

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

**1. Complaint No.CC006000000100534**

Ms. Priyanka Wilson Fernandes &  
Mr. Anand Ramsukh Rai

.... Complainants

**Versus**

M/s. V.M Associates, Through its partners  
Mr. Virendra M Shah and Mr. Bijal A Dattani

..... Respondent

Along with

**2. Complaint No. CC006000000110807**

Mr. Devendra Ramsukh Rai &  
Mr. Anand Ramsukh Rai

.... Complainants

**Versus**

M/s. V.M Associates, Through its partner  
Mr. Virendra M Shah and Mr. Bijal A Dattani  
Project Registration No. P51800009582

..... Respondent

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

The complainant appeared in person.

Mr. Tarun Shah appeared for the respondent.

**ORDER**

(7<sup>th</sup> January, 2020)

1. The complainants have filed the above two separate complaints seeking directions to the respondent to pay interest for the delayed possession under Section-18 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA") from the date of possession mentioned in the agreements for sale till the actual date of possession on the amount paid by them in respect of the flats booked by them (the said flats) in the respondent's project known as "**Avirathi Home, Building-C**" bearing MahaRERA Registration No.151800009582 at Borivli (West), Mumbai.
2. These complaints were heard on several occasions and the same were heard finally on 12.12.2019, when both the parties appeared and made their



submissions. After hearing the arguments of both the parties, the respondent was directed to file its reply within a period of 10 days. Accordingly, the respondent filed its reply on 24.12.2019. The same is taken on record.

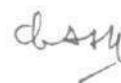
3. It is the case of the complainants that they have booked the said flats for a total consideration amount of Rs. 1,50,00,000/-. The registered agreements for sale have been executed between them on 28.04.2016, wherein the date of possession was mentioned as 31.08.2016. Till date the complainants have paid substantial amount towards the purchase of the said flats. However, the respondent had failed and neglected to hand over the legal possession with occupancy certificate to the complainants. The complainants, therefore, prayed MahaRERA to take action against respondent for non-performance of its duty, being the promoters of the project.
4. The respondent, on the other hand, disputed the claim of the complainants and argued that the present complaints have been filed with malafide intention just to harass the respondent and by suppressing the material facts from MahaRERA that the complainants have already taken fit-out possession of their respective flats in the year 2018 and have also carried out interior work in the said flats and they are in fact occupying the same. In respect of their contention, the respondent has annexed photographs of the said flats.
5. With regard to alleged delay, the respondent has stated that the said building, wherein complainants flats are situated, was ready for possession in the year 2016 itself and the Architect had given completion certificate in the year 2017 and the same has already been uploaded in the MahaRERA website. Though it has applied for occupancy certificate in the year 2016, it could not get the same from MCGM due to the reason that MCGM was not taking over the possession of PAP building No.1 constructed by them on site.

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6. The complainants know these facts and hence, they did not make any grievances since 2016 to 2019 and paid the outstanding dues as and when demanded by the respondent and after a period of 3 years, they have filed these complaints with malafide intention just to extort money. However, now it has obtained the occupancy certificate upto 12<sup>th</sup> floor on 25.11.2019 and the complainants have been informed accordingly by letter dated 15.12.2019.
7. The respondent further stated that it has implemented the said project in a time bound manner by utilizing all resources and expertise. In the said layout, there were totally 4 buildings bearing Nos.1, 2, 3 and 4 (proposed). Building No.1 consists of Ground + 6 upper floors which is the PAP building to be handed over to the competent authority viz. MCGM as PAP tenements as the said plot of land was partly reserved for Public Housing for Dishoused in the D.P. plan. It has completed the said building and obtained occupancy certificate on 25.07.2014.
8. The building No.2 and 4 were also completed and the occupancy certificate were obtained on 27.05.2014 and 13.06.2014. Further, though an application was made for occupancy certificate for building No.3, which was already constructed in the year 2016 itself, MCGM were not taking the possession of the said PAP building No.1 since 2016, and therefore, not granted occupancy certificate for the building no.3. Further, as per conditions of various permissions granted by the competent authority, till handing over possession of PAP building No. 1 to MCGM, the respondent was not entitled to seek occupancy certificate. However, though the PAP building No. 1 was ready with occupancy certificate in the year 2014 itself, the Competent Authority did not take possession of the same and hence, the occupancy certificate got delayed which is finally granted on 25.11.2019. The said delay was beyond its control.

9. In support of their contentions, the respondent has relied upon the Judgment and Order of Appellate Tribunal in Appeal No. AT 006000000010452 and prayed for 3 years extension in the date of possession. With regard to the difference in area, as alleged by the complainants, the respondent has stated that there is no change in the carpet area and the flats are constructed as per the area mentioned in the agreements for sale. Further, it prayed, in support of its contention, for dismissal of this complaint.
10. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, admittedly, the complainants have purchased flats by executing registered agreements for sale with the respondent and the possession is not given to the complainants on the agreed date i.e. 31/8/2016, mentioned in the agreements for sale executed between the complainants and the respondent. Hence, the present complaints have been filed under section-18 of the RERA seeking interest for the delayed possession from the date of possession till the actual possession with the occupancy certificate.
11. The respondent has argued that there is no intentional delay. The project got delayed mainly due to the inaction on the part of the competent authority viz., MCGM in not taking possession of the PAP Building No. 1, which was ready with occupancy certificate in the year 2014 itself. However, finally I has obtained the occupancy certificate from the competent authority on 25-11-2019. The respondent has uploaded the Architect's completion certificate on MahaRERA website in the year 2017 itself. 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 fit out possession. The said fact has not been disclosed by the complainants in their complaints.




12. The MahaRERA, therefore, feels that there is a substance in the justification given by the respondent and there were mitigating circumstances due to which the project got delayed. Therefore, the respondent is entitled to get reasonable extension in the date of possession mentioned in the agreement for sale.
13. In the present case the MahaRERA has noticed that the respondent has handed over fit out possessions of the complainants flats in the year 2018. The respondent has annexed the photographs of the flats of the complainants. However, the complainants have not denied the said facts by filling rejoinder to the reply of the respondent on record. Moreover, the MahaRERA has also observed that the said facts have been suppressed by the complainants in their online complaints filed before the MahaRERA. It shows that the complainants have not come before the MahaRERA with clean hands. Therefore, they are not entitled to seek any sympathy from the MahaRERA.
14. 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 to 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.”*

15. The aforesaid provisions of section-18 stipulates that if the promoter fails to complete the project or unable to handover possession of the flat to the allottee on the agreed date of possession, the promoter is liable to pay interest for the delayed possession. However, in the instant case, the respondent has completed the said project and obtained occupancy certificate and even handed over possession of the flats to the complainants. Moreover, though the agreed date of possession mentioned in the agreements for sale was over in the month of August, 2016 itself, the complainants did not approach MahaRERA seeking reliefs under the provisions of the section 18 of the RERA till year 2019. Even the said delay in filing these complaints have not been explained by the complainants in the complaints or at the time of arguments. The respondent, on the other hand, has been able to explain the delay in handing over the flat to the complainants. Therefore, the MahaRERA feels that the provisions of the section-18 would not attract in these cases and the complainants would not be entitled to seek interest for the delayed possession under section-18 of the RERA.
16. With regard to the difference in area of the flats, the MahaRERA feels that the complainants have submitted any cogent documentary proofs to show that the respondent has provided lesser area flats. Hence, the said contention of the complainants stands rejected.
17. With these observations, both the complaints stands dismissed for want of merits.

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