BEFORE THE MAHARASHTRA

REAL ESTATE REGULATORY AUTHORITY, MUMBAI

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

Complaint No. CC006000000192271

Komal S Khilnani .... Complainant/s

Vs

M/s. Balaji Construction Company .... Respondent/s

MahaRERA Project Registration No. P51700008216

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Advocate Shankarlal Raheja for the Complainant
Advocate Sunil Dongare for the Respondent

Order

6th September, 2021

1. The Complainant is a home buyer and an Allotee within the meaning of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016 and the Respondent is the Promoter/Developer within the meaning of Section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016. The Respondent has registered their project "TRINITY OASIS" under section 5 of the Real Estate (Regulation and Development) Act, 2016 ("**RERA**") bearing MAHARERA **Registration No. P51700008216** (hereinafter referred to as the "**said Project**").

2. On 07/07/2021, the following roznama was passed by this Authority:

Both parties present.
Learned Counsel for the Complainant contends that in around the year 2011 -13, he had paid approximately INR 10,00,000 (Ten Lakhs) which is 35% of the consideration towards booking the apartment.
He confirms that no agreement for sale was executed.
He further confirms that the allotment letter did not mention the date of possession however, he was given to understand that possession would be given 5-6 years.
The Complainant contends that this is also admitted by him in the written statement.

The Complainant states that the Respondent has now put June 2022 as the project completion date on their registration webpage and that and he is not ready to wait and seeks refund together with interest.
Learned counsel for the Respondent contends that the booking was taken in 2013 in which about INR 9,00,000 was towards the apartment cost and the rest was towards taxes.
Learned counsel for the Respondent contends that the allotment letter did not give any possession date as the project was in its initial phases.
Learned Counsel for the Respondent however submits that the Respondent is ready to refund the amount in instalments without paying interest as there was no agreement stating that interest would be paid in the event of a refund.
Reserved for Orders

3. The reliefs sought by the Complainant are as follows:
   a. *refund the entire amounts paid aggregating Rs 1055933/- to including the MVAT and Service Tax and pay interest as per Section 18 and other applicable provisions of the Real Estate (Regulation and Development) Act, 2016.*
   b. *to pay compensation and damages for grave and irreparable losses to the Complainant for an amount of at least Rs 28,00,000/-*

4. The submissions of the Complainant are as follows:
   a. The Complainant has booked the flat no. 901 on the 9th Floor of the Tower no 1 on or around 15th May 2011 and paid Rs 2,00,000/- towards the advance payment. The Respondent issued an allotment letter dated 27th March 2012.
   b. On 26th May 2015, the Respondent vide his letter has intimated to the Complainant that the Plinth work of the building is completed and demanded an amount of Rs. 4,27,140/- which was paid on 7th July 2015.
   c. The Respondent is bound to mention the exact/specific date of delivery of possession of the said flat and cannot evade the liability merely by stating that the same was never agreed or stipulated or time was not the essence. The Respondent has always orally represented and warranted that the possession of the said flat shall be handed over on or before 31st December 2017. The Respondent on the MahaRERA website has proposed date of completion of the project as 31st December 2017 and revised completion date is 31-07-2022.
   d. Respondent is in violation and breach of section 14 and 13(1) of RERA and has not on a single occasion offered or called upon the Complainant to execute and register the written Agreement.

e. The Project is in standstill and no progress in the construction work is observed on the ground. Further, the Respondent has also not communicated as to the need of any extension of time for completion of the said flat. However, the Respondent has revised the date of possession to July 31, 2022.

f. The Complainant has also relied on the Apex Court judgment in Kolkata West International City P Limited v/s Devashish Rudra in which the Apex Court held that possession of the booked flat has to be given within a reasonable time and states that eleven years is by no means and stretch of imagination can be termed as a reasonable period.

g. The Complainant has therefore filed the present complaint seeking the reliefs as sought thereunder.

