

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

**Complaint No. CC006000000079514**

Ashlesh Gosain

..Complainant

Versus

M/s Spenta Builders Pvt. Ltd

..Respondent

MahaRERA Project Registration No. P51800002414

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

None appeared for the complainant.

Adv. Purazar Fouzder appeared for the respondent.

**ORDER**

(03<sup>rd</sup> September, 2020)

(Through Video Conferencing)

1. The complainant has filed this complaint seeking relief under section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'RERA'). The said complaint was disposed of vide reasoned order dated 13<sup>th</sup> November, 2019 passed by MahaRERA whereby direction was given to the respondent/promoter to pay the interest for delayed possession to the complainant from 1<sup>st</sup> July, 2017 till the occupancy certificate was obtained for the project on 20<sup>th</sup> February, 2019.
2. The complainant thereafter filed an application dated 13<sup>th</sup> January, 2020, and sought correction in the aforesaid order dated 13<sup>th</sup> November, 2019 passed by MahaRERA stating therein that Wing 'A' in the respondent's project known as "Palazzio" bearing MahaRERA registration No. P51800002414 wherein he has booked a flat for which no occupation



certificate has been issued till date. Further, the respondent/promoter has violated the provisions of RERA and hence, he is liable to pay interest for the delayed possession from 31<sup>st</sup> December, 2015 and not from 1<sup>st</sup> July 2017 as mentioned in the said order.

3. The said application was heard by MahaRERA on 11<sup>th</sup> March, 2020 when both the parties appeared through their respective advocates and made their submissions. During the hearing the complainant had prayed to allow the said application which the respondent has denied. However, the final order could not be passed due to non-availability of physical file as the office of MahaRERA was closed due to lockdown declared by the State as well Central Government due to Covid-19 pandemic.
4. The MahaRERA has now issued Standard Operative Procedure dated 12-06-2020 for hearing of complaints through Video Conferencing. Accordingly, this application was again scheduled for hearing today as per the SOP dated 12-06-2020. Both the parties have been issued prior intimation of this hearing and they were also been informed to submit their written submissions, if any. Accordingly, the respondent appeared through its advocate, however none appeared for the complainant. Hence the MahaRERA heard the arguments advanced by the respondent.
5. During the course of hearing, the respondent has stated that the application filed by the complainant is not maintainable as there is no provision under RERA to rectify / correct the order passed by MahaRERA. The complainant, therefore has to challenge the said order dated 13-11-2019 in appeal before the Maharashtra Real Estate Appellate Tribunal if he has any grievance about it.
6. The MahaRERA has perused the facts on record of the present case. From the record, it appears that by filing this application, the complainant is seeking correction in the order dated 13.11.2019 passed

by MahaRERA. The respondent has contended that there is no provision under RERA to correct the said order and hence the complainant has to file appeal against the said order passed by the MahaRERA.

7. In this regard, the MahaRERA has perused the provisions of section 19 of the RERA which reads as under:

***“Section 39. The Authority may, at any time within a period of two years from the date of the order made under this Act, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:***

***Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act:***

***Provided further that the Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.”***

8. In view of the aforesaid explicit provision under RERA, the MahaRERA is empowered to rectify any mistake apparent from the record. In this case, it appears that for Wing ‘B’ of the said building known as Palazzio, wherein the complainant’s flat is situated, the respondent had not obtained occupancy certificate, when the order was passed by MahaRERA on 13-11-2019 in this complaint. However, inadvertently it is wrongly recorded in para 6 of the said order that “the respondent to pay interest till the date of occupancy certificate i.e. 20-02-2019” and therefore the said mistake is required to be rectified.

9. However, with regard to the other relief sought by the complainant towards interest payment from 31-05-2015, the MahaRERA feels that the said order dated 13-11-2019 is a reasoned order passed by MahaRERA after considering the facts and merits of the case and also considering the earlier orders passed by MahaRERA in respect of this particular

building known as 'Palazzio'. Hence, the MahaRERA feels that the decision given by considering the merits of the case cannot be rectified by MahaRERA as per provisions of section 39 of the RERA. Hence the request of the complainant for payment of interest from 31<sup>st</sup> December, 2015 stands rejected.

