

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

COMPLAINT No: CC006000000056135

Mrs Jayshree Arvind Dholakia & Mr. Sandeep Arvind Dholakia ...Complainants

Versus

1. M/s. Right Channel Constructions Pvt Ltd.
2. M/s. Urvi Realtors

..... Respondents

MahaRERA Registration No - P51800008732

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

Adv. Ashutosh Kaushik represented for the complainants.

Adv. Deepan Dixit appeared for the respondents.

ORDER

(16th March, 2020)

1. The complainants have filed this complaint seeking directions from MahaRERA to the respondents to complete the construction of the flat and hand over the possession of the same to them along with interest for delayed possession under section-18 of the Real Estate Regulation and Development Act, 2006 (hereinafter referred to as 'RERA') in respect of booking of a flat No.302, Wing 'A' of the project known as "**4810 Height**" bearing MahaRERA Registration No. P51800008732 at Dahisar, Mumbai.
2. This complaint was heard on 07.05.2019 when both the parties showed their willingness to settle the matter amicably and hence this matter was referred to Maharashtra Real Estate Reconciliation Dispute Redressal Forum. However, in spite of several meetings, the parties could not settle the matter amicably and hence the said Conciliation Forum again referred the matter to MahaRERA with the remarks "settlement failed". Therefore, the matter was again heard on 14.02.2020 when the complainants appeared through their Advocate, however

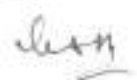
none appeared for the respondents. Hence, in compliance of principles of natural justice, the matter was adjourned and heard finally today i.e. on 11.03.2020 when the complainants did not appear. However, the respondents appeared and sought further time to file reply. Therefore, after hearing the arguments of respondents, the respondents were directed to file written submission. The respondents have filed the same on 13.03.2020 and the same is taken on record.

Pleadings :

3. In the present case, though the notice of hearing was duly served upon the complainants, the complainants did not appear for the hearing and hence MahaRERA perused the complaint filed by the complainants. It is the case of the complainants that they have booked the said flat in 2009 in the Respondents' project for a total consideration amount of Rs.16.75 lakh. The respondent no.1 had issued allotment letter dated 24.11.2009. Thereafter, registered agreement for sale was also executed on 05.01.2012 between the complainants and respondent no.1 in which respondent no.1 had agreed to hand over the possession of the said flat to the complainants on or before 31.03.2013. Though they have paid substantial amount towards the cost of the said flat, the respondent no.1 has failed and neglected to hand over the possession of the same to the complainants and neglected to hand over the possession of the same to the complainants and hence the complainants have filed this complaint seeking interest for the delayed possession under section- 18 of the RERA Act and also injunction against the respondents not to create any third party interest with respect to the said flat.
4. The respondent no.1 on the other hand has resisted the claim of the complainants by raising various defenses against the reply filed on record. The respondent no.1 mainly contended that complaint is not maintainable and the same suffer from material defects and the same is filed just to mislead the MahaRERA and to extort money from it. The respondents further stated that

till date they have received Rs.1341468/- from the complainants and deny the cash payment of Rs.3,90,000/- as alleged by the complainants. With regard to the delay, the respondent no.1 stated that the alleged delay is neither intentional nor deliberate. Further, the date of possession mentioned in the agreement for sale i.e. 13.03.2013 is subject to force majeure as mentioned in the registered agreement for sale entered into between them and the complainants. The said agreement further provides that in case of delay, the respondents, on demand by the complainants, shall provide refund of the money along with interest. However, the complainants till date have not exhausted the said option available to them as per the registered agreement for sale. However, the complainants were informed time and again about the causes of the said delay and they were satisfied about same and hence from year 2013 till filing of this complaint, the complainants never raised any objection. Hence, now they cannot claim any interest under the provisions of section-18 of RERA and they have been estopped from claiming the same.

