

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI

Complaint No.CC006000000089993

Mr. Sachin Dashrath Chorge

.... Complainant

Versus

M/s. Rite Developers Private Limited

.... Respondent

Project Registration No.P51800006260

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

Adv. Sasikumar T. C. appeared for the complainant.

Mr. Ritesh Shah, director of respondent appeared on behalf of the respondent.

ORDER

(10th August, 2020)

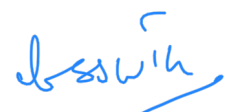
(Through Video Conferencing)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to handover possession of the flat and to pay interest for the delayed possession under section 18 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the RERA") with respect to booking of flat bearing No. 205, 2nd floor in the respondent's project known as "Rite Luxuria" bearing MahaRERA Registration No.P51800006260 at Mulund (East) , Mumbai.
2. This complaint was heard on several occasions in the presence of the concerned parties and the same was heard finally today as per the Standard Operating Procedure dated 12th June 2020 issued by MahaRERA for hearing of complaints through video conferencing. Both the parties have been issued prior intimation of the hearing and they



were also been informed to submit their written submissions, if any. Accordingly, both the parties have appeared for the hearing and also filed their respective submissions on record.

1. It is the case of the complainant that he has booked the said flat in the respondent's project on 27/12/2010 for a total consideration of Rs. 62,92,500/-. Out of the said consideration of the flat till date, he has paid an amount of Rs. 50,34,000/- which comes to 80% of the total consideration. The parties entered into a registered agreement for sale on 31/12/2011. According to the said agreement, the respondent was liable to handover possession of the flat on or before 31/05/2013. However, the respondent failed to handover the possession on time and sent the possession letter only on 14/02/2020. With regard to the defences raised by the respondent for the delay, the complainant stated that the change in D.C. rules, changes in policies and delay in getting approvals do not fall under any force majeure clauses of the agreement for sale which would enable the respondent to seek extension of time for completion of the project. Moreover, the amendment in DC rules was enforced in January 2012 was not mandatory for this project but was optional. The respondent had already obtained the sanctioned building plans on 22/10/2010 and application of the new D.C. rules were optional for the respondent that changed the design of the building without consent of the allottees to avail the benefits of the new rules. In this regard, the complainant has relied upon the judgment dated 28/02/2019 of Hon'ble Maharashtra Real Estate Appellate Tribunal in appeal of Mindset Estate Pvt. Ltd. Vs. Biyani Financial Services Pvt. Ltd. & Ors., wherein it is held that the change in D.C. rules of 2012 is not acceptable as a 'force majeure'. The complainant therefore stated



that the respondent can not avail the benefits of DC rules of 2012. Hence complainant sought monetary compensation.

2. The complainant further stated that the respondent informed the complainant about the change in plans on 21/11/2015 and sought additional payment of Rs. 10,35,000/- for increase in carpet area. The complainant tried to settle the issue with the respondent. However, on failure of any settlement he sent a legal notice on 05/03/2019 for the same. The MahaRERA has jurisdiction to entertain the matter since the dispute arose for the first time on 21/11/2015. The increased area was due to the inclusion of the flowerbed in the area of the flat thus causing the complainant to lose all the open spaces in the said flat as per the agreement for sale for which the complainant has already paid to the respondent. However, there was no actual increase in the area of the flat.
3. The complainant further stated that the irrevocable consents as per the agreement are coerced and not consented by section 7(1) (i) & (ii) of MOFA, 1963. The blanket consents are illegal which is settled in Bombay High Court judgements of (i) Bajranglal Eriwal & Ors. Vs. Sargam Chunilal & Ors. (MANU/MH/0339/2008), (ii) Vidhi Builders Pvt. Ltd. Vs. Arenbee Media Consultants Ltd. (MANU/MH/0423/2012) and (iii) Dosti Corporation & Ors. Vs. Sea Flama Co-operative Housing Society Ltd. & Ors. (MANU/MH/0480/2016). Hence, the complainant sought damages for changes in the plans without obtaining consent of the complainant.
4. The complainant further stated that he has already paid all the applicable taxes to the respondent. The GST regime came into effect

on 01/07/2017 while the date of possession was in the year 2013. Hence the respondent is not entitled to claim any GST. The respondent even promised to waive the GST vide its letter dated 23/02/2018. Further the complainant is also not entitled to pay any interest for delayed payments and are entitled to seek damages in the form of interest from the respondent. Further the complainant has not yet been granted the possession and hence is entitled to interest till the actual date of possession by the respondent.

