

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

Complaint No. CC006000000171653

Ms. July Iqbal Salewala

..Complainant

Versus

N. Rose Developers Private Limited

..Respondent

MahaRERA Project Registration No. **P51700007936**

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

Adv. Vishal Kava appeared for the complainant.

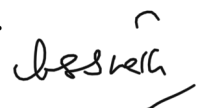
Mr. Agarwal appeared for the respondent.

ORDER

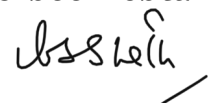
(12th November, 2020)

(Through Video Conferencing)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent handover possession of the flat along with interest for the delayed possession under section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of booking of a flat No. A-1702 in the respondent's registered project known as "Heaven Plaza" bearing MahaRERA registration No. P51700007936 at Dahisar.
2. This complaint was heard finally on 13-10-2020 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 of this hearing and they were also informed to file their written submissions, if any. Accordingly both the parties appeared for the said hearing and made their submissions. The MahaRERA heard the arguments of both the parties. After hearing the oral submissions made by both the parties, one week's time was granted to them to upload their reply on record of MahaRERA as per SOP dated 12-06-2020. Accordingly, the respondent has uploaded its reply on record of MahaRERA on 19-10-2020. The same is taken on record.



3. It is the case of the complainant that the said flat was jointly purchased by her along with her late husband Mr. Iqbal Tajuddin Salewala by executing the registered agreement for sale on 19th July, 2012. The said flat was purchased for a total consideration amount of Rs. 51,00,000/- and till date, she has paid entire consideration amount to the respondent. Though the respondent has obtained occupancy certificate for the said project on 7-08-2019, however till date, the possession has not been handed over to her. The complainant further stated that except her there is no other legal heir of her late husband Mr. Iqbal Tajuddin Salewala. Hence the complainant by filing this complaint is seeking possession of her flat along with interest for the delayed possession under section 18 of the RERA as the agreed date of possession mentioned in the agreement for sale was 31-07-2015 which has already lapsed.
4. The respondent on the other hand resisted the claim of the complainant by filing written reply on record of MahaRERA on 19.10.2020. In the said reply the respondent has stated that this complaint is liable to be dismissed on the ground that the complainant has already filed a complaint before State Consumer Disputes Redressal Commission bearing complaint no. 1036 of 2019 seeking similar relief. Hence, this complaint is liable to be dismissed. The respondent further stated that the complainant July Iqbal Salewala is a widow of Late Mr. Iqbal Tajuddin Salewala who had granted power of attorney in the name of one Mr. Praveen Mann Singh Chouhan. The said power of attorney is not authenticated as the complainant has neither paid the appropriate stamp duty nor the same is registered or notarized document. The respondent further stated that since 2018, the complainant never visited India and hence there is no question of granting power of attorney to Mr. Praveen by signing the same in India. The respondent further stated that the project is completed and the occupancy certificate has been obtained for this project on 07.08.2019.



5. In addition to these, the respondent further stated that the complainant along with her husband Late Mr. Iqbal Tajuddin Salewala purchased the said flat no. A-1702 and thereafter, she informed the respondent that her husband has expired and therefore she is claiming 50% share in the said flat. However, no relevant document was submitted by her. Hence, the possession was not given to the complainant. Thereafter, the respondent received a phone call from U. S. and it has informed that Late Mr. Iqbal Tajuddin Salewala had one more wife and one son from the said wedlock. Hence the respondent informed the complainant to submit succession certificate / letter of administration pertaining to her claim of 50% share of her deceased husband. However, till date she has not produced the same. The complainant by filing this complaint is trying to get malafide gain in the said flat. Hence, the respondent requested MahaRERA to direct the complainant to submit the succession certificate / letter of administration so as to enable it to handover the possession of the said flat to the complainant.
6. The MahaRERA has examined the arguments advanced by both the parties and also perused the record. In the present case by filing this complaint, the complainant is mainly seeking possession of her flat along with interest for the delayed possession under section 18 of the RERA as the agreed date of possession is lapsed.
7. With regard to the claim of the complainant for possession of flat No. A 1702, the MahaRERA has observed that the complainant along with her husband late Mr. Iqbal Tajuddin Salewala have jointly purchased this flat by executing the registered agreement for sale dated 19th July, 2012. This is an undisputed fact as the same is not denied by the respondent. After the death of her husband, the complainant being one of the party to the said agreement is claiming possession of the said flat. The

respondent cannot deny the possession of the flat to the complainant just because of the internal dispute between the complainant and her family members. Moreover, the respondent has not brought any cogent documentary evidence on record of MahaRERA with regard to any dispute raised by the family members of the complainant except a bare statement. Hence the MahaRERA feels that being a joint allottee, the respondent promoter is liable to handover possession of the said flat to the complainant as per the terms and conditions of the agreement for sale.

8. With regard to the other issue raised by the respondent regarding the proceeding filed before the State Consumer Redressal Commission by the complainant, the MahaRERA is of the view that to file complaint before the MahaRERA under section 31 of the RERA is the additional remedy available to the complainant being the aggrieved party for any violation of the provisions of the RERA. Moreover, no order passed by the State Consumer Redressal Commission has been produced on record of MahaRERA by the respondent. The MahaRERA is therefore of the view that just because of the filing of the alternative proceeding before another forum, justice cannot be denied to the complainant.

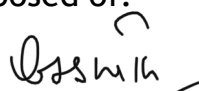
9. With regard to the relief sought by the complainant towards the interest for the delayed possession under section 18 of the RERA, the MahaRERA has observed that as per the registered agreement for sale dated 19-07-2012, the respondent has agreed to handover possession of the said flat to the complainant on or before 31-12-2015 and admittedly the possession has not been handed over to the complainant allottee on the agreed date of possession. The MahaRERA therefore feels that the respondent has violated the provision of section 18 of the RERA. The respondent, in its reply submitted on record MahaRERA has not cited any justified reasons for the alleged delay in handing over possession of the said flat to the complaint on the agreed date of possession. Hence

the MahaRERA is of the view that the respondent is liable to pay interest for the delayed possession as per the provision of section 18 of the RERA. Further, there was enough time for the respondent to complete the project before the relevant provisions of The Real Estate (Regulation & Development) Act, 2016 which came into force i.e. on 1st May, 2017. However, after commencement of RERA the promoter is liable to pay interest for the delayed possession under section 18 of the RERA.

10. In view of the aforesaid facts, the following order is passed:

- a) The respondent to handover possession of the flat to the complainant within a period of 30 days from the date of this order.
- b) The respondent is further directed to pay interest to the complainant from 1st May, 2017 for every month till the date of occupancy certificate 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 there under.

11. With the above directions, the complaint stands disposed of.


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