

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

Complaint No. CC006000000171571

Mr. Mukesh Chetram Agrawal

Mrs. Urmila Mukesh Agrawal

.... Complainants

Versus

M/s. Era Realtors Pvt. Ltd.

M/s. Omkar Realtors Pvt. Ltd.

.... Respondents

Project Registration No. P51800010463

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

Adv. Ashutosh Kaushik appeared for the complainants.

Adv. Devendra Patankar appeared for the respondents.

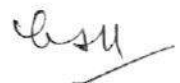
ORDER

(6th March, 2020)

1. The complainants have filed this complaint seeking direction from the MahaRERA, to the respondents, to refund the amount paid by them along with interest under Section-18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA") in respect of booking of a 5 - BHK flat bearing no. D - 1801, on the 18th floor, admeasuring 3714.88 sq. ft., in the respondents' project known as "**Alta Monte and Signet**" bearing MahaRERA registration No. P51800010463 situated at Malad (East), Mumbai.
2. The complaint was heard finally on 12/02/2020, when both the parties appeared through their respective advocates and sought sufficient time to file their respective submissions which was granted.

Pleadings:

3. It is the case of the complainants that, they have booked the said flat in the respondents' project on 28/05/2015 for a total consideration of Rs. 7,56,70,800/-. The said flat was purchased under the 20:80 scheme, wherein, the complainants were supposed to pay 20% at the time of booking while the remaining 80% was to be paid at the time of possession



of the said flat to the complainants. Accordingly, the complainants have paid an amount of Rs. 1,59,94,799 /- towards the consideration of the said flat till 17/06/2017. The respondents issued an allotment letter in favour of the complainants on 15/03/2016. Till date the respondents have not yet executed the agreement for sale with respect to the said flat. As per the clause 17 (e) of the said allotment letter, the respondents were liable to hand over the possession of the said flat to the complainants on or before December 2018. However, the respondents have failed to hand over the possession of the flat to the complainants till date. The complainants have been continuously following up with the respondents regarding the delay. However, the respondents have given verbal promises to the complainants, but the project is stand still and incomplete.

4. The respondents resisted the claim of the complainants and stated through their affidavit in reply that, as per the allotment letter issued to the complainants, the date of possession was December 2018; however, it was subject to extension due to force majeure events. The respondents further stated that, the terms and conditions mentioned in the allotment letter were indicative and not exhaustive. The date of completion in the MahaRERA registration is 31/12/2020 which has not yet lapsed. The respondents further stated that, till date the complainants have paid an amount of Rs. 1,50,35,654/- towards the consideration of the said flat. However, the complainants have not come forward to execute the registered agreement for sale with respect to the said flat despite several follow-ups by the respondents. The respondents further stated that, at the time of booking, they had expressly explained the complainants the status of the project, construction plans and also the delay which could be faced by the respondents. This was accepted by the complainants and then they booked the flat with the respondents. The respondents further stated that,

the project got delayed for various reasons which accounted for force majeure and were beyond the control of the respondents such as:

- a. Delay in obtaining all the permissions and approvals from competent government authorities since the project is being developed under the S. R. scheme.
- b. Several litigations filed by the slum dwellers causing delay in the project and also monetary loss to the respondents.
- c. Dharna agitation carried out by non-eligible slum dwellers from 23/05/2016 which ended in February 2018. The respondents also filed Writ Petition bearing no. 1946 of 2016 against such slum dwellers.
- d. Economic downturn as well as due to demonetisation, the flats couldn't be sold and hence funds could not be raised.
- e. Change of D. P. rules in Mumbai, constraining the respondents to change the building plans and seeking approval of the SRA.

The respondent further stated that, till date the complainants have paid less than 20% of the amount and if the reliefs are granted to the complainants as per the complaint, the entire project will be affected and other allottees will also suffer loss. The respondent therefore prayed for dismissal of the complaint, since the complainants are not entitled to any reliefs from the MahaRERA and also prayed for imposing cost upon the complainants.

5. The complainants further filed their rejoinder to the reply filed by the respondents and have denied all the submissions made by the respondents. The complainants in their rejoinder have further prayed for direction to the respondent to compensate the complainants by way of interest for delayed possession if the respondents do not agree for the withdrawal of the complainants from the said project.

Findings and Reasons:

6. The MahaRERA has examined the arguments advanced by both the parties as well as the available record. In the present case, the complainants are allottees in the project being developed by the respondents. Till date the complainants have paid substantial amount towards the consideration of the said flat, however, the respondents have failed to hand over the possession of the said flat to the complainants as per the date mentioned in the allotment letter. Moreover, there is no registered agreement for sale entered into between the parties inspite of substantial payment. The complainants therefore have filed this complaint initially praying for refund of entire amount with interest and subsequently praying for interest for the delayed possession till the actual date of possession. The respondents on the other hand has contended that , the delay caused in the completion of the project was beyond the control of the respondents, and hence the date mentioned in the allotment letter was subject to further extension and it is a tentative date subject to force majeure.
7. In view of the aforesaid discussions, the MahaRERA is of the view that, there is no agreement for sale executed between the parties showing any agreed date of possession , however, in the allotment letter issued to the complainants, the date of possession is mentioned as 31-12-2018. Which has already lapsed and possession of the said flat has not been handed over to the complainants.
8. In the present case MahaRERA has considered reasons cited by respondent for delay and said reasons does not give plausible explanation therefore m feels that, the same cannot be considered as force majeure. Therefore,



MahaRERA cannot accept the contentions of respondent that, the project got delayed due to force majeure.

In this regard , the MahaRERA feels that the respondent has violated the provisions of section 18 of the RERA and the complainants therefore are entitled to seek relief under section 18 of the RERA which is reproduced below

“ 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:...”

Although there is no agreement for sale between the parties, the allotment letter has a date of possession which is binding on the respondent.

9. The MahaRERA is also of the view that the payment of refund at this stage by the respondents would amount to diversion of funds from the project, which will ultimately affect the project completion. Since the complainants have already shown their willingness to accept the interest for delayed possession by filing a rejoinder of MahaRERA , the following order is passed:

- a. The respondents are directed to execute the registered agreement for sale with the complainants within a period of one month from the date of order.



- b. The respondents are directed to pay interest for delayed possession to the complainants from 01/01/2019 at the rate of Marginal Cost lending Rate (MCLR) of State Bank of India (SBI) + 2% till the actual date of possession on the actual amount paid by the complainants.

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



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



महा-रेरा