

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Complaint No. CC006000000193572

1. Shabbir M Hussain

...Complainant

Versus

1. M/s. Rajsanket Realty Ltd

2. ICICI Bank Ltd

...Respondents

MahaRERA Project Registration No. P51800012243

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

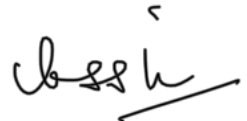
C.A. Parag Shah appeared for the complainant.

Ld. Adv. Sheelang Shah appeared for the respondent no.1.

ORDER

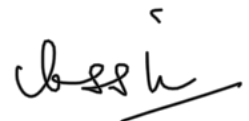
(Monday, 28th January, 2022)
(Through Video Conferencing)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent no.1 to refund the entire amount paid to the respondent no.1 along with interest under the provisions of section 12 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of the flat bearing no. 508 in B wing in the respondent's registered project known as "**Rajinfinia Phase II Wing A Wing B Wing C**" bearing MahaRERA registration No. **P51800012243** located at Malad West, Mumbai.
2. This complaint was heard on 22/09/2021 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, both the parties appeared for the hearing and made the submissions. During the hearing, the respondent was directed to file reply within

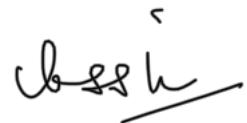


a period of one week. The complainant was directed to file rejoinder, if any, in the subsequent week and with these directions the matter was reserved for the order.

3. It is the case of the complainant that the respondent no. 1 i.e. M/s Rajsanket Realty Ltd is professionally a developer and is developing a project known as 'Raj Infinia' which consists of 3 wings A, B and C having 2 basements, ground/ stilt level, 1st podium level and 2nd podium level + 36 upper habitable floors, located at Malad West, Mumbai registered with RERA. The complainant further stated that respondent no. 2 i.e. ICICI Bank Ltd. is professionally a lending partner for the subvention scheme. The complainant stated that the respondent no.1 emphasized on the subvention scheme which allowed paying a portion of the total flat consideration amount at the time of booking and the remaining was to be paid at flat possession. Moreover, they even verbally confirmed that the project would be completed by December 2016. The marketing material along with promised reasonable timeline towards flat possession enticed the complainant and they purchased flat no. 508 in B-wing of the project Raj Infinia under the subvention scheme. The complainant stated that the respondent no.1 agreed and confirmed the basic sale price of Rs. 21237/- per sq.ft for the flat. The complainant stated that the respondent allotted flat for sale price of Rs. 1,51,85,400/- and the complainant purchased the said flat and paid a total of Rs 25,55,560/- The complainant stated that as per the subvention scheme (popularly known as 20:80 schemes), they paid 20% of the consideration price to respondent no.1 and the balance 80% was required to be paid by respondent no. 2 to respondent no.1. Any pre-EMI payments prior to flat possession was required to be paid by respondent no.1 to respondent no.2. The complainant stated that thereafter complainant entered into an agreement for sale with respondent no. 1 dated 08-07-2013. The complainant stated that respondent no. 2 sanctioned the loan for an amount of Rs 1,33,51,922/- and disbursed an amount of Rs. 1,25,92,652/- to respondent no. 1 under subvention scheme. The complainant stated that respondent no. 2 had disbursed almost 94% of the sanctioned amount of the loan in the first year (2013) itself when the project was

