

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

Complaint No. CC006000000079482

Mr. Jayantilal Parsotam Makwana

.... Complainant

Versus

M/s. Balaji Construction Co.

.... Respondent

Project Registration No. **P51800009622**

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

Adv. Somil Gada appeared for the complainant.

Adv. Narendra Jain appeared for the respondent.

ORDER

(21st January, 2020)

1. The complainant has filed this complaint seeking directions to the respondent to handover possession of the flat and also to pay interest for the delayed possession under section-18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as “RERA”) from the year December, 2010 till the actual date of possession in respect of booking of a flat No. 209, on 2nd floor, (now it is commercial premises) in the respondent's project known as “**Gajanan Plaza**” bearing MahaRERA registration No. P51800009622 at Kandivli (W), Mumbai.
2. This complaint was heard on several occasions and the same is heard finally today. During the hearings, both the parties appeared and made their respective submissions.
3. It is the case of the complainant that in the year 2008, he had booked a flat admeasuring 258 sq.ft. carpet area in the respondent's project for a total consideration amount of Rs. 9,75,000/-. The respondent has issued allotment letter on 3-05-2008 for the said booking, wherein the date of possession was

mentioned as December, 2010 and also executed registered agreement for sale for the said flat on 7-12-2013. Thereafter, both the parties entered into MoU dated 8-09-2017 and the date of possession was revised to 31-12-2018 with grace period of 3 months i.e. 31-03-2019. Though he has paid an amount of Rs.7,80,000/- to the respondent, it has failed and neglected to handover possession of the said flat to him. Hence, the present complaint is filed seeking possession of the flat along with interest for the delayed possession under section-18 of the RERA.

4. The respondent has filed reply on record and disputed the claim of the complainant. It stated that 97% of the project has completed on site and the project period got over on 31-12-2018 and it applied for extension of project period. But, it has got extension by 4 months i.e. till 30-04-2020 Therefore, it is challenging the said order passed by the MahaRERA.
5. With regard to the delay in the project, the respondent has stated that the project got delayed due to the change in status of the project, as earlier it was a residential project and now it is converted into commercial. The said conversion is mentioned on MahaRERA website. Further, the said project got changed due to change in Government policy and change in DCPR, 2034. The said policy got changed after execution of MoU dated 8-08-2017 with the complainant.
6. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, by filing this complaint, the complainant is seeking possession of a flat admeasuring 258 sq.ft. carpet area booked in the year 2008. There is an allotment letter, issued by the respondent, agreement for sale and also the MoU allegedly entered into between both the parties, wherein the respondent has agreed to handover possession of the said flat to the complainant on or before 31-12-2018 with grace period of 3 months i.e. 31-03-2019.

7. However, during the hearing, the MahaRERA has noticed that the status of the project is changed after 2017 and the respondent has converted this project from residential to commercial. There is a supplemental agreement for allotment of alternative premises to the complainant in the present project registered with the MahaRERA. Under the circumstances, the MahaRERA cannot consider the prayers of the complainant under the earlier agreement for sale entered into between the parties in the year 2013.
8. In view of the aforesaid facts, the MahaRERA does not find any merit in this complaint. Hence, the complaint stands dismissed.



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

महा-रेरा