

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

Complaint No. **CC006000000171901**

Mr. Tarun Goyal

...Complainant

Versus

1. M/s. Karm Infrastructure Private Limited

2. Bank of Maharashtra

...Respondents

MahaRERA Project Registration No. **P51700008284**

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

Ld. Adv. Mini Rao i/b Divya Shah Associates appeared for the complainant.

None appeared for the respondents.

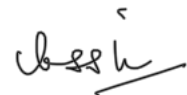
ORDER

(01st July, 2021)

(Through Video Conferencing)

1. The complainant above named has filed this complaint seeking directions from MahaRERA to the respondent to refund the amount paid by him along with interest 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 the flat bearing No.303 admeasuring 555.96 square feet carpet area, on the 3rd floor, "C" Wing in the respondent's registered project known as "**Karm Gardens - 1**" bearing MahaRERA registration No. **P51700008284** at Ambarnath (M Cl), Dist. Thane.

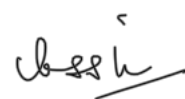
2. This complaint was transferred to this Bench from the Hon'ble Member-2 MahaRERA on 02-05-2021 and accordingly same was



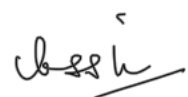
scheduled for hearing on 10-06-2021 as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions, if any. Accordingly, the complainant appeared for the hearing through his advocate and made the submissions. However, despite the notice of hearing, none appeared for the respondent. Hence on the said date of hearing in compliance of principles of natural justice, the matter was adjourned today with a direction to the respondent promoter to file its reply within a period of two weeks.

3. During the course of hearing today, the complainant appeared through his advocate and made his submissions. However, despite notice, the respondent no. 1 promoter neither appeared nor has filed any reply on record of MahaRERA. Hence, the MahaRERA heard the arguments of the complainant and also perused the available record.

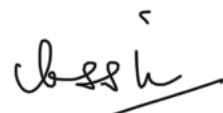
4. It is the case of the complainant that by a registered agreement for sale dated 12-07-2013 he has purchased the said flat from the respondent no. 1 for total consideration of Rs.32,52,747/-. At that time, the respondent no. 1 promoter suggested that he should obtain loan from their associated Bank viz. Bank of Maharashtra viz the respondent no.2 under subvention scheme for purchase of flat. Accordingly, he purchased the said flat and executed all documents required with the respondent no.1 and respondent no.2. Out of the total consideration, he has paid 10% of the amount to respondent no.1 and the respondent no.2 paid



approximately 85% of the amount on his behalf to the respondent no.1, on the demands made by it as per the terms and conditions of the said agreement for sale and the balance 5% amount was to be paid by respondent no.2 at the time of handing over possession of the flat to him. As per letter dated 12th August, 2013 of respondent no.1, the interest on the loan availed by the complainants from respondent no.2 would be paid by respondent no.1 to respondent no.2 till the possession of the said flat is handed over by former to the complainant. He would be obligated to repay the amount of loan along with interest thereon, in Equated Monthly Instalments (EMIs), after receiving the possession of the flat. Hence, it was respondent no.1's obligation to bear and pay the interest on the loan availed until possession of the flat is handed over to him with occupation certificate. However, it has failed to pay the interest amount from January, 2019 till date and has also failed to handover possession of the flat to him as per clause no.7 of the said agreement on or before December, 2014. However, respondent no.1 has unilaterally uploaded a revised completion date of the project on the MahaRERA website as 31st May, 2019. The complainants have been receiving demand letters from respondent no.2 to pay the outstanding amounts of interest defaulted by respondent no.1 from January, 2019. Due to inordinate delay in handing over possession of the said flat to the complainant and respondent no.1's incapacity to service interest to respondent no.2 as per the said subvention scheme, the complainant through his advocate's letter dated 5-10-2019 terminated the said agreement and demanded that all amounts paid by them be refunded to them along with interest thereon. Complainant has waited for almost 5 years and hence he was forced to withdraw from the said project.

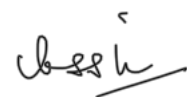


5. In the present case, the MahaRERA has observed that the complainant has filed this online complaint before MahaRERA on 17-12-2019. However, till date the respondent has not bothered to file its reply to this complaint, though the complaint is visible to the respondent in its project. Even after issuance of the SOP dated 12-06-2020, the respondent was liable to upload its reply in digital form in this complaint. However, till date the respondent has not complied with the said direction. Furthermore, though the notices for the virtual hearings have been duly served upon it, the respondent failed to appear for the hearing which shows that the respondent is not willing to contest this complaint. Hence, the MahaRERA has no other alternative but to proceed with the matter ex-parte against the respondent on merits.
6. The MahaRERA has examined the arguments advanced by the complainant. The complainant being an allottee of this project filed this complaint seeking refund of the entire amount paid by him along with interest due to the delayed possession under section 18 of the RERA. There is a registered agreement for sale dated 12-07-2013 entered into between the complainant and the respondent wherein the respondent agreed to handover possession of the said flat to the complainant on or before 31-12-2014. Admittedly, the possession has not been handed over to the complainant till date. It shows that the respondent has violated the provision of section 18 of the RERA.
7. In this regard, it is necessary to peruse the provision of section 18 of the RERA, which reads as under:



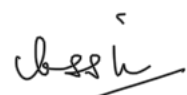
"18 (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the 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."

8. The aforesaid explicit provisions 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, on demand of the allottee, if the allottee is willing to withdraw from the project, the promoter is liable to refund the entire amount to the allottee along with interest as prescribed under the provisions of RERA and the relevant Rules made there under. Likewise, in the present case, since the respondent has failed to handover possession of the flat to the complainant on the agreed date of possession

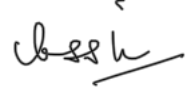


mentioned in the agreement for sale, the complainant is entitled to seek refund under section 18 of the RERA.

9. In the present case, the MahaRERA has noticed that the complainant has booked the said flat under subvention scheme which can be seen from the letter dated 12-08-2013 issued by the respondent, whereby the respondent no. 1 has confirmed it will bear interest on the loan taken from the respondent no. 2 for the said flat up till issuance of possession letter. However, the respondent no. 1 has failed to adhere to the said letter and failed to pay the pre EMI to the respondent no. 2, even after taking more than 85% amount and also failed to handover possession of the said flat to the complainant. Hence, the MahaRERA is of the view that the respondent no. 1 is liable to settle the payment issues with the respondent no. 2 bank, which has issued notice to the complainant under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
10. In view of above facts and discussion, the respondent no. 1 is directed to refund the entire amount paid by the complainant towards the consideration of the said flat along with interest at the rate of SBI's Highest Marginal Cost Lending Rate (MCLR) plus 2% as prescribed under the provisions of section-18 of the Real Estate (Regulation and Development) Act, 2016 and the Rules made there under from the date of payment till the actual realisation of the said amount to the complainant. The respondent no. 1 is also directed to settle all the dues of the respondent no. 2 taken by it on behalf of the complainant.



11. With the above directions, the complaint stands disposed of.
12. The certified copy of the order will be digitally signed by concerned Legal Assistant of MahaRERA and it is permitted to send the same to both the parties by e-mail.



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

