

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

Complaint No. CC006000000100403

Sama Mohd Sharif

.... Complainant

Versus

M/s. Satyam Developers

.... Respondent

Project Registration No. P51800006823

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

Complainant appeared in person.

Adv. Satish Dedhia appeared for the respondent.

ORDER

(20th February, 2020)

1. The complainant has filed this complaint seeking directions from the MahaRERA, to the respondent, to hand over the possession of the flat along with occupancy certificate and interest and compensation for delayed possession under Section 18 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the RERA) in respect of booking of a flat in the respondent's project known as **"Swaroop Harmony"** bearing MahaRERA registration No.P51800006823 situated at Santacruz (East), Mumbai.
2. The complaint was heard on several occasions and the same was heard finally on 21.01.2020, when both the parties appeared and made their respective submissions. The respondent has also filed its reply on 29.01.2020, which is taken on the record of MahaRERA.

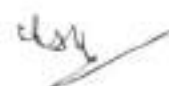
Pleadings:

3. It is the case of the complainant that, she had booked the said flat in the respondent's project on 02.06.2010 for a total consideration amount of Rs. 51,00,000. The agreement for sale was executed in the year 2012



between both the parties. According to the said agreement, the respondent was liable to hand over the possession of the said flat to the complainant within a period of 3 years. However, till date, the possession has not been given to the complainant though a substantial amount of Rs.46,83,788/- has been paid to the respondent. The complainant has therefore, filed this complaint seeking relief under Section 18 the RERA.

4. The respondent, on the other hand has resisted the claim of the complainant by raising various defences in its complaint on record. The respondent has further stated that the complaint is not maintainable on the ground of non-joinder of necessary parties as the complainant has purchased the said flat from Satyam Developers with whom the Registered Agreement has been executed. However, he has not joined the said company as a party. With regard to the claim of interest under Section 18 the RERA, the respondent has stated that in the registered agreement for sale executed with the complainant, no date of possession was mentioned on the basis of mutual understanding between the said parties at that time. However, it was contended by the respondent that the complainant subsequently inserted in hand writing by inserting words – ***“which will be delivered within a period of 30 months from the date of registration thereof”***. The said addition/insertion has not been countersigned by the parties to the agreement. The said act of the complainant is unauthorised and hence the claim for interest cannot be considered. As per MahaRERA registration issued in their favour, the date of completion of the said project is shown as 31.12.2020 which is yet to come and hence the



complaint is premature as on today. The respondent further state that as per clause 9 of the said agreement, the possession of the said flat is to be given to the complainant after issuance of Occupancy Certificate, which will be obtained soon. The respondent further stated that in the year 2011 itself, the possession date was not fixed on mutual understanding between the parties and the complainant had not taken any objection at the time of execution of agreement for sale and therefore, now he cannot make any grievance in this regard.

5. The respondent further submitted that the project under reference got delayed due to following reasons:

- i) Delay in vacating the plot by the existing slum dwellers,
- ii) Limited space/working available for construction activities,
- iii) Extreme delay for issuance of full occupancy certificate by the concerned competent authority, mainly SRA from 2016 to 2018 as few slum dwellers were residing on the boundary of the said plot,
- iv) Dispute arose between the partners during 2011,
- v) Financial institution refused to grant loan to the project due to which the project got delayed for want of funds.
- vi) Crisis due to GST and RERA,
- vii) Multi fold increase in project cost.

Due to aforesaid reasons, the respondent stated that the project got delayed. However, the complainant is not at all in loss as the said flat cost has increased substantially from ₹ 38 lakhs to ₹ 80 lakhs.

6. In addition to above, the respondent further stated that Section 8 of the MOFA Act and also as per provisions of the RERA and as held by Hon'ble



High Court of Judicature at Bombay in its order dated 06.12.2017 passed in Writ Petition NO. 2737 of 2017 wherein the respondent is entitled to invoke the "Frustration Clause" as it's unable to pay interest for the alleged delay as sought by the complainant to restrict losses due to the payment of interest. The parties did not seriously foresee the occurrences of aforesaid reasons of delay as occurred during the completion of the project and therefore, respondent showed its willing to refund the entire amount to the complainant. The respondent further stated by invoking the "Frustration Clause", it has already terminated the agreement for sale with the complainant by issuing legal notice dated 20.01.2020 and also have sent cheque bearing No. 492393 to the complainant against partial refund, and called the complainant to complete all remaining formalities. In view of these facts, the respondent prayed for dismissal of this complaint.

Findings and Reasons

7. The MahaRERA has examined the arguments advanced by both the parties as well as on record. In the present case, the complainant has approached MahaRERA seeking interest for the delayed possession under Section 18 of the RERA alleging that the date of possession mentioned in the registered agreement for sale dated 21.12.2011 has already lapsed. However, on perusal of clause No.9 of the said agreement, it appears that the date of possession is mentioned in hand-written words and the same is not counter signed / attested by both the parties. Prima facie, it appears that the insertion of words is not part of the original clause 9 of the agreement. Moreover, if the complainant had any grievance about the date of possession, then he should have taken

appropriate steps at relevant time by executing the supplementary agreement specifying the date of possession which was missed out in the original agreement for sale. Therefore, the MahaRERA cannot accept the date of possession for handing over the said flat from within 30 months from the date of registration of the said agreement as alleged by the complainant.

8. In the present case, the claim of complainant that the date of possession mentioned in the agreement for sale stands over has no substance. However, in absence of any date of possession mentioned in the agreement for sale, the proposed date of completion mentioned in MahaRERA registration can be considered as the date of possession, which is 31-12-2017 in the present case, which has already lapsed. The respondent had sufficient time of more than 5 years to overcome all the constraints pointed out by him to complete the project and handover possession of the residential units to the allottees. Hence, the MahaRERA feels that the respondent has violated the provisions of section 18 of the RERA, making it liable to pay interest for the delayed possession from 1-1-2018 till the actual date of possession.

9. In view of above facts and discussion, the respondent is directed to pay interest to the complainant on actual amount paid by her to the respondent from 1st January, 2018 till the actual date of possession at the rate of Marginal Cost Lending Rate (MCLR) of 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.




10. However, since the project is nearing completion, the respondent would be at liberty to set off the interest amount payable against the outstanding dues if any payable by the complainant and the balance shall be paid at the time of possession.
11. The MahaRERA has also observed that in the present case, the respondent has terminated the registered agreement for sale entered into between the complainants vide termination notice dated 20-1-2020. The said termination has been done during the course of hearing of this complaint. Moreover, whether the said termination is valid in law or otherwise has not pleaded during the course of hearing held on 21-1-2020. Therefore, the MahaRERA cannot accept the said issue of termination raised by the respondent at this stage.
12. With these directions, the complaint stands disposed of.



Dr. Vijay Satbir Singh
(Member I/ MahaRERA)