

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

COMPLAINT NO. CC006000000057314

Hitesh G. Chovaia

..Complainant

Verses

Sailee Builders and Developers

..Respondent

MahaRERA Regn. No. P51800018914

Coram:

Hon'ble Shri Madhav Kulkarni.
Adjudicating Officer, MahaRERA.

Appearance:

Complainant: Present
Respondent : Absent

**ORDER
(Dated 19.07.2019)**

1. The complainant who had booked two flats with the respondent/promoter, initially sought withdrawal from the project and refund of his amount with interest @ 18% and compensation as respondent failed to deliver possession as per agreement but now prays for compensation for delay.
2. As usual the online complaint lacks all the necessary details. Copies of agreements in respect of flat No.B-304 and B-402 are placed on record. All that is contended in the complaint is that complainant paid full amount in the year 2004-05. It appears that flat No.B-304 was in the project of the respondent Prathamesh Galaxy at village Kopri, Kurla, Mumbai booked vide agreement dated 17.12.2004. It appears that land belonged to Pawai Lake Co-operative Housing Society and re-development

* 26.7.19
Rectified as per order on rectification application
A.O.

19.7.19

work was to be done. Complainant was to pay price of Rs.18.90 lakhs. Clause 10 in respect of date for delivery of possession has been kept blank. Agreement in respect of flat no. B-402, shows that on 08.03.2005. Flat No. B-402 was agreed to be sold by the respondent to the complainant for Rs.18.80 lakhs. As per clause 10 of the agreement, possession was to be delivered within 18 months. Complainant has alleged that he has not received possession.

3. Matter came up before Hon'ble Member on 18.02.2019 and came to be transferred to Adjudicating Officer. Matter came up before me on 24.05.2019. Respondent continued to be absent. On 24.05.2019, complainant has filed an application to the effect that he wants possession of the flat in the project but he does not press for relief of possession. He seeks interest and compensation till possession is delivered. As I am working at Mumbai and Pune Offices in alternative weeks, this matter is being decided now.
4. Following points arise for my determination. I have noted my findings against them for the reasons stated below:

POINTS	FINDINGS
1 Has the respondent failed to deliver possession of the flat to the complainant as per agreement, without there being circumstances beyond his control?	Affirmative
2 Is the complainant entitled to the reliefs claimed?	Affirmative
3 What Order?	As per final Order.

19.7.19

REASONS

5. **Point Nos. 1 & 2** – As stated earlier, complainant has placed copies of agreements in respect of flat nos. B-304 and B-402 on record. Agreement in respect of flat no. B-304 is dated 17.12.2004. Clause no. 10 in respect of date for delivery of possession has been kept blank. Copies of Receipts in respect of payment of total price of Rs.18.90 lakhs vide cheques dated 11th, 12th and 16th December, 2004 are annexed to the agreement. The agreement in respect of flat no. B-402 is dated 08.03.2005. As per clause no. 10 possession was to be delivered within 18 months which means by 07.09.2006. Receipts in respect of payment of Rs.18.80 lakhs are annexed to the agreement. There is no challenge that respondent has not delivered possession of the flat[✓] till today. No reason of any kind is coming forth from respondent to justify delay. I therefore, hold the respondent was bound to deliver possession of the two flats by 07.09.2006 and has failed to do so without circumstance beyond his control. Consequently, complainant is entitled to claim compensation by way of interest on the price paid as per Rule 18 of Maharashtra Rules. I therefore, answer point nos. 1 and 2 in affirmative and proceed to pass following order:

ORDER

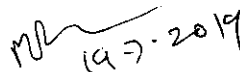
1. Respondent to pay interest to the complainant on price of Rs.18.90 lakhs in respect of flat No. B-304 and Rs.18.80 in respect of flat no. B-402 @ 10.75% p.a. from 07.09.2006 till respondent delivers possession or intimates about receiving Occupation Certificate.

✓
12.12.19

2. The respondent to pay Rs.20,000/- to the complainant as costs of this complaint.
3. The respondent to pay above amounts within 30 days from the date of this Order.

Mumbai

Date : 19.07.2019


(Madhav Kulkarni)
Adjudicating Officer
MahaRERA

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

Review Petition in Complaint No. CC006000000057314

M/s. Sailee Builders and Developers

...Applicant
(Original Respondent)

Versus

Mr. Hitesh G. Chovatia

.... Respondent
(Original Complainant)

Project Registration No. P51800018914

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

Adv. Nilesh Gala appeared for the applicant.

Respondent presents in person.

**ORDER ON REVIEW APPLICATION
FILED BY THE APPLICANT (ORIGINAL RESPONDENT)**

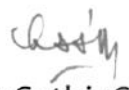
Dated : 27-01-2020 - Filed on : 29-01-2020.

(11TH March, 2020)

1. The aforesaid review application is heard pursuant to the order dated 16-01-2020 passed by the Hon'ble High Court in No. Writ Petition No. 312 of 2020, filed by the applicant herein whereby Hon'ble High Court directed MahaRERA to decide the review application filed by the petitioner (applicant) in accordance with law within the stipulated time as extended in order dated 12/02/2020.
2. After the passing of the order of Hon'ble High Court, the applicant filed review application dated 27-01-2020, challenging Roznama dated 18-02-2019 passed by MahaRERA transferring the complaint filed by the respondent to Ld. Adjudicating Officer for adjudging the quantum of compensation, who subsequently passed final order on 19-07-2019 and disposed of the complaint filed by the respondent. During the hearing today, the applicant has stated that by filing the application, it is challenging impugned Roznama dated 18-02-2019, whereby the complaint filed by the respondent was transferred to Ld. Adjudicating Officer, on the ground that no opportunity is granted to them while hearing. The applicant further stated that, his review application is also filed within a time bound manner and the same is not hit by law of limitation.



3. The respondent, on the other hand, has resisted the claim of the applicant made in this review application and stated that, in the original complaint, he had sought interest and compensation and hence, the complaint filed by him got transferred to Ld. Adjudicating Officer for adjudging the quantum of compensation under the provisions of Section-71 and 72 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA). He further stated that, the same was rightly transferred to Ld. Adjudicating Officer on his own request.
4. MahaRERA has examined the arguments advanced by the both the parties as well as the records pertaining to the review application. On perusal of the same in the original complaint filed by the respondent herein bearing No. CC006000000057314 it was observed that, the respondent had claimed interest and compensation. As per the Section-31 of the RERA the complainant can file the complaint before the authority or Adjudicating Officer. As per the provisions of Section-71 and Section-72 of the RERA, the Adjudicating Officer has the power to deal with the cases for adjudging the quantum of compensation. Hence, it was decided to transfer the said complaint filed by the respondent to Ld. Adjudicating Officer by recording Roznama dated 18-02-2019. The complaint was finally disposed of on 19-7-2019 by the Ld. Adjudicating Officer.
5. It was observed by MahaRERA that, on the day when Hon'ble High Court passed an order in Writ Petition No. 312 of 2020, no review application on this issue was pending before MahaRERA (Member-1) which was apparently filed subsequently.
6. The aforesaid facts make it crystal clear that there is no merit in the review application. Hence, the review application stands dismissed.


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