

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

Complaint No. CC006000000171935

Mr. Vivek Gundu Shetty

...Complainant

Versus

M/s. Vijaysuraksha LLP

...Respondent

MahaRERA Project Registration No. P51700006838

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

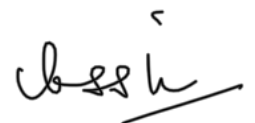
C.A. Parag Shah appeared for the complainant.

Ld. Adv. Sachin Karia a/w Ld. Adv. Deepali Shetty appeared for the respondent.

ORDER

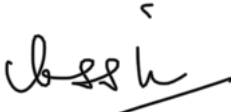
(Monday, 20th December, 2021)
(Hearing Through Video Conferencing)

1. The complainant above named has filed this complaint seeking directions from MahaRERA to the respondent to pay interest for the delayed possession under the provisions section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of a flat bearing no. 2202 on 22nd floor in the respondent's registered project known as "**Orion 3**" bearing MahaRERA registration No. **P51700006838** at Village Kavesar, Ghodbunder Road, Dist. Thane.
2. This complaint was scheduled for hearing on 11/08/2021 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 their submissions. During the course of hearing the respondent filed an application dated 24-05-2021 on record of



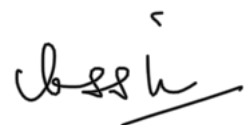
MahaRERA and had raised preliminary issue of jurisdiction of single bench of MahaRERA to decide this complaint singly in view of the Judgment and order passed by the Hon'ble Punjab and Haryana High Court in case of Janta Land Developers.

3. The said issue was dealt with by the MahaRERA by passing an interim order dated 17-08-2021 and held that the single Bench of MahaRERA has jurisdiction to try and entertain this complaint singly.
4. Thereafter this complaint was heard on merits on 07-10-2021 in presence of both the parties. The MahaRERA heard the arguments of the parties and also perused the available record.
5. It is the case of the complainant that he purchased flat no. 2202 on 22nd floor in the project of the respondent by entering into a registered agreement dated 3-12-2012 for the total consideration of Rs. 3,51,40,428/- (including stamp duty as well as registration charges). The complainant stated that from August 2012 he has paid more than 91% of the total consideration amount. The complainant stated that the respondent defaulted in giving possession on the agreed date of possession i.e 31-12-2016 and thereby caused delay. Hence the complainant seeks interest for the delay as well as compensation for mental agony and direct the respondent to deposit the amount before the Hon'ble Authority.
6. The respondent has filed its reply on record on 24-5-2021 relying upon the judgement dated 16-10-2020 passed by the Punjab and Haryana High Court in Writ Petition No. 38144 of 2018 wherein it has been held that a single member of RERA cannot validly pass Orders in respect of complaints



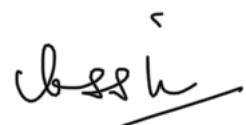
filed under RERA and prayed that the present complaint be placed before two member bench or full bench of MahaRERA Authority. The respondent has relied upon a list of judgements starting with Janta Land Promoters Pvt.Ltd. vs. Union of India and Ors to support his case.

7. The respondent has filed his preliminary affidavit in reply on record on 24-6-2021 denying the contentions of the complainant and stating that the project is complete and OC dated 18-03-2021 is obtained and it is ready and willing to handover possession of the flat to the complainant and hence the respondent has not violated any provisions of RERA. Further, this Hon'ble Authority lacks jurisdiction to sit single as per Hon'ble Punjab and Haryana High Court judgement dated 16.10.2020 in Writ Petition No. 38144 of 2018. The respondent stated that it has completed its obligations for Tower no.1 of the said project and given possession to the flat purchasers for Tower No.1. The respondent further stated that during Conciliation the respondent had informed the complainant about the difficulties faced in the project and given complainant the option to exchange flat in Tower No.1 of the same project and offered possession and agreed to pay stamp duty and registration charges. However, the complainant failed to take possession for the reasons best known to him which is already mentioned in the conciliation roznama dated 16.12.2019. The respondent stated that despite the hurdles and obstacles faced such as demonetization, GST, liquidity crunch, multiple taxation, it has completed the project and offered the possession and any order for refund of payment would have a serious impact on the project as it would derail the balance work in the project.
8. The complainant has filed rejoinder on record on 23-7-2021 stating that the present complaint is similar to Rekha Sinha v/s. Larsen & Toubro wherein it