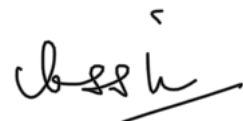


at plinth stage through manipulation. The complainant stated that respondent no. 1 deliberately did not mention the completion date in the sales agreement and advertised and conveyed to provide the possession by December 2016. However, respondent no. 1 was unable to complete the project by December 2016. The complainant stated that since respondent no. 1 was unable to provide possession, respondent no. 1 and respondent no. 2 entered into an agreement on 29th September 2016 which specifies 30-06-2018 as the date by which the respondent no. 1 shall handover the flat possession to the buyers as a condition for subvention scheme. However, even by that date respondent no. 1 defaulted to provide possession to the buyers. The complainant also stated that even though respondent no. 1 was unable to provide the possession by June 2018, respondent no. 1 continued to pay pre-EMI upto March 2019. However, from April 2019, the respondent no. 1 defaulted and failed to pay the pre-EMI to respondent no. 2. Also, the respondent no. 1 has not provided possession of the flat till date. The complainant stated that on default by respondent no. 1 to pay pre-EMI, respondent no. 1 requested the complainant to pay the pre-EMI for 3 months due to liquidity issue. The complainant stated that the liability to pay the pre-EMI to respondent no. 2 was that of respondent no. 1 clearly mentioned under clause 9 of the agreement for sale. The complainant stated that to their surprise as the respondent no. 1 defaulted to pay the pre EMI, respondent no. 2 tried depositing security cheques and started issuing legal notices to 4 complainants to pay the pre-EMI even though it not being the liability of the complainants. The complainant had sent legal notice to respondent no. 1 dated 28-09-2019 via advocates Shamim & Co. to obtain refund on the paid consideration amount but no response was obtained from respondent no. 1. Further, another legal notice was sent to respondent no.1 dated 20-01-2020 via advocates C. R. Naidu & Co. to clear pre-EMI payment dues pending with respondent no.2. No response was obtained from respondent no.1 on this legal notice The complainant stated that current construction work on site remains stalled since January 2019 also respondent no.1 has completed only up to 22 floors of A and B wing and upto 9 floors of C wing. The complainant stated that similar case was taken up before MahaRERA in the matter of Ms. Khyati Shah V/ s M/s Rajsanket Realty Ltd. and ICICI bank bearing complaint no

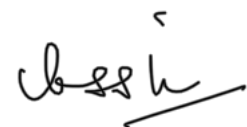


CC006000000141031 and relief was granted. The complainant would like to state that the present matter is exactly similar to that of Ms. Khyati Shah. The complainant stated that even after repeated reminders to respondent no. 1 there has been no progress and no update with respect to project completion. Therefore, complainant pray that the respondent no. 1 be directed to refund the consideration amount paid along with interest to the complainant within 30 days and respondent no. 1 be directed to refund the amount of stamp duty, registration charges and various taxes to the complainant within 30 days along with interest and respondent no. 1 be directed to settle and pay directly any amount due to respondent no. 2 and respondent no. 2 be directed to recover any amount due from respondent no. 1.

4. The complainant has filed further written submissions on record on October 5, 2021 stating that their complaint is not more biased towards ICICI Bank, the respondent no. 2 but more biased towards respondent no. 1 the developer for compensation and refund of money along with interest and which is applicable as per RERA laws paid to respondent no.1 paid under the subvention scheme. The complainant further would like to point out that as per supreme court order the project should be completed within 3 years and it should be taken from the date mentioned in the initial commencement certificate and not from the date when RERA Act came into force. The complainant stated that they knocked the door of MahaRERA when respondent no.1 started defaulting in its duties one by one as well as damage caused to him due to misinformation in public domain. Hence, the present complaint is filed seeking refund of the entire amount paid by him along with interest and also directions to the respondent no. 1 to settle the claim of the respondent no. 2 directly.
5. The respondent no. 1 promoter though appeared for the hearing through its advocate; however it has failed and neglected to file any reply on record of MahaRERA. Hence, the MahaRERA has no other alternative but to proceed to decide this complaint on merits of this case as per the available record.



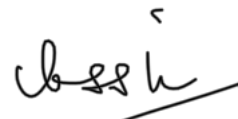
6. The MahaRERA examined the submissions made by both the parties and also perused the available record. By filing this complaint, the complainant sought relief under section 18 of the RERA towards refund along with interest for the delayed possession. He further sought directions to the respondent no. 1 to reimburse the Pre-EMI paid to the ICICI Bank. The respondent no. 1 though contested this complaint stating that the present complaint is not governed under RERA and the same falls under MOFA and the MahaRERA has no jurisdiction to decide this complaint arose out of Facility agreement executed with ICICI Bank; however it has failed to file any written reply on record of MahaRERA.
7. The record shows that the respondent no. 1 is the promoter who registered this project with MahaRERA and the respondent no. 2 is Financial institution who has availed the home loan to the complainant. The complainant has purchased the said flat from the respondent no. 1 vide a registered agreement for sale dated 8-07-2013.
8. As far as relief sought by the complainant towards refund along with interest for the delayed possession sought by the complainant, the MahaRERA has noticed that admittedly, there is a registered agreement for sale signed and executed by the complainant and the original promoter dated 08-07-2013, wherein no date of possession is mentioned. However, the complainant by relying upon the judgement and order of Hon'ble Apex Court as well as MahaRERA has stated that the reasonable period for completion of the project should be 3 years. Since in the present case, they have executed the agreement for sale with the respondent on 08-07-2013, the date of possession should be 08-07-2016. Hence, he is alleging the violation of section 18 of the RERA by the respondent No.1 and hence seeking refund along with interest.



