

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

Complaint No.CC006000000057892

Mr. Pulin Navinchandra Kusumgar

...Complainant

Versus

Mr. Jignesh Shah

.... Respondent

Project Registration No.P51800007692

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

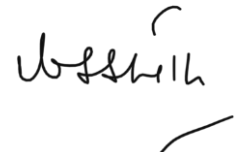
Mr. Sohil Kusumgar appeared for the complainant.

Adv. Dinesh Rane appeared for the respondent.

ORDER

(30th September, 2020)
(Through Video Conferencing)

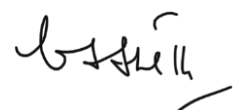
1. The complainant has filed this complaint seeking directions from MahaRERA to refund the entire amount paid by him to the respondent along with interest under section 18 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA') with respect to booking of flat bearing No.701 on 7th floor of the respondent's project known as "**Pushpak Heights**" bearing MahaRERA Registration No.P51800007692 at Malad, Mumbai.
2. This complaint was heard on several occasions in the presence of the concerned parties and the same was heard and closed for order on 25-02-2020, with the directions to the respondent to file sur-rejoinder if any within a period of one week. Thereafter, 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.



3. The MahaRERA has now issued Standard Operating Procedure dated 12-06-2020 for hearing of complaints through Video Conferencing. Accordingly, this complaint was again scheduled for hearing on 28-08-2020 as per the SOP dated 12-06-2020. Both the parties have been issued prior intimation of the hearing and they were also informed to submit their written submissions, if any. Accordingly, the parties appeared for the hearing and made their respective submissions on record. During the course of hearing, the respondent sought time to file sur-rejoinder on record. Hence on request of the respondent, one week's time was granted to file sur-rejoinder on record and the case was closed for order. Pursuant to the said direction, the respondent has uploaded a copy of sur-rejoinder on record of MahaRERA on 4th September. The same is taken on record.
4. It is the case of the complainant that he had booked the said flat in the respondent project in the year 2010 for total consideration amount of Rs. 61,00,000/-. Out of the said consideration amount, he has paid an amount of Rs. 60,00,000/- to the respondent in the year 2010 itself and as on date an amount of Rs. 1 lakh is outstanding. At the time of booking of the said flat, the respondent has agreed to handover possession of the said flat to him on or before 23/07/2011. However, it has failed to handover the same to him. Thereafter it has executed the registered agreement for sale with him on 24-08-2015, wherein no date of possession has been mentioned by the respondent. The respondent has abandoned the project and same is at a standstill. The complainant therefore lost faith in it and hence is willing to withdraw from this project and take back his money under section 18 of the RERA.
5. The respondent on the other hand resisted the claim of the complainant by filing reply and sur-rejoinder on record. It has stated that it has undertaken the redevelopment project and IOD was issued by MCGM on 20th December, 2010. Further amended plans were submitted and same

were approved on 27.4.2012, 30.3.2013, 12.9.2013 and 25.5.2017 respectively. The respondent stated that taking a cue from the Adarsh fallout, the Union Govt. issued notices making defence NOCs mandatory for carrying out redevelopment or construction activities near land owned by or in the possession of armed forces and thereafter it was made mandatory for any construction activities within 500 metres to obtain a no objection certificate. The said project is situated within a radius of 498 sq.mtrs. of Control Ordinance Dept. (COD). Hence from the year 2014 till 2017 the Bldg. Proposal Department of MCGM did not give any new permissions for the projects which were situated within a radius of 500 sq.mtrs. of COD. Therefore there was a delay in the said project till the year 2017. The respondent further stated that the Excluded Part (EP) of Mumbai's new DCPR 2034 was to come into force from 24th October, 2018 which was an unabated delay. Therefore there were continued delay in approvals till the year 2019.