5. With regard to the delay, the respondents stated that the said delay was due to unforeseen reasons which were beyond their control. They however, stated that the said project was on hilly area with hard rock below and in the month of January 2011 when the excavation was started, it was realized that the entire ground below the said land is of hard stone and not mud and therefore, the excavation work took about two years time and the same was completed in December 2013 only. Another reason for the delay is of change due to amendment in DCR 1991 due to which for two years, the plans were not sanctioned by the Competent Authority. Respondents further stated that due to shortage of sand supply because of restrictions in mining activities, there was lack of building materials available between 2014 and 2015. Hence the construction work got delayed. Even the Slum Rehabilitation Authorities, Thane have taken more than one year time to approve the plans due to which also the project got delayed. Thereafter, in the year 2016, the Hon'ble High Court of



Judicature at Bombay by order dated 13.03.2015 passed in PIL no.182 of 2009 restrained KDMC from approving any proposal / application and the said order was subsequently modified on 25.04.2016. The said order of Hon'ble High Court also largely affected the overall development activities including this project.

6. The agreement for sale clearly and expressly allowed them to extend the date of possession on the reasons stated above. Now the respondent no.1 is ready to complete the project and possession would be handed over to the complainants on / or before 31.12.2020 failing which he shall be paid interest for the delayed possession from 1.1.2021 as per the provisions of RERA Act. The respondent no.1 further stated that they are ready and willing to return the entire amount paid by the complainant with 9% interest. In addition to this, the respondent no.1 further stated that the complainants are not the actual user but they are investors who have invested their money in various projects in the City of Mumbai and hence prayed for dismissal of this complaint.

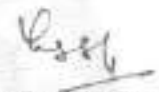
Findings and Reasons:

7. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, the complainant filed this complaint seeking directions to respondents to pay interest for the delayed possession under section-18 of the RERA. The respondent no.1 in this case is a promoter on record of concerned Competent Authority who has executed the Joint Venture Agreement with the respondent no.2 in the year 2009. The respondent No. 2 has registered the said project with MahaRERA, wherein the respondent No. 1 is also shown as promoter in area sharing. The respondents have resisted the claim of the complainants and stated that the project got delayed because of the situations beyond control. Admittedly, there is a registered agreements for sale executed between the complainants / allottees and the respondent No. 1, in which the date of possession was mentioned as 31-03-2013 and till date the possession is not given to the complainants, though substantial amount has been paid by them.



8. It shows that the respondents have violated the provisions of section-18 of the RERA Act, 2016 and the rules made thereunder. To justify the case, the respondents have argued that the project got delayed due to **sand ban on sand mining and quarrying of stones, change the DCR, excavation due to rocks as the project is on hilly area, delayed permissions by the SRA etc.** However, the said ban was placed in the year 2007 and same was lifted in the year 2014. In this case, the agreement was executed between the respondents and the allottees in the year 2012 and the respondent No.1 was very well aware of all these constraints. There is no fault on the part of the complainants who have put their hard earned money for booking of the said flat in the respondent's project. The respondent No. 1 has not given any plausible reasons for the alleged delay.
9. It is very clear from the above discussion that the reasons cited by the respondent No. 1 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 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 respondents are liable to pay interest for the period of delay in accordance with the terms and conditions of agreement.
10. Even all the factors pointed out by the respondent No. 1 due to which the project got delayed are taken into consideration, there was enough time for the respondent No. 1 to complete the project before the relevant provisions of Real Estate (Regulation & Development) Act, 2016 came into force on 1st May, 2017. The respondent No.1 is, therefore, liable to pay interest to the complainant for delay in accordance with the provision of section-18 of the RERA.

11. In view of above facts and discussion, the respondent No. 1 is therefore directed to pay interest to the complainants on the money paid by them for the delayed possession from 1st May 2017 till the actual date of possession at the rate of Marginal Cost Lending Rate (MCLR) plus 2 % as prescribed under the provisions of Section-18 of the Real Estate (Regulation and Development) Act, 2016 and the Rules made thereunder. Since the project is nearing completion the MahaRERA directs that the actual amount payable to the complainants towards the interest shall be adjusted with the balance amount payable by the complainants if any and same shall be paid at the time of possession.
12. With the above directions, the complaint stands disposed of.



(Dr. Vijay Satbir Singh)
Member 1, MahaRERA