

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

**Complaint No.CC006000000058093**

Mr. Chandrakesh Rai

..... Complainant

**Versus**

Virar Bolinj Yashwant Krupa Co Op Hsg Society Ltd  
Project Registration No.P99000015890

.... Respondent

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

**Adv. Aniket Nerurkar appeared for the complainant.**

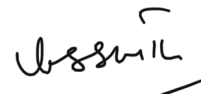
**Mr. Jay Mehta appeared for the respondent.**

**ORDER**

(23<sup>rd</sup> July, 2020)

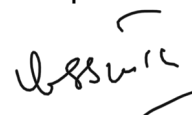
( Through Video Conferencing)

1. The above named complainant has filed this complaint 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 of the booking of a flat bearing no. 504, on 5<sup>th</sup> floor, admeasuring 610 sq.ft, in the respondent's project known as "Virar Bolinj Yashwant Krupa CHS Ltd" bearing MahaRERA registration No. P99000015890 situated at Virar.
2. This complaint was heard on several occasions, when the complainant appeared and made his submissions, however, none appeared for the respondent. The complainant has sought compensation under section 18 of the RERA. Hence, on 10-06-2019, this complaint was transferred to Ld Adjudicating Officer, MahaRERA. However, the Ld Adjudicating Officer, sent this complaint back for appropriate decision. Hence, this complaint was heard again on 28-02-2020, when the respondent remained absent. On that date, the directions were given to the respondent to file reply within a period of one week. However, the respondent did not comply with the directions issued by MahaRERA and hence, in compliance of principles of natural justice, this matter was heard again kept for hearing.
3. The complaint was heard on 06-07-2020, as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints



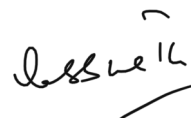
through video conferencing. Both the parties were issued prior intimation for this hearing and they were also informed to file their written submission if any. During the hearing, both the parties appeared through their respective advocate/ representative. On the request of the respondent, the case was adjourned to 13-07-2020.

4. At the time of hearing, both the parties appeared and made their respective oral submissions. After hearing the arguments at length, both the parties were allowed to file their written submissions/rejoinder within a period of 2 days. Accordingly both the parties have filed their submissions on record.
5. It is the case of the complainant that, he booked the said flat in the respondent's project in the year 2014 and the respondent issued an allotment letter dated 30/03/2014. As per the clause 13 of the allotment letter, the respondent was supposed to hand over the possession of the flat to the complainant on or before December 2015. However, the respondent has failed to handover the possession till date. The complainant has paid the total consideration towards the said flat. However, the respondent has not yet registered the agreement for sale with the complainant. He further stated that the allotment letter issued by the respondent has all the details of the agreement for sale. The complainant has therefore filed the present complaint seeking interest for delayed possession and also sought execution of agreement for sale with the complainant.
6. The respondent on the other hand has disputed the claim of the complainant by filing reply on record and stated that the complainant is a member of the respondent society, which has purchased the land from MHADA. Further the allotment letter and share certificate have been issued to the complainant being member of the society and no agreement for sale has been executed with him. The respondent further stated that they have appointed the contractor to construct the building and accordingly the construction work is complete on site. However the required permissions /occupancy certificate could not be issued due to dispute between the MHADA and the Vasai Virar Municipal Corporation that is the competent authority. As on date around 90% of its members have been given possession of their flats upto 7<sup>th</sup> floor. The



respondent further stated that the complainant being its member has paid only land cost and construction cost for developing the said land. Further the respondent is developing the building for its members on and allotting premises to them and there is no interest clause in allotment letter. Since the respondent has collected contribution from its members for developing the building, it is not obliged to pay interest to all its members. The respondent therefore requested for dismissal of this complaint.

7. With regard to the submissions made by the respondent, the complainant filed his rejoinder on record on 15<sup>th</sup> July, 2020 and denied the contentions raised by the respondent. The complainant has stated that the respondent has registered as a promoter with MahaRERA and hence falls within the definition of promoter as defined under section 2(zk) of the RERA. The complainant further stated that the respondent has issued allotment letter for total consideration amount of Rs. 24,40,000/- by mentioning the date of possession and hence the said allotment letter is an agreement between the promoter and the allottee, which contains details of seller and purchaser of flat with the agreed date of possession. The complainant therefore referred the judgment and order passed by the Maharashtra Real Estate Appellate Tribunal in Appeal No. 006000000010841 wherein the order has been passed under section 18 on the basis of allotment letter. The complainant further stated that he has paid the money to the respondent by borrowing the loan from HDFC Bank. Moreover the respondent has illegally given possession of flats to its members without occupancy certificate. The complainant therefore prayed to allow his complaint.
8. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case the complaint has been filed under section 13 and 18 of the RERA seeking execution of agreement for sale as well as for payment of interest for the delayed possession. The complainant has contended that the agreed date of possession as per the allotment letter dated 30-03-2014 issued by the respondent society has lapsed. Hence he has claimed interest or compensation for delay.

