

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

Virtual Hearing held through video conference as per  
MahaRERA Circular No.: 27/2020

**COMPLAINT NO: CC006000000196275**

Ramprakash Gupta &  
Mrs. Kiran Ramesh Gupta ...Complainant/s

Vs

M/S. Bhoomi & Arcade Associates ...Respondent/s

**MahaRERA Project Registration No. P519000007415**

**Order**

**November 25, 2021**

(Date of hearing - 10.06.2021, matter was reserved for order)

**Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA**  
CA Parag Shah for the Complainant  
Authorised Representative Mr. Ashish Dubey for the Respondent

1. The Complainants are home buyers and Allotees within the meaning of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016 and the Respondent is Promoter/Developer within the meaning of Section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016. The Respondent have registered his project "Acropolis 1" under section 5 of the Real Estate (Regulation and Development) Act, 2016 ("RERA") bearing MAHARERA Registration No.P99000007415 (hereinafter referred to as the "said Project").
2. The Complainant seeks relief as under:

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- a) The Respondent be directed to pay the compensation for the period delayed by him in giving possession i.e from 30th September 2016 to till date within 15 days from passing of the order.
- b) Penalty for not completing the project as on the date agreed and promised by him for the possession of the said flat.
- c) The respondent be directed to pay the cost of complaint to the Complainant.
- d) Pending the hearing and final disposal of the present Complaint, the Respondents be directed to deposit the amount before the Hon'ble Authority;
- e) The Respondent be directed to strictly adhere to Real Estate Regulation and Development Act,2016 and its Rules and Regulations.
- f) Any other relief as this Hon'ble Authority may deem fit and proper.

3. On 11.08.2021, the following roznama was passed by this Authority:

*"Both parties present. The Complainant contends that an agreement for sale was executed on May 19, 2015, wherein completion date was mentioned as September 30, 2015. The agreement permitted a 12 month delay in possession and effectively the completion date was September 30, 2016. The Complainant contends that he has still not been given possession. The complainant seeks early possession and also interest as mentioned in the agreement from October 1, 2016 to date of possession. It is also mentioned that the Respondent has stated June 30, 2021 as the project completion date on their registration webpage. The authorised representative for the Respondent contends that the project is now complete and they have offered to hand over possession. He further contends that interest is not payable by the Respondent as the project has been delayed for reasons beyond the control of the Respondent. He contends that the project did not receive electric meters and connection and hence the delay. Reserved for Orders."*

4. The submissions of the Complainant are as follows:

- a. Vide an agreement dated 19.05.2015, they purchased an apartment bearing no. 1101 (hereinafter referred to as "said agreement" and

“said apartment”) in the said Project for a total consideration of Rs. 35,07,000/-.

- b. That out of the total consideration agreed in the said agreement, a full amount of consideration is paid by the Complainant.
  - c. An agreement was entered into between the Parties on 19.05.2015 whereby the date of possession was mentioned as 30.09.2015. The agreement also permitted that 12 months delay in possession and effectively the completion date was 30.09.2016.
  - d. The Respondent has till date not provided the possession of the said apartment to the Complainant because of which the Complainant is suffering from huge financial loss.
5. The Respondent has not filed any written submission / reply/documents on records.
6. From the submissions of the Complainant and the Respondent the only issue is to be examined is *whether the Complainant is entitled to claim interest (compensation) for the delayed possession from 01.10.2016 to date of possession?*
7. Before dealing with the facts in this complaint, it is pertinent to examine “possession” as contemplated under section 18 of the said Act:

*“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:*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

8. From the plain reading of section 18 it is clear that the Promoter (Respondent herein) fails to handover possession as per the terms of the agreement for sale by the specified date therein, the Allottee (Complainant herein) has a choice either to withdraw from the said Project or stay with the Project. Further, in case the Allottee (Complainant herein) chooses to stay and not withdraw from the said Project, he is entitled to claim interest for every month of delay till handing over possession at such rate as may be prescribed from the Promoter (Respondent herein).
9. Thus, in the present complaint, the following observations are noteworthy:
  - a. That an agreement for sale was entered into whereby the date of possession as submitted by the Complainant was 30.09.2016. This date is not disputed by the Respondent at the time of hearing.
  - b. The Complainant has paid entire consideration amount till date towards the purchase cost of the said apartment and the same is not disputed nor denied by the Respondent at the time of hearing.
  - c. Further, the Respondent has delayed in handing over possession of the said apartment as per the committed date i.e. 30.09.2016 as submitted by the Complainant thereby violating the provisions of section 18 (1) of the said Act.

