

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

1. Complaint No. CC006000000171751

Mrs. Amrita Chakraborty And Soumen
Chakraborty ..Complainant

Vs

M/S Balaji Symphony Through Proprietor Mr. Vinay Agarwal..Respondent

Alongwith

2. Complaint No. CC006000000171784

Mrs. Noorjahan Qureshi ..Complainant

Vs

M/s. Balaji Symphony ..Respondent

Alongwith

3. Complaint No. CC006000000193534

Mr. Gokuldas Shankaran ..Complainant

Vs

Mr. Vinay Shravan Agrawal ..Respondent

Alongwith

4. Complaint No. CC006000000193712

Dr. Vidyasindhu Anantrao Sejao & Dr. Aarti V. Sejao ..Complainant

Vs

Mr. Vinay Agarwal Sole Proprietor of M/s Balaji Symphony ..Respondent

Alongwith

5. Complaint No. CC006000000194045

Mrs. Shabana Kishan Malladi ..Complainant

Vs

Mr. Vinay Agarwal ..Respondent

Alongwith

6. Complaint No. CC006000000194211

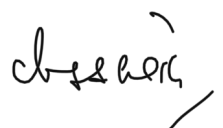
Dr Shivahar Vijay Sonawane ..Complainant

Vs

Mr. Vinay Agrawal, of M/s. Balaji
Symphony ..Respondent

MahaRERA Project Registration No. P52000000754

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



Adv. Leena Koulgekar appeared for the complainants at sr.no.1
C.A.Rajesh Kumar Moondra appeared for the complainants at sr.no.2
Mr. Abhishek Gokulkas appeared for the complainant at sr.no.3
Adv. Mandar Soman appeared for the complainants at sr.no.4
The complainant at sr.no.5 appeared in person
Adv. Makarand Panchakshari appeared for the complainants at sr.no.6
Adv. Ritika Agarwal appeared for the respondent

ORDER

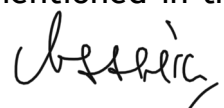
(22nd December, 2020)
(Through Video Conferencing)

1. The above named complainants have filed these 6 separate complaints seeking directions from the MahaRERA, to the respondent, to pay interest for the period of delayed possession under section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'RERA'), in respect to the booking of their respective flats in the respondent's project known as **"Balaji Symphony phase 2"** bearing MahaRERA registration No. **P52000000754** situated at Panvel , Dist Raigarh.
2. These complaints have been filed in the same project and hence the same were clubbed together and heard on several occasions in the presence of concerned parties and same are heard finally today as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through video conferencing. Both the parties have been issued prior intimation for this hearing and they have also been informed to file their written submission if any. Accordingly both the parties have filed their respective written submissions on record. The MahaRERA heard the arguments of both the parties and also perused the record.
3. It is the case of the complainants that they had booked their respective flats in the respondent's project on various dates between the year 2015



till 2018 by executing the registered agreements for sale. According to the registered agreements for sale, the respondent was liable to hand over the possession of the said flats to the complainants on different dates such as 30-04-2017, 30-06-2017 and 31-12-2019. However, the respondent has failed to hand over the possession of the flats to the complainants on the agreed dates. The complainants have contended that they have paid substantial amounts towards the total consideration of their flats and have been following up with the respondent for the completion of the project and for possession of their flats. However, the respondent has failed to comply with its obligations and has not handed over the possession of the flats to them on agreed dates of possession. During the pendency of these complaints, the complainants at Sr. No. 1 and 3 have taken possession of their flats by paying outstanding dues to the respondent. Hence the present complaints have been filed seeking reliefs as sought in these complaints.

4. With regard to the reasons of delay cited by the respondent in its reply, the complainants have denied in the said reasons of delay and stated that the same are not covered under force majeure clause and even no stay order was granted by any competent court of law for construction activities and hence the respondent is not entitled to seek any reliefs under the force majeure clause. They further stated that though the project was getting delayed, they have made timely payments to the respondent. However, for any delay on their part in making payments, the respondent charged 12% interest and hence they are also entitled to seek similar rate of interest as charged by the respondent. Hence they prayed to allow these complaints.
5. The respondent resisted the claim of the complainants by filing written replies on record of MahaRERA wherein it has stated that the delay caused in the project is only due to the governmental delays, economic and financial downturn by extraneous facts as stated in clause no.4 of the agreement for sale entered into between the parties. The respondent further stated that the date of possession mentioned in the

