

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

Complaint No. CC00600000078839

Mr. Rajesh Suresh Awasthi

.... Complainant

Versus

M/s. Dedhia Builders & Developers (India) LLP

..... Respondent

Project Registration No. **P51700001985**

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

The complainant appeared in person.

Adv. Rahul Rawal appeared for the respondent.

ORDER

(30th October, 2019)

1. The complainant has filed this complaint seeking directions to the respondent to pay interest for the delayed possession under section-18 of the Real Estate (Regulation & Development) Act, 2016 (herein after referred to as "RERA"), to cancel the illegal demand of Rs. 3,84,000/- raised by the respondent and also direct the respondent to complete the pending work on site in respect of the project, wherein the complainant has booked a flat in the building known as "Elcanto" bearing MahaRERA registration No. P51700001985 at Thane (West).
2. This matter was heard on several occasions and the same was finally heard today. During the hearings, both the parties appeared and made their submissions. The complainant argued that he had purchased the flat in the respondent's project by executing registered agreement for sale. According to the said agreement, the respondent was liable to handover possession of the said flat on or before December, 2017. However, the respondent failed and neglected to handover possession of the same to the complainant. Hence, the complainant is seeking interest for the delayed possession under the provision of section-18 of the RERA.

Rawal

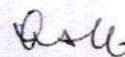
3. The complainant further stated that the respondent is illegally demanding an amount of Rs. 3,84,000/- from him towards the development and infrastructure charges, which has already been paid to the competent authority in the year 2013 itself i.e. prior to the purchase of the said flat and the respondent has already added that cost at the time of sale of the said flat. Hence, now it can not raise such illegal demand.
4. He further relied upon the order passed by the MahaRERA in complaints filed by other allottees and pressed for relief in terms of the said order. However, the complainant has admitted that there are certain outstanding dues towards the cost of the said flat and the society maintenance charges and shown his willingness to pay the same. Further, there are various mal practises by the respondent without first obtaining occupancy certificate, the fit out possession was offered to the allottees. There are a number of defects noticed in the flat. Hence, the complainant pressed for relief as sought for in this complaint.
5. The respondent, on the other hand, has disputed the claim of the complainant and stated that the present complaint is not maintainable in law since the project is complete and occupancy certificate has been obtained for this project in the month of August 2018, and the present complaint was filed thereafter. The possession was offered to the complainant after occupancy certificate subject to payment of outstanding dues towards the cost of the flat, society maintenance charges, development and infrastructure charges, and interest for delayed payment etc. The respondent stated that the said charges are levied as per the agreement for sale entered into with the complainant. With regard to the development and infrastructure charges, the respondent has stated that the same has been paid to competent authority in the year 2013 and now it is seeking reimbursement from the allottees. Further, other allottees have settled the matter with an amount of Rs. 2 lacs lumpsum and the respondent stated that the complainant would also pay the same amount instead of an amount of Rs. 3,84,000/-, as worked out earlier.

Handwritten signature

6. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, the complainant is seeking interest for the delayed possession as well as waiving of some outstanding dues alleged to be illegal. With regard to the claim of the complainant for interest under section -18 of the RERA, the MahaRERA is of the view that the present project is completed and occupancy certificate has also been obtained in the month of August, 2018 and the complaint was filed after obtaining occupancy certificate. Hence, the claim of the complainant towards the interest can not be entertained since after occupancy certificate section-18 cannot be made applicable. Therefore, the claim of the complainant towards interest stands rejected.
7. With regard to other issues raised by the complainant for alleged malpractice of the respondent for obtaining occupancy certificate and fit out possession, the MahaRERA feels that those issues are required to be dealt with by the competent authority. Hence, the complainant would be at liberty to approach the concerned competent authority for redressal of his grievances.
8. On the issues raised by the complainant about the defects in the flat, the MahaRERA is of the view that the said issues cannot be raised at this stage since the complainant has not yet been taken possession of the flat. Moreover, even if there is any defect in flat, the respondent is under obligation to correct the same during defect liability period.
9. The complainant has raised an issue as an illegal demand by the respondent. In this respect, the MahaRERA is of the view that there is a registered agreement for sale executed between the complainant and the respondent. The terms and conditions mentioned therein including the payment schedule is binding upon both the parties. In the present case, the development and infrastructure charges are levied as per clause No. 26 of the agreement for sale. The respondent has stated that they are ready to settle with an amount of Rs. 2 lakh instead of Rs. 3,84,000/- as mutually settled with other allottees. Even the respondent has shown their

willingness to waive off the interest amount levied upon the complainant towards the delayed payment.

10. Considering the aforesaid facts, the MahaRERA directs that since the project has got occupancy certificate, the complainant is required to take possession of the flat by paying undisputed amount such as cost of the flat, society maintenance charges etc., The complainant is also directed to pay an amount of Rs. 2 Lacs as per clause No. 26 of the agreement for sale. The request of the complainant to grant reliefs in terms of order passed by the MahaRERA in other complaints filed in this project, the MahaRERA feels that the complainant was not a party to the said complaints. Hence, the same cannot be made applicable to this complainant.
11. With the above directions, the complaint stands disposed of.



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

