

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

Complaint No. CC005000000033512

Mr. Prashant Newaskar And Mrs. Harsha Newaskar ..Complainants
Vs

M/s. Neo Pharma Pvt Ltd Through Mr. Oswal And
Babul Rustamkhan Pathan ..Respondent

MahaRERA Project Registration No. **P52100000926**

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

Adv. Leena Kaulgekar appeared for the complainants.

Adv. Rekha Bhapkar appeared for the respondent.

ORDER

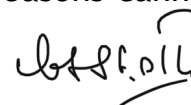
(12th November, 2020)
(Through Video Conferencing)

1. The complainants have filed this complaint seeking interest for the delayed possession under section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of booking of flat no. 53 on 5th floor in Building no. 'B' of the respondent's registered project known as "Kalpataru Jade Residences B" bearing MahaRERA registration No. P52100000926 at Pune.
2. This complaint was heard on several occasions in presence of both the parties and same was heard finally on 19.10.2020 as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for the 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 respective written submissions, if any. Accordingly, both the parties appeared for the hearing and they have submitted their respective written submissions. After hearing the arguments of both the parties, one week's time was granted to both the parties to upload their respective written submissions on record of MahaRERA. Accordingly,



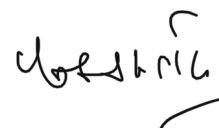
both the parties have uploaded their written submission on record of MahaRERA on 27-10-2020 and 22-10-2020 respectively. The MahaRERA heard the arguments made by both the parties and also perused the record.

3. It is the case of the complainants that they have booked the said flat in the respondent's project for total consideration amount of Rs.1,13,95,958/- The registered agreement for sale was executed on 24/3/2017. According to the said agreement the respondent was liable to handover the possession of the said flat to the complainants on or before 30th April, 2019. Till date the complainants have paid an amount of 1,10,82,321/- between the year 2016 and 2017. The complainants further stated that the respondent has not handed over the possession of the said flat on the agreed date of possession and hence it is liable to pay interest on the delayed possession under section 18 of the RERA. The complainant further prayed for cost of the complaint amounting to Rs.50,000/- in the present complaint. With regard to the alleged reasons cited by the respondent towards the alleged delay the complainants have stated that clause 7.1 of the agreement for sale would not be applicable in the present case because till date the flat is not ready for possession and thus the date of possession mentioned in the agreement cannot be postponed and the grace period cannot be made applicable. Further, this complaint was filed before MahaRERA on 4/11/2019 i.e. after six months from the date of agreed possession having lapsed and therefore the respondent cannot state that the complaint is premature. With regard to the Covid-19 pandemic issue raised by the respondent, the complainants have stated that the Covid-19 pandemic started after the date of possession mentioned in the registered agreement got lapsed and hence the said reasons cannot help



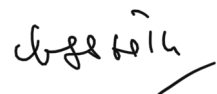
the respondent. The complainants therefore prayed to allow this complaint.

4. The respondent on the other hand has resisted the claim of the complainants by filing reply as well as written submissions on the record of MahaRERA. The respondent has stated that the complaint filed by the complainants is premature and same is filed before the agreed date of possession mentioned in the said agreement got lapsed. Hence prayed for dismissal of this complaint. With regard to the issues of delay raised by the complainants the respondent has stated that it has received permission for construction in the project from the TMC for 19 habitable floors above the basement and two parking floors and podium level vide commencement certificate dated 6/5/2015 and same was revalidated on 15/4/2017. Thereafter, the NOC from High Rise Committee was required and accordingly it applied for NOC to the High Rise Committee on 22/1/2015 and the High Rise Committee granted NOC after two years i.e. on 7/1/2017. As per the prevailing policy, it had to apply to competent authority for revision in the sanctioned plan on receipt of the NOC issued by the High Rise Committee. Accordingly, the respondent filed an application for revision of the plan to concerned competent authority on 19/4/2017 and it got the sanction from the competent authority on 12/2/2018. Thereafter the respondent had to obtain the environment clearance without which the additional two floors as per sanctioned plans by the concerned competent authority i.e. PMC could not be constructed on site. Hence, it applied for environmental clearance on 29/4/2018 and same was granted on 11/9/2019. Thereafter the respondent started construction work on site. The said permissions took around 51 months and hence the project got delayed. The respondent further stated that as per the agreement for sale the date for offer of possession is April, 2019 subject to the reasonable extension as stated in clause no. 7.1 of the agreement for sale wherein



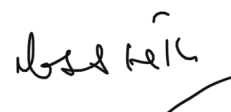
the respondent is entitled to get 6 - 9 months grace period and before the said grace period gets over the present complaint has been filed. The respondent further stated that as on date the project is 95% complete on site and it is striving towards the completion of the external work which is required to apply for occupation certificate. However during the pandemic situation and shortage of labour the respondent is trying to complete the work on site. The respondent further prayed for dismissal of this complaint.