was held that interest would be paid by the respondent. The complainant has further relied on the case of Arifur Rahman Khan and Aleya Sutana & Ors. vs DLF Southern Homes Pvt. Ltd. 2020 SCC Online SCC 667 where 339 flat buyers complained against the delayed handing possession and the bench of the Supreme Court held that they are entitled to compensation. Hence the complainant seeks interest for delay.

9. The MahaRERA has examined the submissions made by both the parties and also perused the available record. By filing this complaint, the complainant is mainly seeking relief under section 18 of the RERA towards interest for the delayed possession alleging the violation of section 18 of the RERA by the respondent. The respondent on the other hand has refuted the said contentions of the complainant by raising the issue of jurisdiction of single bench and also stating that the project is complete and occupancy certificate has already been obtained on 18-03-2021 and the possession has also been offered to the complainant. Hence there is no violation of section 18 of the RERA.
10. As far as issue raised by the respondent of jurisdiction of single bench of MahaRERA to decide this complaint, the MahaRERA has already dealt with the said issue vide an interim order dated 17-08-2021. Thereafter, the Hon'ble Supreme Court of India in it's order dated 11-11-2021 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. Hence the said issue is no more survived in this case.
11. On an analytic consideration of this complaint filed before the MahaRERA under section 18 of the RERA, the MahaRERA has noticed that admittedly

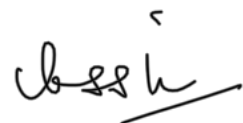


there is a registered agreement for sale executed between the parties on 03-02-2012. According to clause no. 16 of the said agreement for sale, the respondent has agreed to handover possession of the said flat to the complainant on 31-12-2016. To support his contention the complainant has uploaded a copy of agreement for sale on record of MahaRERA. Admittedly the possession was not handed over to the complainant.

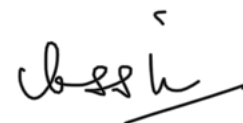
12. With regard to the issue raised by the respondent promoter that the project got occupancy certificate and possession has already offered to the complainant in September, 2021 has no substance in view of explicit provisions of section 18 (1) of the RERA which reads as under:

“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 allottee, 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.”

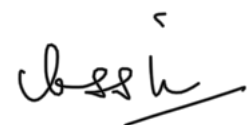


13. The aforesaid explicit provision under section 18 of the RERA clearly provides that on failure of the promoter to handover possession of the flat to the allottee on the agreed date of possession mentioned in the agreement for sale, the allottee has two choices either to withdraw from the project or to continue in the project. If the allottee intends to withdraw from the project, the promoter on demand of the allottee is liable to refund the entire amount paid by the allottee along with interest and compensation as prescribed under RERA. If the allottee is willing to continue in the project, in that event, the promoter is liable to pay interest for the delayed possession.
14. Likewise, in the present case, the complainant has opted to take possession of his flat along with interest for the delayed possession since the respondent has failed to handover possession of the said flat to him on the agreed date of possession on 31-12-2016. By sending a letter dated 25-04-2018, the respondent has already accepted the delay and offered compensation to the complainant. Admittedly, the occupancy certificate was obtained for this project on 18-03-2021 and before that the complainant has filed this complaint before MahaRERA on 23-12-2019 seeking relief under section 18 of the RERA. It shows that the respondent was in violation of section 18 of the RERA on the date of filing of this complaint before MahaRERA. Hence, the contention of the respondent that the provisions of section 18 of RERA ceased to operate as the occupancy certificate has already been obtained on 18-03-2021 has no substance. Therefore, the complainant allottee is entitled to seek relief under section 18 of the RERA for interest for the delayed possession.
15. With regard to the above issues as contended by the respondent in response to the complaint, the MahaRERA feels that the reasons cited by the respondent do not give plausible explanation. As a promoter, having

