

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

**Rectification cum Review application**

**In**

**Complaint No.CC006000000055995**

Mr. Lalit Chopra

.... Complainant

**Versus**

M/s. Vital Developers Private Limited

....

Respondent

**Project Registration No.P51800010172**

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

Adv. Vijaya Bane appeared for the complainant.

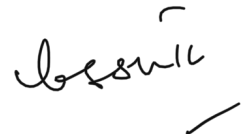
Mr. Sagar Bekal appeared for the respondent.

**ORDER**

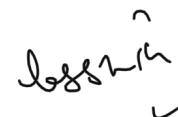
(03<sup>rd</sup> August, 2020)

(Through Video Conferencing)

1. The complainant had filed this complaint seeking directions from MahaRERA to the respondent to refund the amount paid by the complainant to respondent along with interest under section 18 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'RERA') with respect to booking of a flat in the respondent's project known as "Odina" bearing MahaRERA Registration No.P51800010172 situated at Chembur, Mumbai.
2. The above complaint was heard finally on 12/02/2019, when the parties were duly represented and made their respective oral as well as written submissions and accordingly the final order came to be passed on 26/04/2019 whereby the respondent was directed to pay interest for delayed possession to the complainant from 01/05/2017 till the actual date of possession.

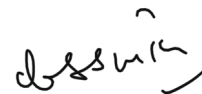


3. Thereafter, the respondent filed an application on record of MahaRERA and sought rectification in the said order dated 19-04-2019 passed by the MahaRERA on the ground that the same is not in consonance with the other order dated 29-10-2018 passed by the MahaRERA in complaint No. CC006000000055017, wherein the MahaRERA has considered the status quo order passed by the Hon'ble High Court Bombay in PIL No. 86 of 2014 and extended the date of possession mentioned in the agreement for sale. The respondent sought similar order in this complaint also.
4. The complainant has also sought execution of the order dated 19-04-2019 passed by the MahaRERA on the ground that the respondent has not filed any appeal against the said order and hence it is liable to execute the same.
5. The said application was heard finally today as per the Standard Operating Procedure dated 12/06/2020 issued by MahaRERA for hearing of complaints through video conferencing. The parties were issued prior intimation for the hearing and were also informed to submit their written submission if any. Accordingly, the parties appeared through their representatives/ advocates and made their submissions.
6. It is the case of the respondent that it has sought the rectification of the order since the reason for delay in the project was due to the status quo order granted by the Hon'ble High Court in the PIL No. 86 of 2014, wherein an order of status quo was passed in the year 2016 which was vacated finally in the month of April, 2018.



Therefore, due to the said status quo order, the competent authority did not grant any permission for the said period and hence the project got delayed. Considering the said facts, the MahaRERA has already granted relief in its favour in Complaint No. CC006000000055017 by passing an order on 29-10-2018, whereby the date of possession mentioned in the agreement for sale executed with the said complainant was extended for the period when the said status quo order was in operation. The respondent further stated that in this complaint the date of possession mentioned in the agreement was June, 2017. However, the interest was granted in favour of the complainant from May, 2017. Hence the respondent sought rectification in the said order dated 19-04-2019 passed by the MahaRERA.

7. In addition to this, the respondent stated that the complainant has also failed to make timely payments to it since 2017 even though the demand letters were issued to him. The respondent further stated that the building was ready till the 15<sup>th</sup> floor before the status quo order was granted by the Hon'ble High Court and only 2 floors were to be constructed. However, the respondent could not get the part Occupancy Certificate for the same since there was no water facility due to non availability of overhead tanks due to the pending clearances of the Aviation Authorities. The respondent further stated that after the injunction was removed and after clearance from the Aviation Authorities, it has completed the construction work of the project, has just obtained part occupancy certificate up to 15<sup>th</sup> floors on 12<sup>th</sup> July, 2020, and now it has planned to handover possession of the said flat to the complainant by 15<sup>th</sup> August, 2020. The respondent therefore stated that though



the complainant failed to make the timely payment, it has completed the construction of the complainant's flat and obtained occupancy certificate. Since the year 2017, the complainant did not make any payment and hence is a defaulter and is liable to pay interest. The respondent therefore prayed that the MahaRERA should review the application filed by the respondent and pass appropriate order accordingly.

