

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

Complaint No. CC006000000195178

Raunak Singh

....

Complainant

Versus

Dhruva Woollen Mills Pvt Ltd

....

Respondents

MahaRERA Project Registration No. P51700004574

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

C.A. Parag Shah appeared for the complainant.

Ld. Adv. Abir Patel appeared for the respondent.

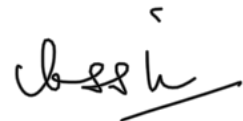
ORDER

(Wednesday 16th February 2022)

(Through Video Conferencing)

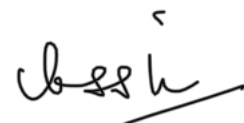
1. The complainant above named has filed this complaint seeking directions from MahaRERA to the respondent to handover the possession of the flat and also to pay interest for the delayed possession under the provisions of section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of a 2 BHK flat on the 6th floor, Tower 9, in the respondent's registered project known as "**Runwal Eirene - Part 1**" bearing MahaRERA registration No. **P51700004574** located at Thane.

2. This complaint was heard on 17/11/2021 as per the Standard

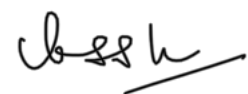


Operating Procedure dated 12/06/2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions, if any. Accordingly, the parties appeared for the hearing and made their submissions. MahaRERA heard the submissions of the parties and also perused the available record.

3. It is the case of the complainant that he purchased the 2 BHK flat for a total consideration of Rs 91,96,800/- and on request of the Respondent, Complainant has till date paid an amount of Rs 89,77,091/- (excluding Stamp duty, VAT, Registration and other taxes) amounting to 98% of the consideration amount which has been acknowledged by the Respondent. Thereafter, parties entered into a registered agreement for sale on 07/02/2019. The respondent was liable to hand over possession on or before 31/12/2019. However, same is still not hand over and the project is incomplete till date. The Respondent has thereafter obtained an extension till 2024 which is more 4 years delay and hence the complainant is seeking interest and compensation u/s. 18 of the RERA from December 2019. The complainant has requested several times to the respondent for possession and after 31/12/2019 for payment of interest on amount paid by him for delay in handing of possession of the said flat. The Complainant received an email from the Respondent regarding meeting, but the respondent merely pointed out general problems faced by Construction Industry and never committed a specific date of possession. The complainant has therefore filed the present complaint seeking reliefs as sought thereunder.

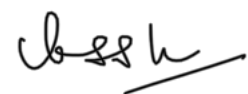


4. The respondent has refuted the claim of the complainant by filing its affidavit stating that a bench of this Authority comprising Chairperson and at least 2 members can hear any complaint filed under section 31 of the RERA as held by the Hon'ble High Court in case of Janta Land Promoters Pvt. Ltd. vs. Union of India and therefore this complaint cannot be decided by a member of the Authority sitting singly.
5. The respondent stated that in terms of clause 8 of the said agreement, the possession of the flat was due to be given on or before December, 2019 and under clause 8.3 there was grace period of 6 months thereby making the possession dated June, 2020. Further, the possession date was subject to further reasonable extension of time in the event of occurrence of mitigating events as per clause 8.7 of the said agreement. Further due to Covid 19 pandemic the construction work on site was stopped which recommenced around September, 2020. The respondent further submitted that, Covid 19 pandemic is a notified force majeure event and MahaRERA has also issued a copy of order dated 18th May 2020. The occupancy certificate has been obtained by the respondent on 09/02/2021 and possession has been offered to the complainant on 12/03/2021 and hence there is no delay in handing over possession. The respondent further submitted that, the present tower has been planned for 34 habitable floors and the respondent has full concession for constructing the entire 34 floors and the present real estate project comprises of 11 towers while the completion date for the entire project is 30/06/2025.
6. The respondent further submitted that, the Govt. of Maharashtra



issued a notification notifying certain modifications to the Thane Development Control Regulations. Further, since the project was already planned for constructing 34 habitable floors, the lift machine room and water tank of the building were to be set up on the terrace of the building above the 34th floor and therefore it was not possible for the respondent to procure part occupancy certificate as without a functional life and water supply, occupation certificate would not be granted in respect of the said flat. The respondent further submitted that the respondent had constructed the maximum floors permissible without the necessity of a High Rise Committee clearance and further work came to a standstill, since the High Rise Committee was constituted on 16th January 2018 and the procedures for applying to the Committee were notified 15 months after the said Notification. The respondent further submitted that further commencement certificate for complainant's tower was granted to the respondent on 10/04/2019 for construction of higher floors.

7. The complainant has filed his rejoinder on record on 5-10-2021. The complainant has uploaded certain judgements to support his case and has relied on judgements to prove that a single member of the Authority can hear matters singly. The complainant further stated that the Covid 19 pandemic itself was force majeure event and six months grace was provided for such event and such mitigating circumstances which is already utilized by the respondent and hence it cannot claim further 6-month period over and above the grace period as agreed in the agreement for sale. Further in view of the MahaRERA order dated 18/05/2020 the maximum possible extension that can be availed by the respondent is up to 14/09/2020 and nothing over and above it. The



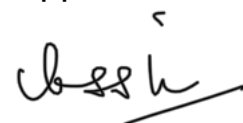
complainant further stated that the respondent is part of reputed Runwal group who are professional developers since many years and very much aware of the hurdles faced in construction industry. Further the complainant entered into agreement for sale in the year 2019 and the new regulation 15.0 i.e., High Rise Committee came into effect via notification dated 07/09/2017 which is before the date of agreement which clearly shows that the respondent was very much aware of this new regulation before entering into the agreement for sale with the complainant in 2019. The complainant stated that when he got intimation about possession, he made the full payment on 22nd March and the respondent handed over physical possession.