5. The respondent, on the other hand has resisted the claims of the complainant by raising various defences in its reply filed on record. The respondent has stated that the project got delayed mainly due to non-approval from the competent authority viz. MCGM and change in policy from free FSI to fungible FSI due to which the plans got amended. The said fact was informed to all allottees including the complainant. As per the said amendment, the increased area was offered to the allottees including the complainant and a draft supplementary agreement for sale was sent to him on 21-09-2015 for additional area of the flat admeasuring 119 sq.ft. The complainant disputed the said area and has not signed the supplementary agreement for sale till date. The respondent further stated that the project got stuck up for 18 months due to the dispute which arose with the adjacent society which finally got resolved with the order of Collector. The respondent further stated that as per clause nos. 1 and 14 of the agreement for sale the complainant had given irrevocable consent for modification in plans due to change in policy and also for consumption of additional FSI and hence now the complainant cannot raise any objection for it. Further during the period when the work was stopped it never raised any demand for payment to the

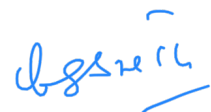
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complainant and as on date an amount of Rs. 22,93,500/- is due and payable by the complainant towards the cost of the flat and an amount of Rs. 1,25,511/- is due and payable towards the other charges. Further, as per the revised plan the complainant is getting flat admeasuring in total 554 sq.ft carpet area (Original 435 sq.ft +119 sq.ft due to fungible FSI). However the complainant is now seeking possession and is not desirous of the additional area to be allotted to him. The said prayers are contradictory and therefore the complainant has to execute a supplementary agreement for sale first with the respondent. Further, the respondent obtained the occupancy certificate in the month of December, 2019 and offered possession of his flat in the month of February, 2020, however, he did not take possession of the same. If the complainant is not ready and willing to take possession of the flat the respondent is ready and willing to refund the entire amount paid by him along with interest. The respondent therefore prayed for dismissal of this complaint.

6. The MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case, by filing this complaint, the complainant has raised various issues such as (i) dispute regarding payment of additional area (ii) possession of his flat, (iii) interest for the delayed possession, etc. Admittedly, the complainant is an allottee in the respondent's project and there are registered agreements for sale executed between the complainant / allottee in the years 2012. According to the agreements for sale, the respondent was liable to give possession of the flat to the complainant on or before 31st May, 2013. However, the respondent has not handover over possession of the said flat to him. The complainant

therefore contended that the respondent and thereby violated the provision of section 18 of the RERA. The complainant has relied upon various orders and judgments passed by Hon'ble Appellate Tribunal and Hon'ble Courts regarding delay/change of plan etc and the same are perused.

7. The respondent on the other hand has resisted the claim of the complainant mainly on the ground that the said delay is due to the change in DCR-1991 in the year 2012 whereby the concept of fungible FSI was introduced and therefore the earlier plans sanctioned by the competent authority got modified. The complainant disputed the said contention raised by the respondent on the ground that it was not mandatory to change the plan as per the new policy.
8. In this regard, the MahaRERA has noticed that the building plan was originally approved in the year 2010 and same was revised by the respondent due to change in DCR-1991 after the year 2012. Accordingly, the respondent modified the building plans, whereby the area of the flats got increased. Thereafter, the respondent offered additional area to all the allottees by executing supplementary agreements for sale in the year 2015. The said modifications was done prior to commencement of RERA and hence the provisions of section 14 of the RERA would not be made applicable in this case. Hence the contention of the complainant that without consent of the allottees the plan was modified has no substance.
9. The respondent has shared the draft supplementary agreement for sale with the complainant in the year 2015. If the complainant was



aggrieved by the said action on the part of the respondent for change in plan by providing additional area in the flat, he should have approached the appropriate forum for agitating his grievances. However, from the year 2015, till filing of this complaint, the complainant kept silent for such indefinite period and after completion of the building, he has approached MahaRERA at a belated stage. Hence the MahaRERA feels that now the complainant cannot raise the issue of additional area provided by the respondent.