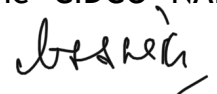


agreements for sale is not absolute but subjective to the delay as defined and agreed upon by the complainants as per the agreement for sale and the respondent is entitled to seek reasonable extension of time for giving possession of the said flats to the complainants as per clause 4 a) of the said agreements for sale. It has further stated that the building was completed on site in the month of September 2019 but the process of granting OC by the CIDCO NAINA delay on the part of MMRDA for granting the NOC. Thereafter it has received the same from MMRDA in the month of July and thereafter it has obtained from NAINA on 24.7.2020. Thereafter the complainants at sr.nos. 1 & 3 have taken possession of their flats by signing the possession cum undertaking letters and hence their claims are afterthought. The respondent further stated that in view of clause 4 (a) of the agreement for sale, the provisions of section 18 has no applicability in the present case. Further, some of the complainants booked their flats under the subvention scheme for which the respondent has made payment of substantial amount to them and hence those complainants cannot seek any compensation and the interest of the respondent being promoter is also required to be taken into consideration.

5. With regard to the delay caused in the project the respondent has stated that the possession of the flats to the complainants got delayed due to the following issues :

a) Delay due to sprinkler issue - The CIDCO had issued letter dated 24.11.2015 whereby the amenities were revised and the sprinklers were to be provided for each flats instead of just common areas for which the respondent was constrained to invite fresh tender for service provides to make the said amenities available. Hence the construction got delayed,

b) Delay in obtaining the revised commencement certificate from CIDCO NAINA - Due to change in planning authority, since NAINA became the competent authority from the month of January 2013, the application filed by respondent for commencement certificate was pending before NAINA for longer period and on 8th January 2016 the CIDCO NAINA

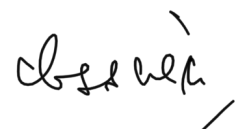


granted revised commencement certificate upto 30th floor for I J and K Wing and plinth C.C. for A to H Wing. Hence the construction got delayed for 24 months from January 2014 to January 2016.

c) Change of loan from DHFL to ICICI Bank - The respondent further stated that it has availed the project loan from DHFL in the year 2014. Thereafter, the Reserve Bank of India superseded the Board of Mortgage tenders of DHFL and insolvency proceedings were initiated against it. The DHFL made its last disbursement on 10.08.2018 and hence the respondent was constrained to avail loan from another bank i.e. ICICI Bank for completion of this project and it has received the first disbursement from ICICI Bank on 31st July, 2019. Due to this reasons the construction got delayed.

d) Delay in NOC from MMRDA from September, 2019 till July 2020 - The respondent stated that as per the rental housing scheme, the respondent was entitled to sell 75% sale component in the project land and was liable to hand over to MMRDA the balance 25%. Accordingly, the respondent has completed phase I and obtained occupancy certificate for wing A,F,G,H on 7th September, 2019 and around 600 families have been allotted their respective flats. The rental building nos. 1 and 2 were also completed on 12th February, 2018. However, the MMRDA delayed in providing NOC for obtaining occupancy certificate. The MMRDA issued the final NOC on 14.6.2020 and thereafter the respondent could obtain the occupancy certificate from CIDCO NAINA on 24.7.2020. Hence the respondent therefore stated that it cannot be held responsible for the alleged delay and it cannot be held liable for violation of section 18 of the RERA.

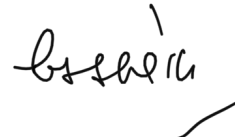
6. The respondent further stated that there is no delay on its part and the delay caused was beyond its control. Further, it has settled the matter with 99 allottees of Phase II till date by offering them suitable rent. The respondent also showed its willingness to settle the matters with these complainants on similar line.