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

1. The application dated 13<sup>th</sup> January 2020 filed by the complainant for rectification of order dated 13.11.2019 is partly allowed;
2. In para 6 of the order of MahaRERA dated 13.11.2019 the third line 'on 20<sup>th</sup> February, 2019' stands deleted;
3. The prayer of the complainant to grant interest from 31.12.2015 stands rejected;
4. Rest of the order is to be read as it is.

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



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.....Complainant

**Versus**

M/s. Spenta Builders Pvt. Ltd.

..... Respondent

MahaRERA Registration No. P51800002414

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

Adv. R.S. Motwani appeared for the complainant.

Adv. Sonam Mhatre appeared for respondent.

**ORDER**

(13<sup>th</sup> November, 2019)

1. The complainant has filed this complaint seeking directions to the respondent to pay interest for the delayed possession under Section-18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as "RERA") and rules and regulations made thereunder till the actual date of possession with occupancy certificate in respect of booking of a flat No. 202 in Wing-A, admeasuring 649.50 sq. ft. carpet area, in the respondent's project "**Palazzio**" at Kurla (W), Mumbai bearing MahaRERA project registration No. P51800002414.
2. This complaint was heard finally on 30-10-2019. During the hearings, both the parties appeared through their respective advocates and made their submissions.
3. It is the case of the complainant that he has purchased the said flat by executing registered agreement for sale dated 15-07-2014 for a total consideration amount of Rs. 97,22,000/-. According to the said agreement, the respondent was liable to handover possession of the said flat to the



complainant on or before 31-12-2015 including the grace period of 6 months. The complainant has paid substantial amount of Rs. 87,49,800/- to the respondent. However, the respondent failed to give possession of the said flat to the complainant on the agreed date of possession. Hence, the complainant prayed interest for the delayed possession. The complainant further stated that in this project, the MahaRERA has already passed an order and granted interest for the delayed possession to other allottees. The complainant, therefore, prayed for similar order be passed in this complaint too.


4. The respondent, on the other hand, has disputed the claim of the complainant and stated that the present complaint is bad in law and therefore, be dismissed. Since there is no intentional delay on the part of the respondent in completing the said project, the project got delayed due to the Civil Aviation NOC. However, the Civil Aviation has issued the NOC on 21<sup>st</sup> March, 2018. The respondent further argued that, the money invested by the complainant has not been misused or retained by him. However, due to delay caused in non-issuing civil aviation NOC, the occupancy certificate has got delayed. Further, the earlier two orders passed by the MahaRERA has been stayed by the Hon'ble High Court and hence the complainant cannot rely upon those orders and prayed for similar reliefs. Further, after passing of those orders, they have obtained revised NOC from GVK-MIAL for final height of the said building as 47.68 sq.m. and they applied for occupancy certificate to the concerned competent authority and the occupancy certificate is awaited.
5. The MahaRERA has examined the issues raised by both the parties as well as the records. It seems from the records that the MahaRERA has already taken the facts and the circumstances argued by the respondent in the earlier complaint bearing complaint Nos. CC006000000012618 and CC006000000057334 and had passed orders on 16<sup>th</sup> March, 2018 and 6<sup>th</sup>

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August, 2019, whereby the respondent was directed to pay interest to the allottees from 1<sup>st</sup> July, 2017 till the actual date of possession as provided u/s 18 of the RERA and the order dated 16-03-2018 passed by the MahaRERA has been confirmed by the Maharashtra Real Estate Appellate Tribunal vide order dated 8/5/18 in appeal No. AP006000000000240. In the present case, no new facts are brought on record by the respondent for considering this matter afresh except the fresh NOC issued by the civil aviation authority on 21<sup>st</sup> March, 2018.

6. In the light of these facts, the MahaRERA directs the respondent to pay interest to the complainant from 1<sup>st</sup> July, 2017 till the date of occupancy certificate obtained for the project i.e. 28<sup>th</sup> February, 2019 at the rate of Marginal Cost lending Rate (MCLR) of SBI +2% as prescribed under provision of Section-18 of the RERA. The respondent is also directed to handover the possession to the complainant forthwith. The MahaRERA further observed that the present project is nearing completion and therefore, the MahaRERA directs that the actual amount payable to the complainant towards the interest amount shall be adjusted with the amount payable by the complainant and the balance, if any, and the same shall be paid at the time of possession.
7. With the above directions, the complaint stands disposed of.

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