

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

**Complaint No. CC006000000100523**

Mr. Hitesh Bhayani & Mrs. Nishita H. Bhayani

.... Complainants

**Versus**

M/s. Indiabulls Infraestate Ltd.

.... Respondent

**Project Registration No. P51900000473**

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

Adv. Veena Saldanha appeared for the complainant.

Adv. Yash Dhakad appeared for respondent No.1.

Adv. Tejas S. Mahamurti appeared for respondent No.2.

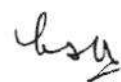
**ORDER**

( 13<sup>th</sup> March, 2020)

1. The complainants have filed this complaint seeking refund of the entire amount paid by them to the respondents under the provisions of Section-18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA") with respect to the booking of a flat No. 3302, on 33<sup>rd</sup> floor, in the respondents' project known as "Indiabulls Blu" bearing MahaRERA registration No. **P51900000473** at Worli, Mumbai.
2. This complaint was heard on several occasions and the same was finally heard on 15/01/2020, when both the parties appeared and made their submissions. During the hearing both the parties sought time to file their respective submissions and in compliance of principles of natural justice, adequate time is granted to them to submit their submissions in support of their claims.



3. It is the case of the complainants that, that on 30-03-2016, they have booked the said flat along with car parking spaces for total consideration amount of Rs.11,39,50,000/- by signing booking application form. At the time of booking, the respondent No.1-promoter has represented that the said building is nearing completion and possession of the said flat would be given on or before August 2018. However, in spite of repeated requests, the respondents have failed to provide the date of possession in the said booking application form/allotment letter. The complainants further stated that, they are Non-residing Indians (NRIs), and are not well aware about the process of acquiring property in India. Till date, he has paid an amount of Rs. 2,60,38,797/-. At the time of booking, the respondent No. 1 represented that the loan for purchase of the flat shall be disbursed by the respondent No. 2 on instalments and the respondent No. 1 shall pay the EMI and interest till possession of the said flat to him in habitable condition. Believing that he had booked the said flat and signed the application form and paid the amount to the respondent No. 1, the complainant has filed this complaint seeking refund along with interest under section-18 of the RERA. However on 8-07-2017, when the project was not even 60% complete and the work of most of the amenities had not even started, yet the respondent No. 2 disbursed an amount of Rs. 11,47,44,371/-. However according to the respondent No.1, the project was 90% complete in March, 2017. The falsity of the statement of the respondent No. 1 can be further understood from the date of completion mentioned on MahaRERA website by the respondent No. 1 i.e. 31-12-2020. The respondent No. 1 obtained part occupancy certificate on 15-09-2018 on certain conditions, which shows that the said is conditional occupancy certificate. To support the contention, the complainant relied upon the order passed by the MahaRERA in the case of Hareesh J. Asher V/s. Bellissimo Crown Buildmart Pvt Ltd. Therefore, the complainant has filed this complaint seeking refund of the entire amount along with interest u/s 18 of the RERA.
4. The respondent No.1 has filed his reply and resisted the claim of the complainant on the ground that, the present complaint is not maintainable and it is filed at a belated stage after obtaining the part occupancy certificate and possession being offered on 30/01/2019 subject to executing agreement for sale and making payment of



outstanding dues. Hence, the complaint is not maintainable under Section-18 of the RERA.

5. The respondent No. 1 further stated that, the provisions of Section-18 will not be applied when the possession is offered and occupation certificate has been obtained. Further, there is no agreed date of possession between the parties since the complainants have failed to sign agreement for sale despite being called upon on several times. Further, complaint under Section-31 can be filed if there is any violation of any provision of RERA.
6. In the present case, the complainants have not shown as to what provision of RERA has been violated by the respondent No. 1. The respondent No. 1 further stated that, on 13/06/2017, 22/06/2017, 30/11/2018, 16/04/2018, 16/04/2019, and 16/09/2019 the complainants were called upon to execute an agreement for sale but they did not come forward and thereby violated the provisions of Section-13. The respondents further stated that, the complainant has paid up to 20% under subvention scheme and till the possession has been offered, they have paid pre-EMI interest up to date. The complainant having enjoyed pre-EMI interest period now cannot be allowed to back out from the contract.
7. Further, the complainants being allottees are liable to make payment as per the Section-19(6) of the RERA. By letter dated 16/07/2019, the complainants' claim was recalled by the respondent No. 2 for default in making timely payment. It shows the intention of the complainant to enjoy the interest free period of subvention and now since they are liable to pay the EMI Interest he has started making default in payments. The respondent No. 1 therefore, prayed for dismissal of this complaint.
8. The MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case, the complainant is seeking refund along with interest under Section-18 of the RERA. Admittedly, there is no registered agreement for sale nor any allotment letter issued showing any date of possession. Further, the respondent-promoter has already obtained part occupancy certificate for the