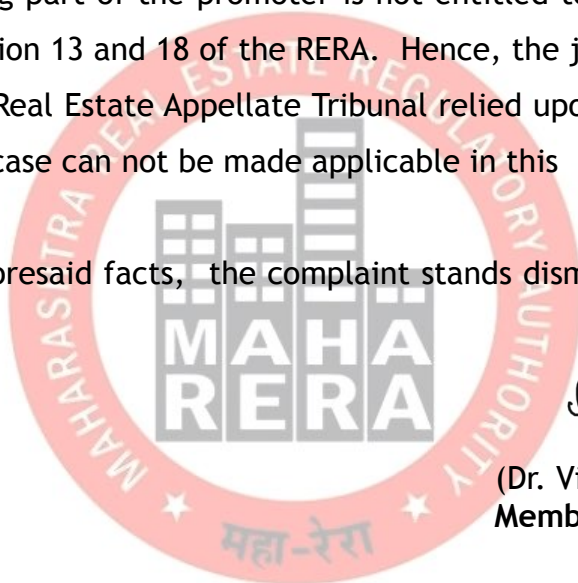


9. In this regard the MahaRERA feels that before going into the merits of the case, it is required to examine the locus standi of the complainant. Admittedly, the respondent is a society registered under the provisions of Maharashtra Co-operative Societies Act, 1960. From the record particularly, the Share Certificate dated 30-03-2014 submitted by the complainant, it appears that originally the flat No. 504 was allotted to the original member Mr. Nikunj Modi, who had been issued Share Certificate by the respondent Society. Thereafter the said Share Certificate got transferred in the name of complainant. It shows that the complainant is member of the respondent society. He is therefore, a part of the society as a share holder. The society has allotted him the flat as its member. The said society has undertaken this redevelopment project for its members and obtained all requisite permissions for construction of the building from the concerned competent authority. The project was ongoing project on the date of commencement of RERA and hence the respondent society being promoter has registered this project with MahaRERA. The society has undertaken the project for its members including the complainant who is a part of the society. This relationship cannot be equated with that of a promoter and allottee as between two separate entities. The complainant is a part and parcel of the society and not an outside buyer separate from the promoter society.
10. As discussed above, the complainant is a member of the respondent society registered under the provisions of Maharashtra Co-operative Societies Act, 1960. Further there is dispute between complainant being member and the respondent being registered society which can be contested before the competent authority under the said Act. The complainant is part of the society and is having shares in the society being member of the society. Moreover the complainant has been duly issued the share certificate by the respondent society. It shows that the complainant is shareholder in the respondent society, who is registered with MahaRERA as promoter.
11. This issue has been clarified by the Hon'ble High Court at Judicature at Bombay in its order dated 10<sup>th</sup> December, 2009 passed in Appeal No. 338 of 2009 in Arbitration Petition (St) No. 493 of 2009 ( Girish M.Mehta & Ors V/s Mahesh Mehta & Ors). In para 16 of the said order it is held that:

***“By now it is well established position that once a person becomes a member of the Cooperative Society, he loses his individuality with the Society and he has no independent rights except those given to him by the statute and Bye-laws. The member has to speak through the Society or rather the Society alone can act and speaks for him qua the rights and duties of the Society as a body”.***

12. In view of the aforesaid position, the complainant being member and shareholder of the respondent society, that has registered this project with MahaRERA as a promoter, cannot be treated as an “ allottee” as defined under section 2(d) of the RERA. The MahaRERA therefore feels that the complainant being part of the promoter is not entitled to any relief under the provisions of section 13 and 18 of the RERA. Hence, the judgment and order of the Maharashtra Real Estate Appellate Tribunal relied upon by the complainant in support of his case can not be made applicable in this case.

13. In view of the aforesaid facts, the complaint stands dismissed being devoid of merit.



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