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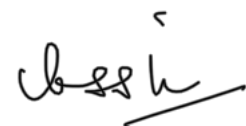
sound knowledge in the real estate sector, the respondent was fully aware of the market risks when he launched the project and signed the agreement with the home buyers. Moreover, the grounds of delay cited by the respondent such as GST, Demonetisation, Covid-19 etc occurred after the date of possession mentioned in the agreement for sale. Hence, the respondent would not be entitled to seek any reliefs under the said grounds.

16. Even if the reasons cited by the respondent promoter are taken into consideration as plausible explanation, the respondent promoter is entitled to seek 6 months period of extension in the date of possession which was permissible under the provisions of MOFA in which the present agreement for sale was executed between the parties. Considering the said period of 6 months the date of possession comes to 30-06-2017 from 31-12-2016. Even on that date also the project was incomplete and the possession was not handed over to the complainant. Hence, the complainant is entitled to seek interest for the delayed possession from 1-07-2017.
17. Moreover, the respondent promoter by signing the agreement for sale with the complainant committing the specific date of possession cannot be permitted to re-write the said date of possession mentioned in the agreement for sale merely by saying that the revised completion date of this project got extended till 30-10-2021 by MahaRERA in view of the judgement and order passed by the Hon'ble High Court at Judicature at Bombay in given case of Neel Kamal Realtors Suburban Pvt Ltd decided on 6-12-2017.
18. However, in the present case, the MahaRERA has noticed that the

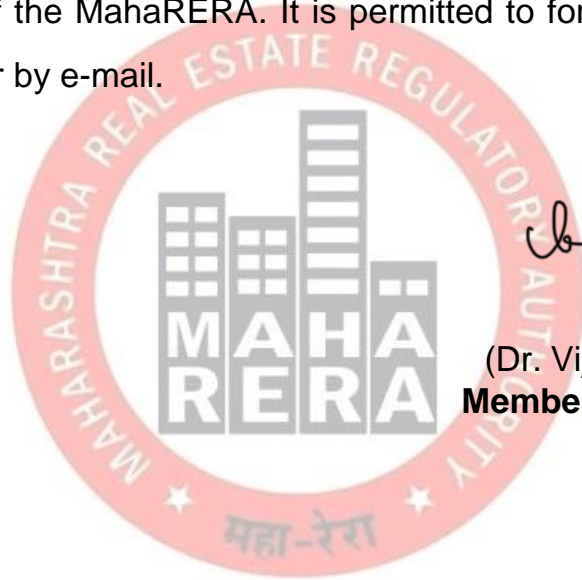


respondent promoter has completed the construction and obtained occupancy certificate on 18-03-2021 and also offered possession of the said flat to the complainant. It shows the respondent promoter has complied with its statutory duty cast upon it under section 18 of the RERA towards interest for the delayed possession on the date of OC and the possession was offered to the complainant. Hence the MahaRERA is of the view that the complainant is not entitled to seek any interest after the date of OC obtained for this project.

19. In view of these facts, the respondent is directed to handover possession of the flat to the complainant along with interest for the delayed possession to the complainant from 01-07-2017 till the date of OC i.e., 18-03-2018 for every month on the actual amount paid by the complainant towards the consideration of their flats at the 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 thereunder.
20. Needless to state here that the interest shall be paid on the actual amount as provided under section 18 of the RERA towards the consideration of the said flat only, excluding the stamp duty, registration charges and taxes etc. paid to the government.
21. 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.



22. As far as relief sought by the complainant towards compensation, the MahaRERA is of the view that since the complainant is willing to be in project and to have possession, as per the provisions of section 18(1) of the RERA he is entitled to seek interest. Hence the prayer towards compensation stands rejected.
23. With the above directions, the complaint stands disposed of.
24. 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.



Vijay Satbir Singh

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