

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

1. Complaint No. CC005000000022387

Mr. Amit SatyanarayanBaldawa

.... Complainant

Versus

M/s. Keshavleela Properties

.... Respondents

Project Registration No. P52100009759

Along With

2. Complaint No. CC005000000022428

Mr. Shekhar Subhash Puri

.... Complainant

Versus

Mr. Ajit Keshavrao Gaikwad

.... Respondent

Project Registration No. P52100009759

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

The complainants appeared in person.

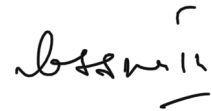
None appeared for the respondent.

ORDER

(06th July 2020)

(Through Video Conferencing)

1. The above named complainants have filed these 2 complaints seeking directions from the MahaRERA, to the respondent, to pay interest for the period of delayed possession under section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA), in respect of the booking of their respective flats bearing nos. 406 & 503 , in Wing B, of the respondent's project known as "Polaris" bearing MahaRERA registration No. P52100009759 situated at Mundhava, Pune. The complainants also sought direction to the respondent to pay the rent incurred by them due to the delay in handing over the possession of their respective flats by the respondent.



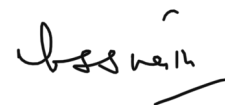
2. This complaint was heard on several occasions in the presence of concerned parties and same are heard finally today as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through video conferencing. Both the parties have been issued prior intimation for this hearing and they have also been informed to submit their written submission if any. Accordingly, the parties have filed their respective written submissions on record.
3. During the course of hearing, the complainants appeared in person and argued the matter, however none appeared for the respondent. Hence the MahaRERA has perused the written submission dated 4-07-2020 filed by the respondent.
4. It is the case of the complainants that, they had booked their respective flats in the respondent's project in the year 2018 and have also entered into registered agreements for sale with the respondent on 14-05-2018 and 14-06-2018 respectively. According to the registered agreements for sale, the respondent was liable to hand over the possession of the said flats to the complainants on or before 31/12/2018. However, the respondent has failed to hand over the possession of the flats till date. The complainants have paid amounts of Rs. 55,42,546/- & Rs. 50,88,352/- towards about 85% of the total consideration of the flats and have been following up with the respondent for the completion of the project and for possession of their flats. However, the respondent has failed to comply with its obligations and has not handed over the possession of the flats to them till date. Hence the present complaints have been filed seeking reliefs as sought in these complaints.
5. The respondent has filed its written submission on record of MahaRERA of 4-07-2020 and resisted the claims of the complainants by raising

various defences and has denied all the allegations and averments raised by the complainants. It is further stated by the respondent that as on date, 85% of the internal and external work of construction of the complainants' wing -B is complete on site. The respondent further stated that, as per the agreements for sale, it was liable to hand over the possession of the flats to the complainants on or before 31/12/2018. However, as per part II of the clause 6, it is entitled to a reasonable extension of time to complete the project for various reasons beyond its control and same have not been considered by the complainants. Even the said fact is not mentioned in these complaints. With regard to the delay in this project, the respondent stated that the project got delayed mainly due to inclusion of the village Mundhawa, in which the project is situated along with 10 other villages within the jurisdiction of the Pune Municipal Corporation (PMC) from PMRDA on 04/10/2017, which caused a lot of delay and confusion with respect to the attaining of the required permissions and sanctions as well as the rules regarding the FSI & TDR. Even though the PMC declared the FSI for the village "Mundhawa", the TDR has not been declared and the development plan for the village has not been sanctioned till date causing inordinate delay in the development of the said project.

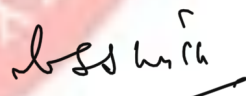
6. In addition to this the respondent further stated that, it registered the project under MahaRERA in the year 2017 and has mentioned the date of completion of the project as 28/05/2021, which is not yet over and hence there is no substance in the complaints filed by the complainants. The respondent further stated that, the other reasons for the delay in the project were, effect of demonetisation, establishment of RERA as well as GST causing negative sentiments in home buyers causing loss of

business to the respondents, transporters' strike and non-availability of labour due to strike etc. The respondent therefore stated that the grant of interest and compensation to the complainants would cause irreparable losses to the respondent. The respondent therefore prayed that the complaints filed by the complainants be dismissed.

7. The MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case admittedly, the complainants are the allottees in the respondent's project and there are registered agreements for sale executed between the complainants / allottees on 14-05-2018 and 14-06-2018. Accordingly to clause No. 6 of the said agreements, the respondent was liable to give possession of the flats to the complainants on or before 31-12-2018. However, till date, the possession has not been given, though substantial amount has been paid by them. It shows that the respondent has violated the provisions of section 18 of the RERA Act, 2016 and the rules made there under. To justify the case, the respondent has stated that the project got delayed mainly due to inclusion of village Mundhava in Pune Municipal Corporation (PMC) from PMRDA. In this regard, it is observed that, the respondent in its submissions has stated that the said jurisdiction got changed from PMRDA to PMC on 04-10-2017, which is prior to execution of agreements for sale with the complainants. Hence at the time of execution of the agreements for sale with the complainants, the respondent was well aware of all these constraints in the project and therefore, mentioned the date of possession in the agreements for sale accordingly. Therefore now, the respondent cannot rely upon this ground to justify the delay happened in this project.
8. With regard to the other ground of delay cited by the respondent such as demonetisation, GST, RERA, transporters' strike etc, the MahaRERA feels that the said reasons / grounds are general in nature and not covered under the force majeure clause and hence same can not be accepted by MahaRERA. There is no fault on the part of the complainants who have put their hard earned money for booking of the said flats in the respondent's project. The respondent has not given any plausible reasons for the alleged delay.



9. It is very clear from the above discussion that the reasons cited by the respondent for the delay in completion of the project, do not give any satisfactory explanation. Moreover, the payment of interest on the money invested by the home buyers is not the penalty, but, a type of compensation for delay as has been clarified by the Hon'ble High Court of Judicature at Bombay in the judgment dated 6th December, 2017 passed in W.P. No. 2737 of 2017. The respondent is liable to pay interest for the period of delay in accordance with the terms and conditions of agreement.
10. In view of above facts and discussion, the respondent is directed to pay interest to the complainants from 1st January, 2019 every month till the actual date of possession on the actual amount paid by the complainants 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 there under.
11. With regard to the payment of interest to the complainants, the MahaRERA further directs that, the respondent promoter is 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.
12. With the above direction both the complaints stand disposed of.


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