5. The MahaRERA has examined the submissions made by both the parties as well as the record. In the present case, the complaint was filed seeking interest and compensation for the delayed possession under section 18 of the RERA. Admittedly, there is a registered agreement for sale entered into between the complainants and the respondent promoter dated 24-03-2017. According to the said agreement, the respondent promoter was liable to handover possession of the said flat to the complainants on or before 30-04-2019 and admittedly possession of the flat is not given to the complainants and the occupancy certificate has not been obtained for this project. The respondent promoter has contended that the said delay occurred mainly due to delayed permissions by the government and semi government authorities and the said delay was beyond its control. The respondent further stated that the present complaint is premature as the same is filed in the month of November, 2019 before the grace period of 9 months mentioned in the said agreement gets over. 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 the MahaRERA on such project continues till the project gets completed fully and obligations of the promoter regarding the project get fully discharged by obtaining occupancy certificate/ completion certificate and admittedly, as on date the respondent has not obtain



occupancy certificate/ completion certificate for this project and hence the project is still incomplete. Therefore, the MahaRERA can not accept the contention of the respondent that the complaint is premature and hence liable to be dismissed.

6. With regards to the reasons cited by the respondent for alleged delay, the MahaRERA feels that the reasons cited by the respondent do not give a satisfactory 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. The respondent's arguments that the project got delayed mainly due to delay of about 2 and half year it could not get the NOC from the High Rise Committee and hence it could not start the construction work on site. Admittedly, the respondent had applied for the NCOC of High Rise Committee on 22-01-2015 and same is received by it on 7-01-2017 and the registered agreement for sale was executed with the complainants on 24-03-2017 i.e. after the NOC from the High Rise Committee is received for this project. The respondent therefore can not take the said ground for delay which occurred prior to the agreement for sale with the complainants. The respondent was very well aware of all these constraints at the time of execution of the agreement for sale with the complainants with a definite date of possession. Moreover if the concerned authorities were delaying the permissions, the respondent could have approach to the appropriate forum including the court of law seeking appropriate directions to the concerned authorities. However, in the present case no such steps seem s to have been taken by the respondent. Hence the said justification cannot be accepted by the MahaRERA.
7. Further, if the project was getting delayed due to the aforesaid reasons cited by the respondent, then the respondent should have informed the complainants and should have revised the date of possession in the



agreement at that relevant time or else should have offered refund of the amount to the complainants, if the said delay was not acceptable to them. From the record, it prima facie appears that no such steps have been taken by the respondent. Hence, now it cannot take advantage of the said reasons of delay.

8. It is very clear from the above discussion that the reasons cited by the respondent donor justify the delay. Moreover, the payment of interest on the money invested by the home buyers is not a penalty, but a type of compensation for the delay as has been clarified by the Hon'ble High Court of Judicature at Bombay in its judgment dated 6th December, 2017 passed in W.P. No. 2737 of 2017. The respondent is therefore liable to pay interest for the period of delay.
9. The MahaRERA is also of the view that the said agreement was executed between the parties when the provision of MOFA were in force. As per the MOFA, the promoters were entitled to seek an extension of 6 months for any force majeure reasons. Likewise in this case even if the justifications cited by the respondent is accepted by the MahaRERA, it is entitled to seek only 6 months extension as per the provisions of MOFA in the date of possession mentioned in the agreement for sale from 30-04-2019 till 31-10-2019.
10. With regard to the issues raised by the respondent regarding the default in making outstanding dues by the complainant as per the agreement for sale, the MahaRERA is of the view that as per the provision of section 19(6) of the RERA, the allottee is liable to make the timely payment as per the payment schedule mentioned in the agreement for sale. If there is any default on the part of the complainants allottees, in that event the complainants allottees are liable to pay the interest towards the delayed payment at the rate prescribed under RERA and

the relevant Rules made there under i.e. MCLR plus 2%.

11. In view of the aforesaid facts the MahaRERA directs the respondent to pay interest for the delayed possession from 1st November, 2019 for every month till the actual date of possession of the flat to the complainants on the actual amount paid by the complainants at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2% as prescribed under the provisions of section 18 of The Real Estate (Regulation and Development) Act, 2016 and the Rules made there under.

12. The complainants are also awarded Rs 10000 towards the cost of litigation.

13. With the above directions, the complaint stand disposed of.




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