

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

Complaint No. CC006000000056266

M/s. Subhash Enterprises Pvt. Ltd.,

.... Complainant

Versus

M/s. Indiabulls Infraestate Ltd.,

.... Respondent

Project Registration No. P51900000469

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

Adv. Aditya Deolekar a/w Adv. Avdhoot Bidaye appeared for the complainant.

Adv. Abir Patel appeared for the respondent.

ORDER

(4th December, 2019)

1. The complainant has filed this complaint seeking directions from MahaRERA to direct the respondent to pay interest for the delayed period of 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 1304 sq.ft. carpet area in the respondent's project known as "Indiabull Blu Tower" bearing MahaRERA registration No. P51900000469 at Worli, Mumbai. The complainant further prayed for compensation for mental harassment and financial strain due to non delivery of flat on the agreed date of possession.
2. This complaint was heard on several occasions and the same was heard finally on 8-11-2019, when both the parties appeared through their respective advocates. After hearing the arguments of both the parties, the respondent was directed to file written submissions within a period of two weeks and the complainant to file rejoinder, if any, in a week's time thereafter. Accordingly, the respondent has filed written submission on record of MahaRERA. However, no rejoinder has been filed by the complainant so far.

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3. It is the case of the complainant that the complainant signed the booking application form on 11-11-2011 and originally booked a flat No. 801 admeasuring 782 sq.ft. carpet area in the respondent's project for a total consideration amount of Rs. 5,33,32,000/-. At the time of booking, it has paid an amount of Rs. 5 Lakh and the representative of the respondent informed that the date of possession of the said flat would be October, 2016. However, the progress of the project was not satisfactory. Therefore, the respondent addressed a letter dated 23-09-2014 to the respondent asking the exact date of possession. But, on 26.11.2016, the respondent allotted another flat No. 1601, "A" Wing, 16th Floor adm. 1304 sq. ft. of carpet area in lieu of the original flat No. 801, while car parking and rest of amenities as well as facilities remained the same as per original offer. The complainant has paid a total sum of Rs. 3,35,80,091/- to the respondent, which amounts to 62.96% of the total consideration. Thus, it has complied with its obligations under the said Application Form by making payments of more than 60% of the said consideration and the balance 40% of the said consideration is only due and payable on possession.
4. The committed date of possession of the original flat was October, 2016, But, the same was unilaterally revised by the respondent from October, 2016 to December, 2017. However, the respondent now seeks to handover the possession of the said flat in December, 2020 which is 4 years after the originally committed date of possession at the time of booking (i.e. October, 2016). Hence, the present complaint has been filed seeking reliefs as sought for in this complaint. In support the case, the complainant relied upon the judgement given by the Hon'ble Appellate Tribunal in Appeal No. AT006000000010455 (Mr. R. Sinha V/s L&T) wherein the Hon'ble Appellate Tribunal has held that complaint under section-18 is not only maintainable after occupancy certificate, but, it is also maintainable till handing over possession of the flat.

BSM.

5. The respondent resisted the complaint by raising various defenses in the reply filed on record of MahaRERA. The respondent further stated that the complaint is belated and after thought as the same is filed after grant of occupancy certificate for Tower-A, wherein the flat of the complainant situated. Hence, the provision of section-18 of the RERA ceased to apply in this case and hence the complaint is not maintainable. The complainant has signed the application for provisional booking on 26-11-2016 and it was mentioned that the date of possession is the date on which communication of occupancy certificate is sent to the complainant. Hence, there is no delay as alleged by the complainant.
6. With regard to the provision of section-13 of the RERA, the agreement for sale required to be executed if more than 10% of the amount is paid. The respondent has called upon the complainant for execution of agreement for sale on 6-08-2014, 12-11-2014, 8-12-2015, 11-06-2015, 24-08-2014, 17-10-2015, 4-07-2018, 31-07-2018 and 18-09-2018. However, the complainant being investor did not come forward to execute the same. After booking of original flat No. 801 by the complainant, the respondent has shared the draft agreement for sale to them on 28-07-2015. However, the complainant was irregular in every payment and delayed the same without any justification. The respondent has also waived off the interest levied to the complainant. The date of possession was given to the complainant as 2017 is for old flat No. 801. However, in the year 2016, the complainant themselves approached the respondent for another flat and selected flat No. 1601. Accordingly, the complainant signed new application form dated 26-11-2016, wherein no date of possession was mentioned. However, now the occupancy certificate is obtained and it is communicated to the complainant on 18-09-2018. Hence, the present complaint is not maintainable and liable to be dismissed.
7. The MahaRERA has examined the rival submissions made by the both the parties as well as the record. In the present case, the complainant has filed

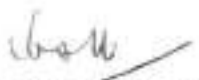


this complaint seeking interest for the delayed possession under section-18 of the RERA alleging that the date of possession agreed by the respondent has been over. However, there is no agreement for sale executed between the complainant and the respondent. Further, it also appears from the record that the complainant has originally booked flat No. 801, which subsequently changed to flat No. 1601, for which the new application form was also signed by the complainant on 26-11-2016. The complainant is seeking interest for the delay possession from December, 2017 as per the agreed date of possession by the respondent.

8. In this regard, the MahaRERA feels that as per the provision of section -18 of the RERA, the allottee is entitled to seek interest for the delayed possession period, if the promoter fails and neglected to handover possession of the flat to the allottee on the agreed date of possession mentioned in the agreement for sale. In the present case, admittedly, there is no agreement for sale executed between the complainant and the respondent showing the specific date of possession. Moreover, in the allotment letter dated 26-11-2016, the date of possession was mentioned as the date of communication of occupancy certificate to the complainant, which is 18-09-2018. Therefore, the MahaRERA feels that there is no violation of section-18 of the RERA by the respondent.
9. Further, the occupancy certificate has also been obtained for this project on 15-09-2018 as seen from the form 4 uploaded on MahaRERA website and the present complaint is filed on 21-09-2018 i.e. after date of possession. Hence, the provision of section-18 of the RERA ceased to apply in this case. The MahaRERA further observed that the complainant has failed to show any cogent documentary proof signed by both the parties, showing the agreed date of possession for handing over flat to the complainant. Moreover, the MahaRERA has also observed that the complainant is relying upon the documents issued for the original flat No.801, which is subsequently changed

to flat No. 1601, and the same can not be taken into consideration after signing new application form dated 26-11-2016 by the complainant. Hence the claim of the complainant for interest under section-18 of the RERA has no substance. Hence, the same stands rejected.

10. The MahaRERA directs that, since the occupancy certificate has already been obtained for this project, the respondent is to handover possession of the flat to the complainant subject to payment of outstanding dues. The parties are also directed to execute agreement for sale as per the provision of section -13 of the RERA.
11. With the above direction, the complaint stands disposed of.


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

महा-रेरा