

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

COMPLAINT No: CC006000000130995

Mr. Vijay B. Singh

.... Complainant

Versus

M/s. Neelkamal Realtors (Suburban) Pvt. Ltd

.... Respondent

Project Registration No. **P51700003433**

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

Adv. Nilesh Dubey i/b Adv. Manoj Shukla appeared for the complainant.

Adv. Gauri Pal appeared for the respondent.

ORDER

(2nd January, 2020)

1. The complainant has filed this complaint seeking directions from the MahaRERA to the respondent to pay interest for the delayed possession under the provision of section-18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA") in respect of booking of a flat bearing no. 1303, on 13th floor, in building No. 12 of the respondent's project known as "**DB Ozone**" bearing MahaRERA registration No. P51700003433 at Mira Road, Dist. Thane.
2. This complaint was heard on several occasions and same was heard finally on 16-12-2019. During the hearings, both the parties appeared and argued the matter. The respondent has also filed reply on record and a copy thereof was given to the complainant. After hearing the arguments of both the parties, the complainant was directed to file rejoinder, if any, within a period of one week.
3. It is the case of the complainant that originally the said flat was allotted to Mr. Imtiyaz Khan who later assigned all his rights in favour of the complainant after receiving his dues/profit. Accordingly, the complainant steps into the shoe of original allottee Mr. Imtiyaz Khan. The complainant

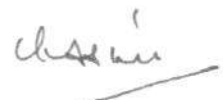


has paid a sum of Rs. 18,43,678/- and has purchased the said flat in the year 2013. The respondent had executed the registered agreement for sale with the complainant on 8/1/2014, wherein the original allottee Mr. Imtiyaz was made as confirming party. According to the said agreement, the respondent was liable to handover possession of the said flat to the complainant on or before 31-12-2015 including the grace period of one year. However, till date the respondent has not given possession of the said flat to the complainant. The complainant has paid substantial amount to the respondent towards the cost of the said flat. Hence, the complainant has filed this complaint and sought relief as prayed for in this complaint.

4. The respondent filed reply on record and resisted the claim of the complainant by raising various defenses. The respondent has mainly raised the issue of maintainability of this complaint on the ground that the agreement had been registered under the provisions of MOFA Act (still in force), the present complaint is governed by provisions of MOFA and not RERA. The respondent further clarified that the project was a part of Rental Housing Scheme of MMRDA, having a total number of 25 buildings within the jurisdiction of Mira-Bhayandar Municipal Corporation at Thane District. The construction work of the said project started after obtaining the commencement certificate in the year 2010 and is going on in a phase-wise manner.
5. As per clause No. 29 of the agreement for sale executed between them, the agreed date of possession with grace period was December, 2015. The said clause also mentioned that the date could be extended if the project got delayed due to non-availability of steel/construction material, war, civil commotion or an act of God, any notice /order /rule /notification of the Government/MBMC/Public authority/court/tribunal, economic downturn or any event beyond the control of the developer or force majeure etc., The project could not be completed due to following reasons.



- a) Due to economic downturn/crises, the flats could not be sold in the market and hence, it could not generate the required funds for construction purpose.
 - b) There was an undue delay in availability of sand on time for construction of the said project as the sand mining was banned in all coastal regulated areas across the State of Maharashtra. Even the quarrying of stone was simultaneously banned in the entire State by the Environment Ministry, which resulted into non-availability of stone for construction as per the order passed by the Hon'ble High Court in PIL No. 138 of 2006. The said ban was lifted only in the month of February, 2014 by the order of National Green Tribunal.
 - c) The State Environment Impact Assessment Authority (SEIAA) is not providing any clearance for stone quarry and has stopped issuing permissions to stone-crushing units.
 - d) The respondent stated that it had given the date of 31-12-2019 as the revised completion date under MahaRERA to cover the unforeseen delay in view of the extension provision being restricted under the RERA. Since the project got delayed, the respondent is ready and willing to refund the amount paid by the complainant till date with interest. Hence, the respondent requested to dismiss the present complaint on the ground of maintainability.
6. The MahaRERA has considered the arguments advanced by both the parties as well as record. In the present case, admittedly, the complainant is an allottee of the MahaRERA registered project of the respondent, who have purchased the said flat by executing the registered agreement for sale with the respondent. According to the said agreement, the respondent was liable to handover the possession of the said flat to the complainant on or before 31-12-2014 with grace period of one year i.e. 31-12-2015. However, till date the possession is not handed over to the complainant in spite of the fact that the complainant has paid substantial amount to the respondent towards the




cost of the said flat. The respondent disputed the claim of the complainant and argued that there is no intentional delay on the part of the respondent. However, the project got delayed due to the reasons cited as above.

7. In this regard, the MahaRERA feels that all the factors pointed out by the respondent for the delay happened in this project have been discussed in detail by MahaRERA while passing the orders in the earlier complaints filed by other allottees in this project and relief has been granted to them under section-18 of the RERA. However, the respondent has not brought any new facts on record of MahaRERA, which could explain the said delay further. Moreover, the respondent has not produced any order passed by the Hon'ble Maharashtra Real Estate Appellate Tribunal / Hon'ble High Court at Bombay restraining MahaRERA from passing any order in this particular project.
8. 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 plausible explanation. The MahaRERA, therefore, feels that the respondent/promoter has failed to handover possession of the said flat to the complainant on the agreed date of possession mentioned in the agreement for sale and thereby violated the provisions of section-18 of the RERA.
9. The MahaRERA further feels that the payment of interest on the money invested by the home buyers is not the 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.
10. In this regard, the MahaRERA further feels that in the present case, after the commencement of the provisions of RERA, which came into effect, on

1-05-2017, the home buyers are entitled to claim interest under section-18 of the RERA for the delay till the possession of the flat is handed over. Accordingly, the complainant has shown his willingness to accept the interest for the delayed possession from 1-05-2017 i.e. the date when the RERA came into force.

11. In the light of these facts, the MahaRERA directs the respondent to pay interest to the complainant on the amount paid by him from 1st May, 2017 till the actual date of possession at the rate of Marginal Cost Lending Rate (MCLR) of State Bank Of India (SBI) + 2% as prescribed under the provisions of Section-18 of the RERA.
12. Since the project is nearing completion, the payment of interest at this stage would jeopardize the project which may cause further delay in completion of this project. Hence, the respondent would be at liberty to pay the interest amount to the complainant at the time of possession with occupancy certificate by adjusting the same with the outstanding dues payable by the complainant.
13. With the above directions, the complaint stands disposed of.

महा-रेरा


(Dr. Vijay Satbir Singh)
Member 1, MahaRERA