6. The respondents further stated that the Assistant Engineer (Building Proposal Department) of P Ward of MCGM issued a letter for requisition of demand dated 11th May 2018 vide which they sought for recovery of further premium payment as per land rates of Village Malad East amounting to Rs. Two Crore Twenty Three Lakh Twenty Four Thousand only. Though the necessary concession was approved by the concerned authority, yet the Assistant Engr. (BP Dept.) of MCGM forced the respondent to pay the premium as per Malad Ready Reckoner rate although the City Survey nos. upon which the said project was situated is in Kurar Village and not in Malad Village. This caused further delay in the process and the cost of project escalated on continuous basis. The respondents submit that eventually this confusion and the issue of zoning was recently resolved on 4th December, 2019 where the premium will have to be worked out as per Ready Reckoner zone. The aforesaid circumstances led to tremendous delay beyond the control of the

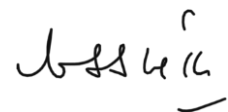


respondent and due to this the respondent could not pay any wrongfully calculated premiums and the TDR could not be purchased. Thereafter the respondent put up their case for extension to the Hon'ble Authority which granted a certificate of extension of registration of project on 7th January, 2020. The respondent stated that it is now in the process of purchasing the TDR at the proper ready reckoner rate as calculated on zone 72/332 and is in the process of duly completing the said project. The respondent stated that at the time of registration of the construction of the said building was at halt due to COD issues and the complainant was aware of the same and agreed to enter into and further executed the agreement for sale dated 24th August 2015 with the respondent. Hence the complaint and the claim of the complainant is premature as the period for construction is not completed and as this Authority has issued certificate of extension of registration of project till 30th December 2020, the present complaint cannot be entertained. The respondent has absolute intentions to complete the said project by the timeline as provided on RERA website or earlier. Further on bare perusal of the said agreement for sale it can be noted that there is no mention of the handover of possession by any specific date and the present complaint has been filed with an intention to misguide this Hon'ble Authority by giving false information.

7. The respondents further mentioned that as per clause 48 of the said agreement for sale, the respondents are entitled for extension of time due to delay on account of non availability of steel, cement, other building material, water or electric supply, war, civil commotion or act of god, any notice, order, rule, notification of the State Govt, BMC and/or other public or competent authority. Hence the delay caused in the said project was not deliberate but was beyond the control of the respondent developer.

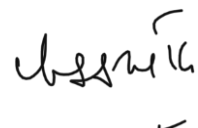
As with

8. In the sur-rejoinder filed by the respondent on record, it has repeated and reiterated the submissions made in its reply and further stated that if any refund order is passed in this complaint at this stage it would adversely affect the financial health of this project and it will affect the completion of this project. Hence prayed for dismissal of this complaint.
9. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, the complainant has approached MahaRERA seeking refund of the entire amount under section 18 of the RERA since the respondent has failed to handover possession of his flat. Admittedly, the flat was booked for total consideration amount of Rs. 61,00,000/- and till date the complainant has paid 60,00,000/- to the respondent. The payment made by the complainant has not been denied by the respondent. There is agreement for sale executed between the parties on 24th August, 2015. On perusal of the same, it appears that no date of possession has been mentioned in the said agreement. Admittedly, the said agreement was executed under the provisions of MOFA was in force and it was mandatory for the promoter to disclose the date of possession date in the agreement. The complainant has alleged that the respondent has agreed to handover possession of the said flat to him on or before 23-07-2011. However, no evidence has been placed on record to show that the respondent has agreed to handover possession of the said flat was 23-07-2011.
10. The respondent on the other hand prayed for dismissal of this complaint stating that the complainant was aware of the constraints of the project and hence no date of possession mentioned in the agreement for sale and even the revised completion date for this project as per the registration certificate issued by the MahaRERA is 30-06-2021 and hence it has still time to complete the project till that date. Hence the complaint is filed at premature stage. With regard to the delay, the



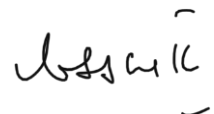
respondent further stated that the project got delayed mainly due to the notification issued by the Central Government making defence NOCs mandatory for carrying out redevelopment or construction activities near land owned by or in the possession of armed forces and thereafter it was made mandatory for any construction activities within 500 metres to obtain a no objection certificate, the MCGM forced the respondent to pay the premium as per Malad Ready Reckoner rate although the City Survey nos. upon which the said project is situated in Kurar Village and not in Malad Village and due to the change in new DCPR, in the year 24th October, 2018, it could not complete the said project and hence same got delayed.