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complainants' flat and possession has also been offered to the complainants on January, 2019. In this regard, it is necessary to read the provision of Section-18 of the RERA, which read as under:

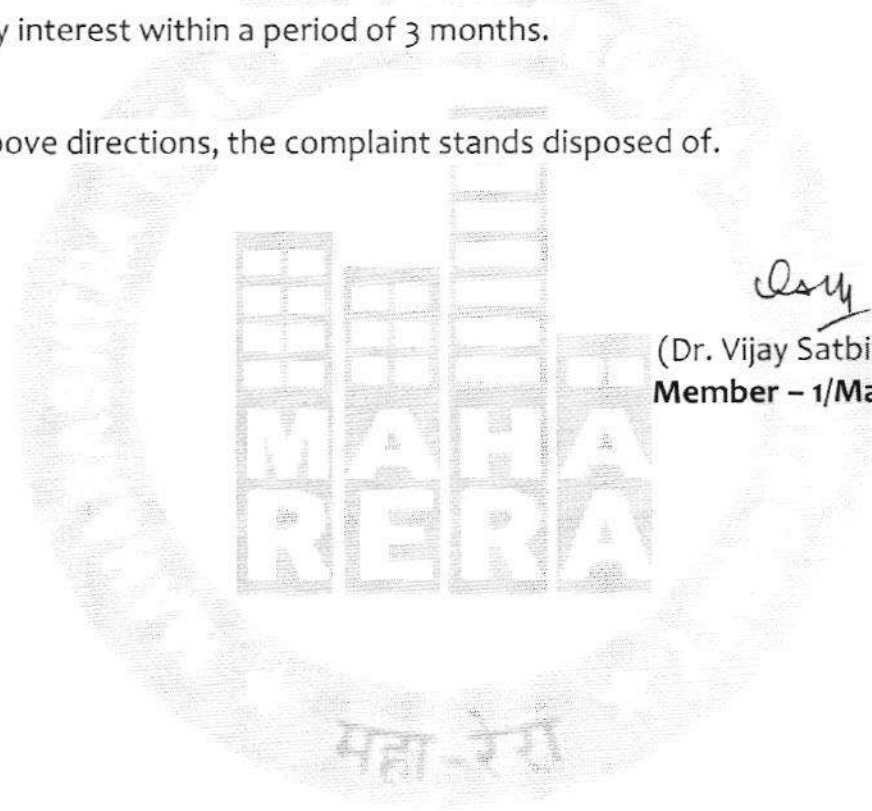
***“Sec 18: (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer 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 allottees, 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.*”**

***----- he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”***

9. As per the aforesaid provision of the RERA, it is clear that, Section-18 will apply if the promoter fails to complete the project and hand over the possession of the flat to the allottees. However, in the instant case, the respondents have completed the project and have obtained the part occupancy certificate for the complainants' flat and also offered possession of the flat to the complainants along with Occupancy Certificate on 30/01/2019. Therefore, the provisions of Section-18 will not be applicable in this case. Hence, the complainants cannot seek refund of the amount paid by them to the respondents in such a completed project. It is also pertinent to note that, money paid by the complainants have already been utilised for the construction of their residential unit.



10. In the present case, the MahaRERA has also observed that, the complainants have booked the said flat under subvention scheme by availing the loan from the Respondent No. 2 as per the agreed terms between the parties and the respondent No. 1 was liable to pay the pre-EMI interest till the possession is handed over to the complainants.
11. In view of these aforesaid facts, the MahaRERA directs the respondents to execute the registered agreement for sale with the complainants within a period of 30 days from the date of this order. Failing which the money paid by the complainants be refunded without any interest within a period of 3 months.
12. With the above directions, the complaint stands disposed of.



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