8. The MahaRERA has examined the arguments advanced by both the parties and also perused the available record. The complainant by filing this complaint is seeking reliefs under section 18 of the RERA from the agreed date of possession till the actual date of possession.
9. As far as issue raised by the respondent of jurisdiction of single bench of MahaRERA to decide this complaint, the MahaRERA is of the view that the Hon'ble Supreme Court of India in its order dated 11-12-2021 passed in Civil Appeal No(s) 6745-6749 of 2021 (M/s. Newtech promoters and Developers Pvt Ltd versus State of UP and Ors) has confirmed the said issue and held that the single Bench of Authority has jurisdiction to decide this complaint singly.
10. With regard to the reliefs sought by the complainant towards interest for the delayed possession under section 18 of the RERA, the MahaRERA has noticed that admittedly, there is registered agreement

for sale dated 7-02-2019 entered into between both the parties, wherein the date of possession is mentioned as 31-12-2019 with grace period of 6 months i.e., 30-06-2020. Admittedly the possession was not handed to the complainant on the said agreed date of possession.

11. With regard to the alleged delay the respondent has stated that the project got delayed mainly due to the change in policy issued by the State Government whereby it has modified the Thane DCR and issued notification for constitution of High-Rise Committee on 7-09-2017. Due to the said policy it was required to obtain the NOC from the High Rise Committee since the building proposed by it exceed the height of 70 sq. mtrs. Thereafter the High Rise Committee was constituted on 16-01-2018 and the said Committee issued its guidelines for filing an application on 3-12-2018. Only thereafter it could file its application for NOC and same has been obtained in the month of March, 2019. The respondent has mainly stated that the said reasons for delay are covered under clause 8.1 and 8.2 of the agreement for sale signed by both the parties. Hence the respondent stated that it is entitled to get 15 months extension in date of possession under the said agreement.

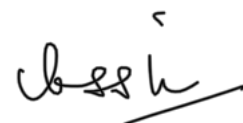
12. In this regard the MahaRERA has observed that the parties have entered into an agreement for sale on 07-02-2019 after commencement of RERA. According to clause No. 8 of the said agreement, the respondent was liable to handover possession of the said flat to the complainant on or before 31-12-2019 with grace period of the 6 months i.e., 30-06-2020. However, the said date of possession was subject to the certain reasons as cited in clause No. 8.1 and 8.2 of the said agreement. However, from the record it appears that all the



incidence of delay cited by the respondent of the High-Rise Committee and change of DCR of Thane was happened before the execution of agreement for sale between the parties in the year 2019. Hence, the respondent was aware of the said incidences at the time of signing of the said agreement for sale with the complainant and hence should have mentioned the reasonable date of for handing over possession of the said flat to the complainant. However, the respondent has not taken such action.

13. In this case the date of possession as per the agreement for sale dated 7-02-2019 with grace period of 6 months is 30-06-2020. However, on that date the Covid-19 pandemic had already started whereby the entire nationwide lockdown was declared by the State as well as Central Governments. The said pandemic situation affected the real estate sector too. Accordingly, the MahaRERA declared the said pandemic period as Force Majeure reasons and granted 6 months extension in the date of completion of the project by issuing Notification dated 18-05-2020. Considering the said 6 months extension of the force majeure reasons, the date of possession in this case comes to 31-12-2020. However, thereafter the respondent shall be liable to pay interest for the delayed possession to the complainant as per the provision of section 18 of the RERA.

14. In the present case, it is noticed by the MahaRERA that the complainant has filed this complaint before MahaRERA on 17-12-2020 and the respondent promoter has completed the project and obtained the occupancy certificate for the project including the complainant's flat on 09-02-2021 and also offered the possession of the same to the

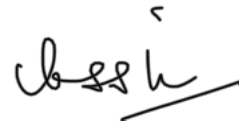


complainant on 12-03-2021. Thereby, the respondent has complied with its liability cast upon it under section 18 of the RERA. However, the complainant has not taken possession of the same and during the pendency of this complaint on 19-07-2021, the complainant has taken possession of the said flat under protest. In this regard, the MahaRERA feels that as per the provisions of section 19(10) of the RERA, the allottee is liable to take possession of the flat within a period of 2 months from the date of occupancy certificate. However, the complainant by violating the provision of section 19(10) of the RERA cannot be entitled to seek relief towards interest for the delayed possession post occupancy.

15. In view of above facts and discussion, the respondent is directed to pay interest to the complainant from 1-1-2021 till the date of occupancy certificate, on the actual amount paid by the complainant at the prevailing rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2% as prescribed under the provisions of section 18 of the RERA and the Rules made there under.

16. With the above directions, the complaint stands disposed of.

17. The certified copy of this order will be digitally signed by the concerned legal assistant of the MahaRERA. It is permitted to forward the same to both the parties by e-mail.



(Dr. Vijay Satbir Singh)

Member – 1/MahaRERA