9. Before dealing with the facts in this complaint, it is pertinent to examine “possession” as contemplated under section 18 of the RERA, which reads as under:

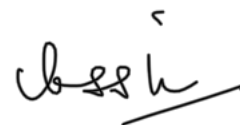
“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on 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.”

10. From the plain reading of section 18, it is very clear that if the promoter fails to handover possession as per the terms of the agreement for sale or as the case may be, by the specified date therein, the allottee has a choice either to withdraw from the said project or to stay with the project. Further, in case the allottee chooses to be in the project and take possession, he is entitled to claim interest for the delayed period of possession on the actual amount paid by him for every month of delay. It is important to note here that the examination of the term ‘possession’ is in context to the agreement for sale signed by both the parties on 08-07-2013.
11. Admittedly, no specific date of possession is being mentioned in the said agreement. However, it can’t help the promoter respondent to escape the provisions of RERA as it has failed to fulfil its obligations to pay the EMIs to the financial institution which it was required to do till the date of possession. It has



clearly violated clause 9 of the agreement. The complainant paid almost the entire consideration which included loan under subvention scheme in 2013. However, he is waiting for his home even after 9 years and he is being asked by the respondents to pay EMI. Normally a project should be complete in 3-5 years as held by the Hon'ble Apex Court in its various judgements. Such an inordinate delay is neither permissible nor justifiable by any stretch of imagination. The complainant is therefore entitled to have reliefs under section 18 of RERA. Needless to say, the provision to claim refund with interest also exists under the Maharashtra Ownership of Flats Act (MOFA) under which the agreement for sale of the complainant was executed.

12. In addition to this, the respondent no. 1 promoter by signing the subvention agreement has agreed to pay the Pre EMI to the respondent no. 2 bank and subsequently, stopped paying the same since the year 2019 and avoided its obligation to pay the Pre EMIs. The said action on the part of the respondent no. 1 promoter amounts to misrepresentation to the complainant allottee. Moreover, the MahaRERA has also noticed that the letter by the National Housing Bank (NHB) to discontinue the subvention scheme like products was to prevent malpractices like this. It does not ask the banks not to fulfil their contractual obligations towards the borrowers whose loans had already been disbursed. Hence, the respondent no.1 promoter, can't take the shelter of these guidelines to avoid own commitment made under the subvention agreement. Obviously, the allottees/ complainants feel that they have been taken for a ride by the respondent promoter. The complainant is therefore, entitled to seek refund for violation of section 12 of the RERA.
13. In view of the facts and circumstances of this case as discussed above, the following order is passed:
 - a) The complainant is allowed to withdraw from the project.
 - b) The respondent no. 1 promoter is directed to refund the entire amount paid by the complainant along with interest at the rate prescribed by MahaRERA,

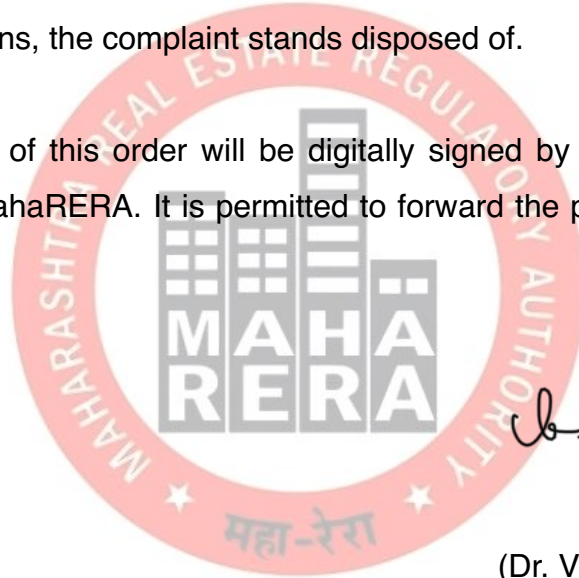


i.e. Marginal Cost of funds based Lending Rate (MCLR) of the State Bank of India (SBI) plus 2 % within 3 months. The respondent promoter is only responsible to pay back the bank dues including loan amount and interest if any.

c) 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.

14. With these directions, the complaint stands disposed of.

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



(Dr. Vijay Satbir Singh)
Member – 1/MahaRERA