

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

**Complaint No. CC006000000110626**

Mr. Bhushan J. Patkar

..Complainant

Versus

M/s. Shree Aryadurga Developers Pvt. Ltd

.. Respondent

MahaRERA Project Registration No. P51800007909

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

The complainant appeared in person.

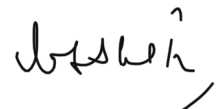
Adv. Geeta Yadav appeared for the respondent.

**ORDER**

(9<sup>th</sup> November, 2020)

(Through Video Conferencing)

1. The complainant has filed this complaint seeking direction from MahaRERA to the respondent to handover the 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. 203, admeasuring 400 sq.ft on 2<sup>nd</sup> floor of the respondent's registered project known as "Thakur Nagar Yashojyoti CHS Ltd" bearing MahaRERA registration No. P51800007909 -at Kurla, Mumbai.
2. This complaint was heard on several occasions in presence of both the parties and same is heard finally today as per the issued Standard Operating Procedure dated 12-06-2020 for hearing of complaints through Video Conferencing. Accordingly, both the parties have been issued prior intimation of this hearing and they were also informed to submit their written submissions, if any. Accordingly, both the parties appeared for the hearing and made their respective submissions. The MahaRERA



heard the arguments of both the parties as well as perused the available record.

3. It is the case of the complainant that he booked the said flat in the respondent's project for a total consideration amount of Rs. 51,22,000/-. The registered agreement for sale was executed on 10<sup>th</sup> June, 2015. According to the said agreement, the respondent was liable to handover possession of the said flat to him on or before 31<sup>st</sup> May, 2016. Till date, he has paid around 96% of the total consideration amount i.e. 46,00,000/- to the respondent. However, the possession has not been handed over to him. With regard to the reasons cited by the respondent for the alleged delay, the complainant has stated that the same are not covered under force majeure grounds mentioned in the agreement for sale executed with him. Further, the Hon'ble High Court at Bombay in its order dated 6-12-2017 has clarified that the date stipulated in the agreement for sale is the final date and the promoter cannot re-write the same. Hence the present complaint has been filed seeking interest and compensation due to delay in handing over possession of his flat under section 18 of the RERA.
4. The respondent on the other hand has refuted the claims of the complainant by filing its reply on record. The respondent has stated that section 18 of RERA is not applicable to the agreements executed under the provisions of MoFA as the revised completion date for this project as per the RERA registration is 31-10-2019 and the revised completion date of this project is 30-04-2021. Hence the respondent still has time to handover possession of the said flat to the complainant. Hence, the complaint is premature as on date. It has further stated that the value of the complainant's flat is more than double and hence he is not at all in loss. The respondent relied upon the judgment and order passed by the Supreme Court of India in case of Bharati Nitin Co. V/s. DHL Worldwide Express (1996) 4 SC. With regard to the alleged delay, the respondent



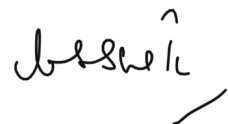
stated that it has started work under the said project by obtaining plinth commencement certificate on 5-06-2014, further commencement certificate on 11-05-2015 and full commencement certificate on 18-09-2020. However, the project got delayed mainly due to the new Development Plan introduced by the State Government for Mumbai City due to which actual implementation/execution of the said D.P. Plan took long time. Further, in the month of November, 2016, the Central Government declared demonetization which cause financial issues to all sectors including the real estate section. Even, now due to lockdown declared by the State as well as the Central Government due to Covid-19 pandemic, the project got delayed for want of labour. The respondent therefore stated that due to these main reasons project got delayed. Hence it prayed for dismissal of this complaint.

5. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, the complaint was filed seeking interest and compensation for the delayed possession under section 18 of the RERA. Admittedly, there is a registered agreement for sale entered into between the complainant and the respondent promoter dated 10-06-2015. As per clause No. 10 of the said agreement, the respondent promoter was liable to handover possession of the said flat to the complainant on or before 31-05-2016 and admittedly possession of the flat is not given to the complainant. The respondent promoter has contended that the said delay occurred mainly due to change in government policies such as change of new D.P. Plan introduced by the State Government in the year 2016 and demonetization declared by the central government. The respondent further claimed that the present complaint is not maintainable and same is premature. In this regard, the MahaRERA is of the view that the complainant is an allottee in the ongoing project which is registered with MahaRERA under section-3 of the RERA Act, 2016. The jurisdiction of the MahaRERA on such project



continues till the project gets completed fully and obligation of the promoter regarding the project get fully discharged. Therefore, the MahaRERA has jurisdiction to hear the complainant's grievances concerning the project. With regard to the other issue raised by the respondent the complainant has argued that the complaint is premature as on date since the revised completion date of this project is 30-04-2021, which is yet to come. In this regard, the MahaRERA is of the view that the said contention of the respondent has no substance, as the date of completion of the project as mentioned in the registration with MahaRERA is different from the date of possession mentioned in the agreement for sale executed between the complainant and the respondent. The date of possession mentioned in MahaRERA registration cannot re-write the date in the contract signed by both the parties. The said issue has been clarified by the Hon'ble High Court of Judicature at Bombay in its judgment and order dated 6<sup>th</sup> December 2017 passed in W.P.No.2737 of 2017 along with other 6 connected matters.

6. With regards to the reasons cited by the respondent for alleged delay, the MahaRERA feels that the reasons cited by the respondent do not give credible explanation. As a promoter, having sound knowledge in the real estate sector, the respondent was fully aware of the market risks when it launched the project and signed the agreement with the home buyers. Moreover, the MahaRERA observed that the new D.P. Plan for Mumbai City was introduced in the year 2016 and even the demonetization was declared by the Central Government in the month of November, 2016 i.e. after the date of possession mentioned in the said agreement for sale signed by them is over in May, 2016. Hence, the said reasons cited by the respondent cannot be accepted. The respondent has not cited any valid reasons for the delay that occurred in this project from the date of execution of the agreement for sale i.e. 10-06-2015 till 31-05-2016. Even the other issues raised by the respondent such as Covid-19

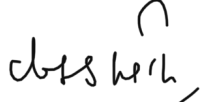


Pandemic occurred after the agreed date of possession mentioned in the agreement for sale being lapsed on 31-05-2016. Hence the said justification cannot be accepted by the MahaRERA.

7. Further, if the project was getting delayed due to the aforesaid reasons cited by the respondent, then the respondent should have informed the complainant and should have revised the date of possession in the agreement at that relevant time or else should have offered refund of the amount to the complainant, if the said delay was not acceptable to him. From the record, it prima facie appears that no such steps have been taken by the respondent. Hence, now it cannot take advantage of the said reasons of delay.
8. It is very clear from the above discussion that the complainant is entitled to have interest under section 18 of RERA. Moreover, the payment of interest on the money invested by the home buyers is not a penalty, but a type of compensation for the delay as has been clarified by the Hon'ble High Court of Judicature at Bombay in its judgment dated 6<sup>th</sup> December, 2017 passed in W.P. No. 2737 of 2017. The respondent is therefore liable to pay interest for the period of delay in accordance with the terms and conditions of agreement.
9. Moreover, 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 1<sup>st</sup> May, 2017. However, after commencement of RERA the promoter is liable to pay interest for the delayed possession under section 18 of the RERA after commencement of the RERA i.e. from 1<sup>st</sup> May, 2017.
10. In view of above facts and discussion, the respondent is directed to pay interest to the complainant from 1<sup>st</sup> May, 2017 for every month till the actual date of possession 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 stand disposed of.

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