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- d. At the time of hearing Respondent states that the completion date shall be considered as per webpage of RERA i.e. 30.06.2020 and the further extended completion date on website which is 30.12.2022.
- e. It is observed that the agreement was signed on 19.05.2015 i.e before commencement of RERA. The date of possession as per this is 30.09.2015 with a grace period of one year. Hence, effectively the date of possession was 30.09.2016. The dates of completion as stated on the RERA website are 30.06.2020 and then subsequently extended to 30.12.2022. Since the agreement for Sale is entered into before the coming into force of RERA i.e on 19.05.2015 the relevant date for completion in this case would be the date mentioned in the agreement for sale. Here, it is pertinent to note that the Act also does not envisage that the agreement for sale which has been executed prior to the commencement of the Act can be re - written. The Act does not provide for rewriting of contracts and agreements entered into before the commencement of the Act. Hence, the date of completion mentioned in this agreement remains sacrosanct. Thus, as the date of possession as promised in the agreement for sale is sacrosanct, the Complainant will be entitled to interest from the date of possession as promised in the agreement for sale to the date of actual possession with occupancy certificate.
- f. The complainant has also sought compensation for delayed possession and at the time of hearing and has also prayed for interest to the delay in giving possession. Further, Complainant also does not want to withdraw from the project and seeks possession of the apartment. As per section 18(1) of the said Act, in case the Allottee (Complainant herein) chooses to stay and not withdraw from the said Project, he is entitled to claim interest for

every month of delay till handing over possession at such rate as may be prescribed. The Complainant in his pleadings and the plaint has not brought anything on record to justify payment of a compensation beyond the interest for delayed possession.

g. The developer has cited reasons for the delay in completion stating that these to be beyond his control. The reasons cited are normal issues that always arise in the life of a project and the developer cannot derisk himself by taking the plea of being beyond his control. Further, it is also seen that as per the MahaRERA Order No. 14/2020 dt 18h May, 2020, the moratorium period was granted to all the Promoters from 15<sup>th</sup> March to 14<sup>th</sup> September, 2020, on account of the COVID-19 pandemic situation. Further vide MahaRERA Order No. 21/2021 dt 6th August,2021, another moratorium period was granted to all the Promoters on account of the second wave for the period of extension of project registration by 6 months w.e.f 15<sup>th</sup> April 2021. The above mentioned periods can only be justifiably deducted from the period of which interest will be payable.

10. From the aforesaid observations it is clear that the Complainant is entitled to claim interest for delayed possession. Thus, the answer to **issue** at para 6 is **affirmative**. Further, it is important to note that the grounds of delay as submitted at the time of hearing are situations and circumstances inevitable in the life of any real estate project and the same is always kept in mind by the Promoter while deciding the date of possession of the project under construction and while committing to its customers the final date of delivery of the apartments in the project to be developed. Hence the said grounds



cannot be taken as a force majeure event nor can they be taken as events beyond the control of the Respondent. Only the periods as mentioned in para 9(g) above would be deducted from the period for which interest is payable.

### FINAL ORDER

Thus, the present complaint is **allowed** and the Complainant is entitled to claim interest for delayed possession from 01.10.2016 till handing over possession at the rate as prescribed *under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules 2017*. Further, with regard to the payment of interest to the Complainant, it is directed that the Respondent/ Promoter is entitled to claim the benefit of "Moratorium period" as mentioned in the Notifications / Orders Nos. 13, 14 and 21 dated 2<sup>nd</sup> April, 2020, 18<sup>th</sup> May, 2020 and 6<sup>th</sup> August, 2021 issued by the MahaRERA. The moratorium period shall be deducted from the total period for which interest is payable. The interest accrued as calculated above shall be paid by 31<sup>st</sup> December 2021 or on the date of possession whichever is earlier. In the event the possession is delayed beyond 31.12.2021 then interest for every month subsequent to 31.12.2021 shall be paid on or before the 10<sup>th</sup> of the following month.

  
(Ajoy Mehta)  
Chairperson, MahaRERA