file the written submissions on record of MahaRERA within a period of one week. Accordingly, the hearing was concluded, and the order was reserved.
5. However, despite specific directions given to the respondent, it has failed to file any written submissions on record of MahaRERA. Hence, the reply filed by the respondent on 22-03-2021 is taken on record and same is perused. MahaRERA heard the submissions made by both the parties and also perused the available record.
6. It is the case of the complainant that he purchased the said flat no A -2701, vide registered agreement for sale dated 22-10-2019. According to the said agreement, the possession was to be handed over to him on or before 31-03-2020. The complainant stated that though all payments due to the builder including the registration fees have been duly paid to the respondent, it has failed to handover possession of the said flat to him. The complainant stated that the said delay on part of the respondent led to significant financial



stress for him and hence as per the provisions of the RERA, he would like to claim interest for the delayed possession. Further, the complainant stated that even after considering the relief extended by the Government due to the pandemic there is a huge default by the respondent in handing over the possession as per the terms and conditions of the agreement. Hence, he prayed to allow this complaint.

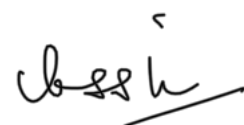
7. The respondent on the other hand has refuted the claim of the complainant by filing its reply stating that the complainant had booked the said unit for an aggregate sale consideration of Rs.2,50,24,000/- vide agreement for sale dated 27-10-2019. The respondent stated that the present complainant seeks compensation for alleged delay in handing over possession of the said unit and power to adjudicate disputes on payment of compensation for delayed possession has been exclusively conferred on the learned Adjudicating Officer and not on Authority. The respondent stated that although the date of possession in the said agreement for sale is 31-03-2020, it is entitled to a grace period of six months on equitable ground on account that the construction of the said project has been duly completed and is nearing completion of the said unit and thus this is a fit case where a grace period of six months can be granted. Further, the MahaRERA had issued Order no. 14/2020 dated 18-05-2020 whereby a blanket force majeure period was declared for all projects in Maharashtra owing to global pandemic of Covid – 19 and in such a situation, it not only proceeded with the completion of the project but was successful in procuring part occupation certificate for A Wing till 25 storeys. The respondent stated that the prolonged pandemic of Covid – 19 has put it under stress due to non-availability of labour, increased costs and market uncertainty, and it will be in the interest of all stakeholders not to burden the project financially by way of imposition of any penalties or compensation. The respondent stated that hence the complainant was not entitled for any interest / compensation as



prayed for and the complaint was liable to be dismissed with heavy costs.

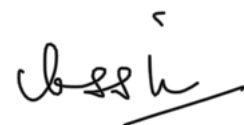
8. The complainant thereafter filed his rejoinder on record of MahaRERA on 12-06-2021 stating that the power to adjudicate the disputes on payment of interest for delayed possession has been entirely conferred on this Authority. Further, the date of possession mentioned in the agreement for sale is 31-03-2020 and there is no clause in the agreement which mentions of any six-month grace period which the respondent is seeking on equitable grounds. Further, this project has received extension on MahaRERA portal multiple times which is clear evidence that there was no intention to give possession of the said unit before the possession date mentioned in the agreement. The complainant further stated that the blanket force majeure issued by MahaRERA was issued for all projects while complete lockdown came into effect from 25-03-2020 i.e., six days before the date of possession as per the agreement for sale and the respondent had not even applied for the occupation certificate and hence the grace period extension should not have been granted in such a case as there was no readiness to handover possession on the agreed date. Moreover, even till date, the respondent has not been able to handover possession. Accordingly, the complainant requested to grant relief by making the respondent liable to pay interest for the delay in handing over possession of the said unit.

9. The MahaRERA has examined the arguments advanced by both the parties and perused the available record. By filing this complaint, the complainant being an allottee of this project has approached MahaRERA 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 27-10-2019 entered between the complainant and the respondent. According to clause no. 24 of the said agreement, the respondent agreed to handover possession of the said flat to the



complainant on or before 31-03-2020. To substantiate its contention, the complainant has produced the relevant pages 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.

10. To justify the said delay, the respondent has mainly contended that due to covid-19 pandemic the project got delayed and still it has completed the substantial work in the project and will soon obtain the occupancy certificate. It has further contended that since the complainant is seeking interest and compensation, the same has to be decided by the Ld. adjudicating Officer/MahaRERA and the MahaRERA has no jurisdiction to try and entertain this complaint.
11. As far as issue raised by the respondent of jurisdiction of Ld. Adjudicating Officer/MahaRERA to decide this complaint, the Hon'ble Supreme Court of India in its recent order dated 11-12-2021 passed in Civil Appeal No. (s) 6745-6749 of 2021 (M/s. Newtech promoters and Developers Pvt Ltd versus State of UP and Ors) has confirmed the said issue and held that the Ld. Adjudicating Officer is empowered to decide quantum of compensation and interest thereon as provided under section 71 and 72 of the RERA. Hence, the jurisdiction to grant interest for the delayed possession as sought in this complaint falls within the jurisdiction of MahaRERA. Hence the said issue does not survive in this case.
12. The respondent has not cited any justified reasons of delay occurred in this project as the Pandemic started in the month of March 2020 exactly 10 days before the agreed date of possession was getting over. However as per the MahaRERA notification dated 18-05-2020 though the respondent is entitled to seek extension for a period of 6 months, the respondent has not



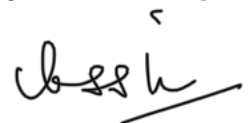
cited any justified reasons of delay in handing over possession of the said flat to the complainant till date.

13. With regard to the above issues as contended by the respondent in response to the complaint, the MahaRERA feels that the reasons cited by the respondent do not give plausible explanation. As a promoter, having sound knowledge in the real estate sector, the respondent was fully aware of the market risks when he launched the project and signed the agreement with the home buyers. Needless to state here that to get all requisite timely permissions from the competent authority by making necessary payment is statutory duty of the respondent being promoter of this project, under the provisions of RERA, the complainant being an allottee has nothing to do with the same. 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.
14. 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***

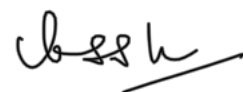
***(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy 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.”***

15. The aforesaid explicit provision under section 18 of the RERA makes it clear 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, since the complainant has decided to be in project, hence, he is entitled to seek interest for the delayed possession as provided under section 18 of the RERA.
17. In view of these facts, the respondent is directed to pay interest for the delayed possession to the complainant from 31-03-2020 till the actual date of possession with OC for every month of delay on the actual amount paid by the complainant 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.



18. 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 2<sup>nd</sup> April 2020 and 18<sup>th</sup> May, 2020 respectively issued by the MahaRERA and the Notification/Order which may be issued in this regard from time to time.
19. With the above directions, the complaint stands disposed of.
20. 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.