8. The complainant on the other hand resisted the claim of the respondent and stated that if the respondent was aggrieved by the said order, it should have challenged the same before the Appellate Tribunal. However, the complainant agreed that since the date of possession mentioned in the agreement for sale is June, 2017, the interest could be granted from July, 2017 instead of May, 2017 and for the said correction, he showed his consent. However, for modification in the order the complainant raised objection stating that if the status quo order was granted for construction of additional two floors above the 15<sup>th</sup> floor, construction of his flat which is situated on the 11<sup>th</sup> floor, could have been completed and the respondent could have obtained part occupancy certificate for his flat. Hence, the respondent is not entitled to seek any relief under the pretext of the status quo order granted by the Hon'ble High Court.

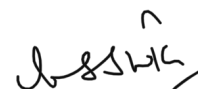
9. With regard to the issue raised by the respondent of non-payment, the complainant has stated that he has already paid around 70% amount towards the consideration of the said flat as per the stages of construction in the agreement for sale. Hence he has not made further payments since the remaining two floors were incomplete

and even after such a big delay, the respondent has only procured part O.C. from the competent authority and not the full O.C. The complainant further stated that if the respondent wanted changes in the order or any more rectification then it should have gone in appeal. The complainant further stated that even if the rectification application of the respondent is considered then it must be as per the agreement for sale entered into between the parties. The date of interest in the order is from 01/05/2017. However the date of possession in the agreement for sale is June 2017 and hence the date of interest should start from 01/07/2017.

10. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, the respondent by filing this rectification application is seeking modification in the order dated 19<sup>th</sup> April, 2019 passed by the MahaRERA in the aforesaid complaint and it has sought relief of about 30 months in the date of possession. The respondent has contended that the said delay occurred mainly due to the status quo order granted by the Hon'ble High Court in PIL No. 86 of 2014 which was finally vacated in the month of April, 2018. As per clause No. 21 sub clause - C of the agreement for sale, it can seek extension in the date of possession mentioned in the agreement for sale executed and duly signed by the complainant. In this regard, the MahaRERA is of the view that the respondent had made the commitment to give the apartment to the complainant on 11th floor by the stipulated date in a building of 15 floors. It could have easily finished the construction work, taken occupancy certificate and given the possession of the apartment to the complainant within the time limit. The status quo order of the Honble High Court cited by the

respondent only stopped further increase in height beyond 15 floors and had no effect whatsoever on the construction of the building up to 15 floors as per the original plan. Moreover if the project was getting delayed due to the said status quo order granted by the Hon'ble High Court as contended by the respondent, then the respondent should have informed the same to the complainant and should have revised the date of possession in the agreement at that relevant time or should have offered refund of the amount to the complainant, 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 it cannot take advantage of the said reasons of delay at this stage. The records also show that the said status quo was granted for additional two floors i.e. 15<sup>th</sup> & 16<sup>th</sup> and hence it could have taken part occupancy certificate from the competent authority for the complainant's flat which is situated on the 11<sup>th</sup> floor. This very issue was not pleaded by the complainant in Complaint No. CC006000000055017. Hence the respondent cannot pray for similar order to be passed in this complaint and the said request of the respondent stands rejected.

11. In this case, the respondent has brought a material fact on record of MahaRERA that the complainant allottee has not made any payment from the year 2017 and the same is an admitted fact. Though the demand for payment was raised in the year 2017 as well as 2019, as per the payment schedule mentioned in the agreement for sale, the complainant failed and neglected to pay the same. Further, though the complainant has not paid the outstanding dues, the respondent has completed its obligation to complete the flat of the complainant and has shown its bonafide. The complainant is therefore liable to





pay interest for the period of default on his part due to delayed payment as prescribed under RERA and Rules and Regulations made there under. This relevant issue seems not to have been considered in the order dated 19<sup>th</sup> April, 2019 passed by the MahaRERA. Hence the MahaRERA feels that the order is required to be reviewed.