10. In the present case, the MahaRERA has also observed that , in the year 2015 itself the respondent revised the date of possession from December, 2013 to May, 2017. If the said condition of the agreement was not acceptable to the complainant, he should have raised objection at that time itself and should have taken full refund, if the revised date of possession was not acceptable to him. Mere refusal to sign the said supplementary agreement for sale is not sufficient for the complainant to claim relief on that behalf at this belated stage. Moreover, the other allottees of this project have accepted the said revised completion date by signing the supplementary agreement for sale, the said revised completion date of the said project i.e. May, 2017 is applicable to the complainant.

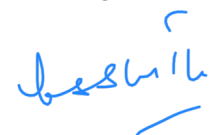
11. With regard to the payment for additional area, the MahaRERA is of the view that it has no jurisdiction to interfere in the issue of payment. It is for the parties to take a decision on it. If the complainant is not ready and willing to accept the same, he is always at liberty to seek refund along with interest as prescribed under RERA.



12. With regard to the other issue of GST raised by the complainant in this complaint, the MahaRERA has observed that the same has been waived by the respondent and hence nothing survives in the said issue.
13. With regard to the delay in completion of this project, the MahaRERA feels that admittedly, on the agreed date of possession mentioned in the agreement for sale, the respondent failed and neglected to handover possession of the flat to the complainant. Further, in the year 2015 itself, the date of possession was revised from 31-12-2013 till 31-05-2017. On that date also possession was not handed over to the complainant. It shows that even on the revised date of possession, the respondent has not handed over possession of the said flat to the complainant and thereby has violated the provisions of section 18 of the RERA and the Rules made there under.
14. To justify its case, the respondent has stated that the project got delayed mainly due to non-approval from the competent authority viz. MCGM and change in policy from free FSI to Fungible FSI due to which the plans got amended. However, the MahaRERA feels that the said reasons do not fall within the ambit of force majeure and therefore respondent cannot seek benefit of it. Hence the reasons cited by the respondent for delay are not acceptable.
15. In view of the aforesaid facts and circumstances of this case, the MahaRERA feels that there is no fault on the part of the complainant who has put his hard earned money for booking of the said flat in the respondent's project. The respondent has not given any plausible

reasons for the alleged delay in the project even after revised date of possession i.e May, 2017.

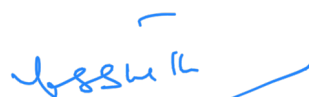
16. It is clear from the above discussion that the reasons cited by the respondent for the delay in completion of the project do not give any satisfactory explanation. Moreover, the payment of interest on the money invested by the home buyers is not a penalty, but a type of compensation for delay as has been clarified by the Hon'ble High Court of Judicature at Bombay in the judgment dated 6th December, 2017 passed in W.P. No. 2737 of 2017. The respondent is liable to pay interest for the period of delay in accordance with the terms and conditions of agreement.
17. In view of above facts and discussion the following order is passed :
 - a) The respondent is directed to pay interest to the complainant from 1st June, 2017 for every month till the date of occupancy certificate is obtained for the project i.e. December, 2019 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.
 - b) With regard to the payment of 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.

- c) As regards the claim of the complainant for damages, the MahaRERA is of the view that since the complainant wants to continue in the project, he is entitled to seek only interest for the delayed possession under section 18 of the RERA.
- d) With regard to the issue raised by the respondent promoter for default in making payment by the complainant, the MahaRERA is of the view that in case of any default on the part of allottees or the promoter, either party would be entitled to seek interest for such a default as prescribed under section 18 of the RERA. Accordingly, if the complainant has made any default in timely payment as per the agreement for sale, the complainant is liable to pay interest for the delayed payment at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2% as prescribed under RERA and the Rules made there under.

18) With these directions, the complaint stands disposed of.



Dr. Vijay Satbir Singh
(Member I/MahaRERA)