11. With regard to the reasons cited by the respondent for the delay in completion of the project, the MahaRERA feels that the respondent has obtained the building approvals plan from the competent authority in the month of October, 2010 and the notification with regard to COD NOC has been issued by the government in the year 2014 and the new DCPR has come into force in the year 2018. The flat of the complainant was situated on 7th floor of the building. Within the reasonable period from 2010 till 2014, it could have completed the flat of the complainant and could have obtained part occupancy certificate. However, no such steps seem to have been taken by the respondent. The MahaRERA therefore, feels that the reasons cited by the respondent do not give plausible 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 agreements with the home buyers. Moreover, if the project was getting delayed due to aforesaid reasons cited by the respondent, in that event it could have approached the competent forums including the court of law for expediting the required permissions for completion of this project. However, no such steps seem to have been taken by the respondent. Moreover, being a promoter of



the project, it was the duty of the respondent promoter to obtain the necessary permissions from the competent authority on time. The allottees have nothing to do with the same.

12. Further with regard to the contention raised by the respondent that there is no date of possession mentioned in the agreement as the complainant was aware of all the constraints of the project. In this regard, the MahaRERA feels that the said agreement was entered into between the parties when the provisions of MOFA were in force. As per the provision of section 3(2) (f) of the MOFA , it was statutory obligation of the respondent to mention the date of possession in the agreement for sale. However, it seems that the respondent has even violated the provision of the MOFA prevailing at that time and therefore, it can't be allowed to claim any advantage due to its own mistake.
13. Even, if it is presumed that no date of possession is mentioned in the agreement, the respondent after commencement of the RERA on 1-05-2017 has registered the project with MahaRERA. At that time it was aware of all the constraints in the project and has mentioned the proposed date of completion of the project as 31-12-2019 and extended revised completion date of this project as 30-06-2021. Therefore in absence of any agreed date of possession in the agreement for sale, the MahaRERA has to consider the proposed date of completion of this project committed by the respondent to MahaRERA as a date of possession for handing over possession of the flat to the complainant. Admittedly, the respondent has failed to handover the possession of the said flat to the complainant on 31-12-2019 and still the project is incomplete. The MahaRERA therefore holds that the date of possession for handover possession of the flat to the complainant is 31-12-2019 and same is lapsed.



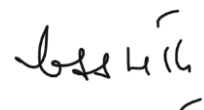
14. In this regard, the MahaRERA has perused the provision of section 18 of the RERA which reads as under:

“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”.

15. In view of the aforesaid explicit provision under section 18 of the RERA the allottee is entitled to claim refund with interest and compensation, if the promoter fails to deliver the possession of the flat on the agreed date of possession mentioned in the agreement and now while registering the project with MahaRERA, the respondent has mentioned the revised the date of possession as 30-06-2021. It shows that, the complainant is required to wait for another 1 and half year to gets the possession of the said flat from the respondent from 31-12-2019. Hence the refund claim by the complainant under section 18 of the RERA Act, 2016 is justified.

16. In view of the aforesaid facts and circumstances of this case, the following order is passed:

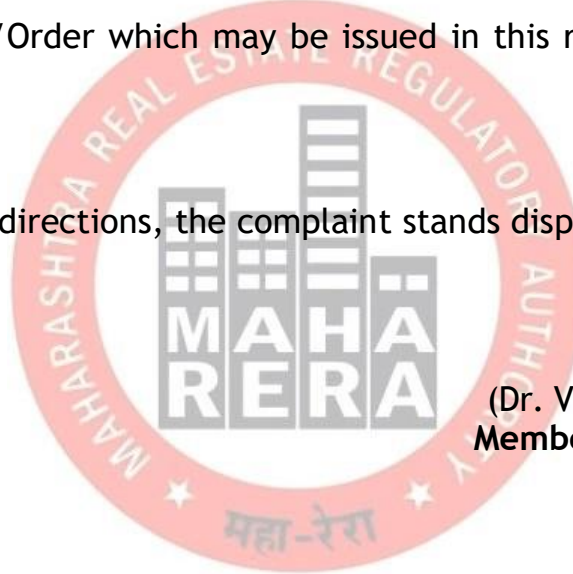
a) The respondent is directed to refund the entire amount paid by the



complainant along with interest 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 from the date of payment till the actual realisation of the entire amount.

- b) With regard to the payment of refund along with interest to the complainant, 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.

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




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