

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

1. Complaint No. CC005000000022644

Mr. Roopesh Saxena

.... Complainant

Versus

M/s. Swet Realtors

M/s. Vineet Constructions

.... Respondents

Project Registration No. P52100012001

Along With

2. Complaint No. CC005000000022645

Mr. Prakash G Patil & 4 Ors.

.... Complainants

Versus

M/s. Swet Realtors

M/s. Vineet Constructions

.... Respondents

Project Registration No. P52100012001

Along With

3. Complaint No. CC005000000022646

Mr. Viver Kulkarni

.... Complainant

Versus

M/s. Swet Realtors

M/s. Vineet Constructions

.... Respondents

Project Registration No. P52100012001

Along With

4. Complaint No. CC005000000022713

Mr. Kiran Subhash Shinde & Anr.

.... Complainants

Versus

M/s. Swet Realtors

M/s. Vineet Constructions

.... Respondents

Project Registration No. P52100012001

Along With

5. Complaint No. CC005000000022809

Mr. Nikhil Kokitkar & Anr.

.... Complainants

Versus

M/s. Swet Realtors

M/s. Vineet Constructions

.... Respondents

Project Registration No. P52100012001

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

Adv. Dhananjay Adkar appeared for the complainants at Sr. No. 1 to 4.

Dr. Vijay Satbir Singh

Adv. Pranali Sawant appeared for the complainants at Sr. No. 5
Mr. Roshan Dusane appeared for the respondents.

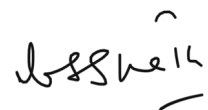
ORDER

Complaints Heard on 07th July 2020

Order Passed on (13th July, 2020)

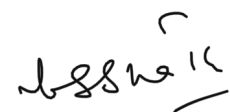
(Through Video Conferencing)

1. The above named complainants/allottees have filed these 5 separate complaints seeking directions from the MahaRERA, to the respondents, to pay interest for the delay in completion of the project under section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA), relating to the booking of their respective flats, in the respondent's project known as "Galaxy Vineet" bearing MahaRERA registration No. P52100012001 situated at Bavadhan BK, Mulshi, Pune. The complainants further sought directions to the respondents to complete the project in all respects along with the amenities as promised in the registered agreements for sale, to pay the outstanding rent incurred by them due to the delay in handing over the possession, and to form the society of the allottees.
2. The above complaints were heard on several occasions in the presence of the concerned parties and the same were heard finally on 7th July, 2020 as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through video conferencing. All the parties were issued prior intimation for this hearing and they were also informed to file their written submission if any. Accordingly, the parties have filed their submissions on record of MahaRERA. During the course of hearing, the parties appeared through their respective advocates and argued the matter. During the course of hearing, the complainants sought time to submit additional documents on record and the same was



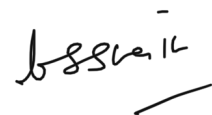
granted. Accordingly, the complainants and respondents filed their documents.

3. It is the case of the complainants that they have booked their respective flats in the respondents' project and have also executed the respective agreements for sale with the respondents. As per the said agreements for sale, the respondents were liable to hand over the possession of the flats to the complainants on or before June 2016. However, they failed to do so. The respondents, later on, handed over the possession of the flats to the complainants after their continuous persuasion. The complainants also signed the possession letters. However, the respondents are yet to obtain the occupancy certificate from the competent authority. The complainants further submitted that, the project is still incomplete, and the respondents have not give them the amenities so far as per the registered agreements for sale. The respondents have also failed to complete the basic infrastructure such as installation of fire fighting equipment, lifts etc. The parking area and solar water piping are yet to be completed. The respondents have also failed to complete the back up for the lifts. The complainants further stated that, the Pune Metropolitan Regional Development Authority (PMRDA) sent a notice to the allottees including the complainants regarding the encroachment of a retaining wall adjoining Ram Nadi (River) which was demolished on completion of the notice period thereby exposing the complainants to various dangers. The respondents also failed to repair the said wall. They also failed to form the society of the allottees till date and are asking for additional amounts for the formation of society. The complainants have therefore filed the present complaints seeking reliefs as prayed therein. The complainants also submitted photographs and other documents to show the incomplete work by

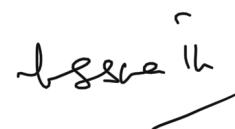


the respondents. With regards to the allegations made by the respondents for renting out the flats by the complainants, the complainants have stated that they are doing so to pay huge EMIs to the banks for borrowing loans.

4. The respondent No. 1 is owner of the project land and the respondent No. 2 is the promoter of the project. They have entered into a registered joint venture agreement on 30-11-2013 for development of the project land. Both the respondents are involved in this project registered with MahaRERA. The respondents have resisted the claim of the complainants by raising various defences by filing written submission on record on 5th July, 2020. The respondents have stated that the complainants have already taken possession of their respective flats in the year 2017/2018 and since then they are using the said flats. The respondents have also produced the possession letters duly signed by the complainants along with the electricity bills which stand in the names of the complainants. The respondents further stated that they are taking care of all the maintenance of the building such as common electricity of the society, water supply through water pumps/ tankers, housekeeping, garden, lift etc and till date they have not charged any maintenance amount to the complainants. Moreover the final possession amount is yet to be paid by the complainants. Further almost 95% allottees have taken possession of their flats and are residing in the said building. The respondents further stated that since the complaints were filed after taking possession of the flats, the same are not maintainable under section 18 of the RERA. Hence the complainants are liable to be dismissed.



