

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

Complaint No. CC006000000089882

Mr. Achal Anand

.... Complainant

Versus

M/s. Sheth Developers Pvt. Ltd.

.... Respondent

Project Registration No. **P51700001729**

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

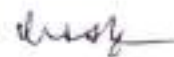
The complainant appeared in person.

Adv. S. M. Tulsankar appeared for the respondent.

ORDER

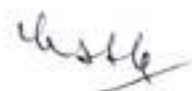
(26th November, 2019)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to pay interest and compensation for the delayed possession as provided under section-18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA") in respect of booking of a flat admeasuring 769 sq.ft. carpet in the respondent's project known as "**Seth Avalon**" bearing MahaRERA registration No. **P51700001729** at Thane.
2. This complaint was heard on several occasions and the same was heard finally on 30-10-2019. During the hearings, both the parties appeared and made their oral as well as written submissions.
3. It is the case of the complainant that he had booked the said flat in the month of March, 2015 for a total consideration amount of Rs.1,36,98,000/- plus other charges. Thereafter, the registered agreement for sale was executed on 28-12-2015. As per clause No. 33 of the said agreement, the respondent was liable to handover possession of the said flat to him on or before January, 2018. The complainant has paid an amount of Rs. 1,20,54,240/- to the respondent. However, the respondent has failed and neglected to handover possession of the said flat to the complainant on the agreed date of possession and violated the provision of section-18 of the RERA. Hence, the



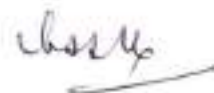
present complaint has been filed under section-18 of the RERA, thereby seeking interest/compensation for the delayed period of possession.

4. In this respect, the respondent filed written submission on record of MahaRERA and resisted the complaint raising various defences in their written submission. The respondent stated that the complainant has not disclosed cause of action in this complaint and filed the same with malafide intension to harass the respondent just to extract money. The complainant has not made out the case for grant of any reliefs. Further, he has suppressed the main fact that the occupancy certificate has already been obtained by the respondent for this project on 9-08-2019 and the possession was offered subject to clearance of all dues even before the RERA completion date. Therefore, the MahaRERA has no jurisdiction to entertain this complaint.
5. Even the agreement for sale was executed under the provision of MOFA and hence, the provisions of RERA would not apply to the case of the complainant as per clause No. 80 of the agreement for sale. Even as per clause No. 81 of the said agreement, the respondent was entitled to reasonable extension of time to deliver possession of the said flat under agreement for sale. However, the project got delayed due to the factors beyond its control, such as shortage of sand between the year 2014, 2016 and 2017. The NGT imposed restriction on sand mining, labour shortage due to change in economic scenario with social and political issues in the real estate sector in Maharashtra, which is dependant on labour secured from outside the state. Further, due to demonetization the project got delayed. Even the construction work got delayed due to heavy rain fall in 2016 and 2017. The respondent further stated that as per clause No. 34 of the agreement for sale, the respondent is liable to refund the amount if he is unable to give possession of the said flat to the complainant. The respondent, therefore, stated that there is no intentional delay on their part and the project got delayed due to the factors mentioned hereinabove. The respondent, therefore, prayed for dismissal of this complaint.
6. The MahaRERA has examined the rival submissions made by both the parties as well as the record. In the present case, the complainant has filed this

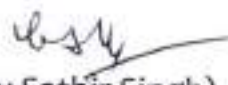


complaint seeking interest for the delayed possession under section- 18 of the RERA. According to the agreement for sale, the respondent was liable to handover possession of the said flat to the complainant on or before January, 2018. However, the possession is not given to the complainant so far.

7. The respondent has stated that the MahaRERA has no jurisdiction to hear this complaint, since occupancy certificate has been obtained on 7-08-2019. Further, there is no intentional delay on their part and the project got delayed due to the reasons such as non availability of sand, labour etc., economic downturn, demonetization etc., In this regard, the MahaRERA is of the view that the complainant is an allottee in the ongoing project which is registered with MahaRERA under Section-3 of the RERA Act, 2016. The jurisdiction of this Authority on such project continues till the project gets completed ~~fully~~ and obligation of the promoter regarding the project get fully discharged. This Authority, therefore, has the jurisdiction to hear the complainant's grievances concerning the project though the occupancy certificate has been obtained on 7-08-2019.
8. The reasons cited by the respondent for the delay such as, economic downturn in real estate sector, scarcity of sand, labour etc, the MahaRERA is of the view that as a promoter, having sound knowledge, in the real estate sector, the respondent was fully aware of the market risks when it launched the project and signed the agreement with the home buyers. Moreover, the nation's economy as a whole has shown consistent growth over the last so many years without any major incidents of recession or inflation. Another factor which the respondent has pointed out is that, the project got delayed because of ban on sand and stone mining. However, the said ban was placed in the year 2007 and same was lifted in the year 2014. In this case, the agreement was executed between the respondent and the allottees in 2015 and the respondent was very well aware of all these constraints. Therefore, he cannot make this factor as an excuse for the delay in completion of his project. The complainant allottee, who has paid substantial amount to the respondent and waiting for home for the last several years should not suffer due to such inaction on the part of the respondent.