12. In this regard, the MahaRERA has perused the provisions of Regulation 36 of the Maharashtra Real Estate Regulatory Authority (General) Regulations 2017, wherein an order of the Authority can be reviewed. The said regulations reads as under:

*“36(a) Any person aggrieved by a direction, decision or order of the Authority, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Authority.*

*(b) .....(e) When the Authority is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the*

***opposite side or party to enable him to appear and to be heard in support of the decision or order, the review of which is applied for.”***

13. In view of the aforesaid explicit provision prescribed under Regulation 36, it is clear that an order passed by MahaRERA can be reviewed if there are new facts discovered or any important matter or evidence which was not within the knowledge of the parties or could not be produced by them at the time when the order was passed or if there are other sufficient reasons. However, in the present case, the above mentioned crucial fact about the non payment of outstanding dues by the complainant was not brought to the notice of the MahaRERA at the time of passing the said order. Therefore, this case satisfies the requirement of Regulation 36 of reviewing the said order and hence, the MahaRERA hereby partly allows the review applications filed by the respondent.

***14. In view of the aforesaid facts and circumstances of this case, the following order is passed:***

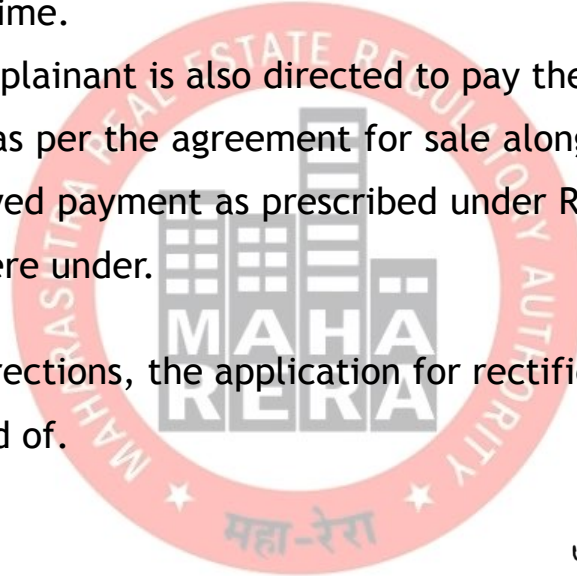
- a. The order dated 19<sup>th</sup> April, 2019 passed by the MahaRERA is hereby recalled;
- b. Since the agreed date of possession mentioned in the agreement for sale executed between the parties is 30<sup>th</sup> June, 2017, the respondent is directed to pay interest for the delayed possession to the complainant from 1<sup>st</sup> July, 2017 till the date of occupancy certificate i.e. 12<sup>th</sup> July, 2020 on the actual amount paid by the complainant at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2 % as



prescribed under the provisions of Section 18 of the Real Estate (Regulation and Development) Act, 2016 and the Rules made thereunder.

- c. With regard to the payment of interest to the complainant, the MahaRERA further directs that the respondent promoter is entitled to claim the benefit of “moratorium period” as per the Notifications /Orders Nos. 13 and 14 dated 2<sup>nd</sup> April, 2020 and 18<sup>th</sup> May, 2020 issued by the MahaRERA and the Notification/ Order which may be issued in this regard from time to time.
- d. The complainant is also directed to pay the outstanding dues payable as per the agreement for sale along with interest for the delayed payment as prescribed under RERA and the Rules made there under.

15. With these directions, the application for rectification/review stands disposed of.



A handwritten signature in black ink, appearing to read 'Dr. Vijay Satbir Singh', is written over the bottom right portion of the MahaRERA logo watermark.

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