5. With regard to the delay in completion of the project, the respondents stated that, the project got delayed due to the mishap of government authority viz PMRDA as their project is adjacent to Ram river and the retaining wall was demolished by the PMRDA as they lost the case in National Green Tribunal. Due to this main reason the project got delayed. The respondents also stated that, the possession to almost 95% of the allottees has been given by them. The respondents further stated that they will complete the remaining work in the project within a period of 6 months i.e before revised completion date i.e. 28-02-2021 as declared before the MahaRERA. The respondents further stated that the complainants have submitted forged Minutes of Meeting of the society.
6. With regard to the issue of formation of society, the respondents have stated that they have already taken steps for formation of society and attached letter dated 11-01-2020 to show that the registration forms have been circulated. With regard to the letter relied upon by the complainant for payment of rent, the respondents have stated that it is a fake letter relied upon by the complainants. The respondents therefore prayed for dismissal of these complaints.
7. The MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case, admittedly, the complainants have purchased flats by executing registered agreements for sale with the respondents but the possession was not handed over to the complainants on the agreed date i.e. 30-06-2016 as stipulated in the agreements for sale executed between them. Hence the present complaints have been filed



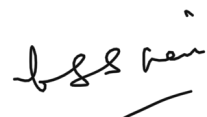
under section-18 of the RERA seeking interest for the delayed possession as the respondents failed to obtain occupancy certificate for the project.

8. The respondents have argued that there is no intentional delay. The project got delayed mainly due to the demolition of retaining wall adjacent to the river by the competent authority viz PMRDA since they lost the case before the National Green Tribunal and till date the project is incomplete. Further, though the date of possession was over in the year 2016 itself, the complainants did not approach MahaRERA seeking relief under section-18 of the RERA till the year 2019, as they had already taken possession of their flats by signing the possession letters. The complainants have pleaded that the said possession is not legal possession, since there is no occupancy certificate for the project.

9. In the present case, the MahaRERA has noticed that the respondents have handed over possession of the flats to the complainants in the year 2017- 2018. The respondents also annexed the copies of the possession letters duly signed by the complainants and the said fact has been admitted by the complainants.

10. In this regard, the MahaRERA has perused the provisions of section 18(1) of the RERA, which reads as under:

18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to



discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand by the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”

11. The aforesaid provisions of section 18 stipulate that if the promoter fails to complete the project or is unable to hand over possession of the flat to the allottee by the agreed date of possession, the promoter is liable to pay interest for the delayed possession. However, in the instant case, the respondents have offered the possession of the flats to the complainants and the complainants have accepted that. If the occupancy certificate was not issued, the complainants should not have taken possession of their flats. During the hearing, the complainants have contended that the possession was given for fit out purpose. However, the possession letters duly signed by the complainants don't clarify that the possession was given for fit out purpose and the complainants along with other allottees continue to stay and use their respective flats till date. The complainants, after taking possession, have even transferred the electricity bills in their names. It shows that the majority of the allottees are residing in their flats. Some have also rented out their flats. Therefore the MahaRERA feels that the

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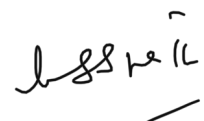
provisions of section 18 would not be attracted in these cases and the complainants would not be entitled to seek interest for the delayed possession under section 18 of the RERA, after taking possession of their respective flats.

12. With regard to the incomplete work pending in the project, the MahaRERA feels that while registering the project with MahaRERA the respondents have mentioned the revised completion date of this project as 28-02-2021. The respondents are therefore liable to complete the pending /incomplete work of the project and to obtain occupancy certificate before that date.

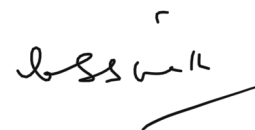
13. In the present case, admittedly, the possession of the flats has not been handed over to the complainants by the agreed date of possession mentioned in the agreements for sale i.e. 30-06-2016. The respondents have not submitted any justified reasons for the alleged delay caused for the same. The MahaRERA therefore feels that the respondents are liable to pay interest for the delayed possession from the agreed date of possession stipulated in the agreements for sale executed with the complainants till the date when the possession of the flats were handed over to the complainants.

14. With regard to the issue raised by the complainants for formation of society, the MahaRERA has observed that the respondents have already taken steps for formation of society and circulated the membership forms.

15. Considering the aforesaid facts of this case the following order is passed.



- a) the respondents are directed to pay interest to the complainants from 1st July, 2016 till the date of possession to the complainants on the money paid by the complainants at the rate of Marginal Cost Lending Rate (MCLR) of the State Bank of India (SBI) 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.
- b) With regard to the payment of interest to the complainants, the MahaRERA further directs that the respondents are entitled to set off the said interest amount with the outstanding dues payable by the complainants if any.
- c) The respondents are also entitled to claim the benefit of “moratorium period” as mentioned in the Notifications /Orders Nos. 13 and 14 dated 2nd April, 2020 and 18th May, 2020 issued by the MahaRERA and the Notification/Order which may be issued in this regard from time to time.
- d) The respondents are also directed to complete whatever incomplete work has been pointed out by the complainants in these complaints and obtain occupancy certificate at the earliest before the revised completion date mentioned in the records of MahaRERA.
- e) The respondents are also directed to form a society of the allottees at the earliest. The complainants are also directed to sign the membership forms circulated by the respondents if any.
16. With the above directions, all five complaints stand disposed of.



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