9. In this regard, the MahaRERA feels that section-18(1) of the RERA, provides that on promoters' failure to give possession on the date specified in the agreement for sale, if the allottee is willing to continue in the project, the allottee is entitled to seek interest at prescribed rate under section-18 (1) of the RERA on the actual amount paid by the allottee for every month of delay till the date of possession. In the present case, admittedly, the respondent has failed to handover possession of the said flat to the complainant on the agreed date of possession. Hence, the MahaRERA is of the view that the complainant is entitled to get interest for the delayed period of possession under section-18 of the RERA.
10. It is very clear from the above discussion that the reasons cited by the respondent for the delay in completion of the project, do not give any plausible explanation. Moreover, the payment of interest on the money invested by the home buyers is not the penalty, but, a type of compensation for delay as has been clarified by the Hon'ble High Court of Judicature at Bombay in the judgment dated 6th December, 2017 passed in W.P.No. 2737 of 2017. The respondent is liable to pay interest for the period of delay in accordance with the terms and conditions of agreement.
11. In the light of these facts, the MahaRERA directs the respondent to pay interest to the complainant on the actual amount paid by them to the respondent from 1st February, 2018 till the date of occupancy certificate i.e. 7-08-2019 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. However, the complainant for compensation/rent, the MahaRERA is of the view that since the complainant wants to be in project, he is not entitled to seek any compensation under section-18 of the RERA.
12. With the above directions, the complaint stands disposed of.


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

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

Non-Execution Application

In

Complaint No. CC006000000089882

Achal Anand

...Complainant/s

Versus

Sheth Developers Pvt Ltd

...Respondent/s

MahaRERA Project Registration No. P51700001729

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

Ld. Adv. Sanjana appeared for the complainant.

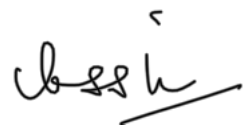
None appeared for the respondent.

ORDER

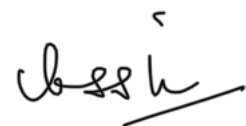
(Thursday , 23rd June 2022)

(Through Video Conferencing)

1. The complainant above named has filed this execution application for non-execution of the final order dated 26-11-2019 passed by the MahaRERA in the aforesaid complaint filed with respect to the project registered by the respondent with MahaRERA. By the said order the said complaint was disposed of with directions to pay interest for the delayed possession from 1-2-2018 till the date of occupancy certificate i.e 7-08-2019 under section 18 of the RERA.

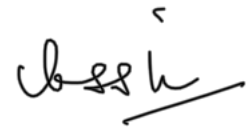


2. This application was heard today as per the Standard Operating Procedure dated 12th June 2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of the hearing. Accordingly, the complainant appeared for the said hearing and made the submissions. However, despite notice none appeared for the respondent.
3. During the course of hearing, the Id. advocate for the complainant stated the respondent has not complied with the order dated 26-11-2019 passed by MahaRERA and not paid the interest granted by the MahaRERA till date. The complainant therefore sought action against the respondent.
4. The respondent despite notice neither appeared nor filed any reply on record of MahaRERA stating the justified reasons of non-compliance of the orders passed by the MahaRERA in aforesaid complaint as well as in non-execution application. It shows that the respondent is not willing to contest this application.
5. Considering these facts and circumstances of this case, the following order is passed:-
 - a. The final opportunity in compliance of principles of natural justice is granted to the respondent to comply with the order dated



26-11-2019 passed by the MahaRERA and to pay the interest amount to the complainant within a period of 30 days from the date of this order.

- b. Failing which the respondent shall be liable to pay penalty of Rs. 5,000/- per day for every day of default till actual compliance of the said order. The said penalty amount will get doubled per day after every month.
- c. The MahaRERA further directs that for recovery of the interest amount and penalty amount levied by the MahaRERA, this non-execution application be referred to Secretary/ MahaRERA for issuance of warrant under section 40(1) of the RERA read along with Rule 3 of Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeals, etc.) Rules, 2017 for recovery of interest and penalty amount from the respondent.



(Dr. Vijay Satbir Singh)

Member – 1/MahaRERA