7. To support its contentions, the respondent relied upon the following judgements M/s. Purbanchal Cables and Conductors Pvt. Ltd. Versus Assam State Electricity Board and Ors. (2012) 6 SCR 905). In the said Judgement, the Hon'ble Supreme Court has held that the benefit of new legislation is available only in respect of agreements entered into after commencement of such a legislation 2) Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India passed on Hon'ble High Court, Mumbai on 6th December, 2017 wherein it was held by the Hon'ble High Court that the RERA has got powers to grant extension / condone delay in certain situation, 3) Sharad Lund Versus Epitome Residency Pvt. Ltd. passed by the MahaRERA in Complaint no CC0060000000001071 wherein the reasons for delay beyond the control of the promoter were condoned and extension was granted to the respondent promoter in the date of possession. In view of these facts, the respondent prayed for dismissal of these complaints filed by the complainants under section 18 of the RERA.
8. The MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case admittedly, the complainants are the allottees of the respondent's project and there are registered agreements for sale executed between the complainants / allottees on 3-11-2015, 24-10-2013, 29-04-2016, 13-12-2018 and 21-10-2016 respectively. Accordingly to the said agreements, the respondent was liable to give possession of the flats to the complainants on various dates as mentioned in the said agreements executed with the complainants such as April, 2017 for the complainants at s.nos. 1 & 2, June, 2017 for the complainants at s.nos. 3, 5 and 6 and for the complainants at s.no. 4 the date of possession was agreed as on or before 31-12-2019. However, out of these 6 complainants, the respondent has handed over possession of the flats to the complainants at s.nos. 1 and 3 after obtaining the occupancy certificate on 24-07-2020. The rest of the complainants have not yet been given the

possession of their respective flats though substantial amount has been paid by them. It shows that the respondent has violated the provisions of section 18 of the RERA.

9. To justify its case, the respondent has stated that the project got delayed mainly due to delayed permissions by the governmental authorities such as MMRDA and the competent authority viz CIDCO NAINA and stated that due to change in planning authority in the month of January, 2013, the CIDCO NAINA was appointed as the new planning authority and the application for requisite permissions were pending before the NAINA for more than 2 years. Even, the MMRDA took around more than a year i.e. from February, 2018 till June, 2020 to issue its NOC and hence the project got delayed.
10. With regard to the said reasons of delay cited by the respondent, the MahaRERA is of the view that the CIDCO NAINA was appointed as new planning /competent authority in the month of January, 2013, which is prior to execution of agreements for sale with the complainants. Hence at the time of execution of the agreements for sale with the complainants, the respondent was well aware of all constraints in the project when it fixed the date for handing over possession to the complainants in the agreements for sale. . Therefore now, the respondent cannot rely upon this ground to justify the delay caused in this project.
11. With regard to the other ground of delay cited by the respondent of not being issued NOC by the MMRDA, it seems that the said issue arose after the date of possession mentioned in the agreements for sale executed with most of the complainants got over. Hence, the respondent cannot take shelter of the said ground.
12. With regard to the other issue cited by the respondent about change of loan from DHFL to ICICI Bank, the MahaRERA feels that the said reasons /



grounds are not covered under the force majeure clause and hence same cannot be accepted by MahaRERA. 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. There is no fault on the part of the complainants who have put their hard earned money for booking of the said flats in the respondent's project. The respondent has not given any plausible reasons for the alleged delay as the same are lame excuses stated by the respondent.

13. Further, if the project was getting delayed due to the aforesaid reasons cited by the respondent, then the respondent should have informed the same to the complainants and should have revised the date of possession in the agreements at that relevant time by executing the rectification deed with the complainants or should have offered refund of the amount to the complainants, if the said delay was not acceptable to him. 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.

14. The MahaRERA has further noticed that these reasons of delay cited by the respondent has already been considered by the MahaRERA in its previous order passed in the complainants filed by the other allottees of this project and has already granted reliefs to them under section 18 of the RERA. The respondent has not brought any new fact on record to justify its case.

15. With regard to the judgements relied upon by the respondent in support of its contention, the MahaRERA is of the view that each case has different facts and merits and the respondent cannot rely upon it. Further the judgement and order of Supreme Court referred by the respondent is passed in the year 2012, prior to commencement of RERA. Moreover, the order passed by MahaRERA in the matter of Mr. Sharan

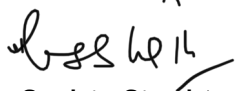
Lund, the MahaRERA has observed that the same has not attained finality and hence same cannot be relied upon by the respondent.

16. It is 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 agreements till the date of occupancy certificate is obtained for the project i.e. 24-07-2020.

17. The MahaRERA has noticed that the complainants at s.nos. 1 and 3 have taken possession of their respective flats during the pendency of these complaints and before the occupancy certificate is received for the project and hence their claim under section 18 of the RERA cannot be taken away just because they have taken possession of their flats.

18. In view of above facts and discussion, the respondent is directed to pay interest to the complainants from the agreed dates of possession mentioned in the agreements for sale executed between the parties till the date of occupancy certificate is obtained on the actual amount paid by the complainants at the rate of Marginal Cost Lending Rate (MCLR) 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.

19. With the above directions, all these 6 complaints stand disposed of.


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