

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

Complaint No. CC006000000057616

Avinash Anant More

Meena Avinash More

..... Complainants

Versus

M/s. Shivam Parivar Developers Private Limited

..... Respondent

Project Registration No. **P51800011260**

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

The complainants appeared in person a/w Mr. Uday Kasliwal, Authorised representative.

Mr. Sumit Kapure , CA appeared for the respondent.

ORDER

(6th August, 2019)

1. The complainants / allottee have filed this complainant seeking directions from MahaRERA to the respondent to handover the possession of their flat and also to pay interest/compensation for the delayed period of possession as provided under section-18 of the Real Estate (Regulation & Development) Act, 2016 in respect of booking of their flat No. 803, admeasuring 645 sq. ft., in the respondent's project known as "**Jagruti CHS Limited**" at Goregaon, Mumbai, bearing MahaRERA registration No. **P51800011260**.
2. This matter was heard on several occasions, when both the parties appeared before the MahaRERA through their representatives. During the



hearings, the complainants have argued that they have booked the said flat in the respondent's re-development project on 2-03-2010 for a total consideration amount of Rs. 65,00,000/-. The registered agreement for sale was also executed on 26-03-2010. Till date, the complainants have paid an amount of Rs.49,00,000/- to the respondent towards the cost of the said flat. According to clause No. 9 of the said agreement, the respondent is liable to handover the possession of the said flat to the complainants within 30 months from the date of commencement of work. The complainants have alleged that the respondent has obtained the commencement certificate for the said project on 18th February 2009. Therefore, it was liable to handover the possession of the said flat to the complainants by 17th August. 2011. However, the respondent has failed and neglected to give the same. Hence the complainants have filed this complaint for getting the possession of their flat and compensation of interest for delayed possession under Section-18 of the Real Estate (Regulation & Development) Act 2016.


3. The respondent filed his written submissions on record and disputed the claim of the complainants including the payment done by the complainants. The respondent also argued that the complainants have paid an amount of Rs. 24,00,000/- and strongly denied the cash payment made by the complainants. It was further argued that the respondent had undertaken this re-development project by executing a registered development agreement with Siddharth Nagar Gulmohar Co-operative Housing Society Limited. With regard to the delay in completion of the project, the respondent argued that it is due to the change in government policy which stalled the approval procedures and permissions from concerned authorities.

4. The respondent also relied upon a circular issued by MHADA dated 28th of August 2009 revising the permissible residential area from 30 sq. mtrs. to 45 sq. mtrs. for re-development building. Further even the MCGM has modified Regulation 33(5) of the DCR-1991, whereby there was an enhancement in minimum area of parking space to be provided to each residential unit. The permissions from Airport Authority of India also got delayed. The respondent further submitted that the cost of the material and labour have also been increased over a period of time and payment of interest will adversely affect the project. The respondent further argued that it had paid huge amount to the concerned government authorities towards various premiums. For obtaining NOC from the MHADA, it took about 51 months and for obtaining the commencement certificate also took about more than a year. The respondent further argued that it also paid huge rental charges to the members of the existing society. The said delay happened due to change in government policies and therefore, the same was beyond his control.
5. The respondent stated, during the hearing, that it will complete the construction work within 36 months from the date of order and will hand over possession of the flat to the complainants and other allottees with occupancy certificate. Further, the payment of interest to the complainants at this stage will amount to the diversification of the funds which shall damage interest of the larger interest of the allottees. Even the price of the complainants is appreciated for more than 4 times of the original price. The respondent, therefore, requested dismissal of this complaint.
6. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, admittedly, there is a

delay in handing over possession of the flat to the complainants. The complainants are, therefore, seeking interest for the delayed possession. The respondent has argued that there is no intentional delay; however, the project got delayed due to the factors like change in government policy, changes in plan and delay in getting various approvals from the concerned competent authority. To support its contention, the respondent has produced various notifications / circulars etc. issued by the MHADA as well as the MCGM. However, now the respondent has shown its willingness to complete this project within a period of 3 years from today.

7. The MahaRERA feels that though there is a substance in the justification given by the respondent and the MahaRERA feels that there are mitigating circumstances due to which the project got delayed. However, the complainants have also put their hard earned money for booking of the said flat in the year 2010 and waiting for the possession of their flat since last more than 8 to 9 years. The MahaRERA can not overlook the said issue.
8. In this regard, the MahaRERA is of the view that after the commencement of the provisions of Real Estate (Regulation and Development) Act, 2016, which came into effect, the home buyers are entitled to claim interest under section-18 of the RERA Act, 2016 for the delay till the possession of the flat is handed over. Even if the justification given by the respondent is considered for the delay, the respondent is liable to pay interest for the said delay happened in the present case after commencement of the RERA Act, 2016.

9. In the light of these facts, the MahaRERA directs the respondent to pay interest to the complainants from 1st May, 2017 till the actual date of possession 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.
10. Since the project is nearing completion, the diversification of the fund towards interest payment would amount to further delay in the project, which would be against the interest of other allottees of this project. Hence, the MahaRERA directs that the actual amount payable to the complainants towards the interest shall be adjusted with the balance amount payable by the complainants, if any, and the same shall be paid at the time of possession.
11. With the above directions, the complaint stands disposed of.


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