5. The Respondent has filed its written statement on 09/05/2021 and has submitted as follows:

a. The complaint filed by the Complainant is false and frivolous and shall be dismissed. The Complainant has tried to project the facts as per his own convenience. In the allotment letter, no date of possession is mentioned and hence there is no violation of section 18 of RERA.

b. The complaint is filed pertaining to building S1 and the project is registered as P51700016602, and the complaint is filed in wrong project registration and hence is not maintainable and should be dismissed.

c. There is no cause of action in this complaint and complaint is filed to vex the Respondent in unwarranted litigations. The Complainant has also not come before MahaRERA with clean hands.

d. The Respondent has further stated that at the time of allotment letter, the Complainant was informed that the project will take 5-6 years to complete. Since the building was not in progress at the time of booking, no agreement for sale was executed with the Complainant.

e. Due to the recession in construction business and hike in cost of raw materials etc. the situation was beyond the control of the Respondent which delayed the project. After the registration with MahaRERA, the

work of new foundation is going on and the project will be complete by June 2024. The business has further suffered since March 2020 due to the lockdown due to pandemic.

f. The Respondent is willing to refund the principal amount of the Complainant of Rs. 9,96,660/- in instalments of Rs. 1,50,000/- from January 2022.

g. The Respondent has also denied paragraph wise the allegations made by the Complainant in the complaint.

6. From the submissions of the Complainant and the Respondent the issue that arises for consideration is that:

   a. *Whether the Complainant is entitled to refund of the amount including the MVAT and Service Tax along with interest as per Section 18 of the RERA?*

   b. *Whether the Complainant is entitled to seek relief under section 14 of the RERA.*

   c. *Whether the Complainant is entitled to claim compensation on the refund amount under sections 71 and 72 of the RERA?*

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 very clear that if the Promoter (Respondent herein) 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

Allotee (Complainant herein) has a choice either to withdraw from the said Project or stay with the Project. Further, in case the Allotee (Complainant herein) chooses to withdraw from the said Project, he is entitled to claim refund with interest including compensation against the Promoter (Respondent herein). It is important to note here that the examination of the term 'possession' is in context to the Agreement for Sale or as the case may be which in the present complaint is the Allotment Letter dated 27-03-2012.

9. Thus, in the present complaint, the following observations are noteworthy:
   a. The said booking was done before the commencement of RERA in the year 2012 and the complainant has paid an amount of Rs. 10,55,933/- which includes the Taxes paid to the Government.
   b. Admittedly there is no registered agreement for sale executed between the parties. However, there is an Allotment Letter dated 27-03-2012 duly signed and issued in favour of the complainant which does not show any agreed date of possession, which has lapsed. Mere statement that the Respondent has agreed to handover possession of the said flat to her within a period of 5 -6 years from the date of booking is not sufficient to prove violation of section 18 of the RERA. Hence the claim of the Complainant towards refund along with interest will be considered under the provision of Section 18 of the RERA. However, the date first mentioned i.e. proposed date of completion of the project on MahaRERA registration, when RERA came into effect would become the relevant date in the absence of an Agreement for Sale. The first registration date shown is 31-12-2017, which got revised and extended under the provisions of RERA till 31-07-2022. Hence in the absence of an Agreement for Sale, MahaRERA would be constrained to take the RERA completion date (31-07-2022) as the promised date of handing over possession of the said flat to the Complainant, which is yet to arrive. Hence, the Authority is of the view that the present complaint is premature as on date for seeking relief of refund under section 18 of RERA. Thus, the answer to **issue No. a** is in negative.

c. As far as relief sought by the Complainant for violation of section 14 of the RERA, the MahaRERA is of the view that the Complainant has not produced any cogent documentary proof on record of MahaRERA to show that the Respondent promoter after commencement of RERA has changed any plan without obtaining requisite consent of the allottees thereby violating the provision of section 14 of the RERA. Moreover, the MahaRERA is of the view that the provision of section 14 of the RERA is prospective in nature and same cannot be made applicable retrospectively to the booking done under the provision of MOFA. Thus, the answer to **Issue No. b** is in **negative.**

d. The complainant has not produced any cogent documentary proof to show the liquidated damages and mental agony and thus, the answer to **Issue No. c** is in **negative**.

e. In the present case, since the respondent has showed its willingness to refund the amount of Rs. 9,96,660/- to the Complainant without any interest in equal instalments of Rs. 1,50,000/- from January 2022, hence in compliance of principles of natural justice, the Authority could consider the prayer of the Complainant towards the refund of amount paid minus the taxes and duties paid.

FINAL ORDER

The Respondent is directed to refund the amount to the complainant excluding the amount paid towards taxes and duties without any interest in six equal monthly instalments from the date of this order.

(Ajoy Mehta)
Chairperson, MahaRERA