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

**Complaint No. CC006000000196316**

Abdul Malik Usmani ...Complainant

Versus

Moonshine Realtors Pvt Ltd ... Respondent

**MahaRERA Project Registration No. P51700008927**

**Coram**: **Shri. Mahesh Pathak, Hon'ble Member – I/MahaRERA**

Ld. Adv. Zaki Shaikh appeared for the complainant.

None appeared for the respondent.

**ORDER**

(Friday, 31st March, 2023)

(Through Video Conferencing)

1. The complainant above named has filed this complaint on 21/03/2021 seeking directions from MahaRERA to the respondent for compensation on account of delay as prescribed under the provisions of section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of 501 B at 5th floor, in the respondent's project known as "**SANIYA HEIGHTS** " bearing MahaRERA registration no. **P51700008927** located at Village: Bhiwandi, Dist: Thane.

2. This complaint was heard on several occasions and same was heard finally on 29-12-2022 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 remained present for the hearing and made her submissions. However, the respondent did not remain present inspite of intimation of hearing being sent to it. The MahaRERA heard the submissions of the complainant and also perused the available record.

3. After hearing the arguments of the complainant, the following Roznama was recorded in this complaint –

***"The complainant is present. The respondent is absent. In fact, the respondent has never appeared before the MahaRERA and has also not filed its reply to the complaint. The complainant seeks interest, compensation and wants to withdraw from the project due to delay in completion of the project as the original date of possession as per the agreement for sale was December 2018. However, the project is still incomplete and the project registration has also not been renewed. Therefore, the complainant wishes for interest and compensation for delay and withdrawal from the project. The respondent is given one last chance to upload its reply and written arguments in the complaint within a period of one week i.e. till 06-01-2023. The complainant may upload his written arguments by such time. The matter is reserved for orders suitably after 06-01-2023. If the respondent does not file its reply / written arguments, the matter would be decided ex parte against the respondent."***

4. Pursuant to the aforesaid direction issued by the MahaRERA, the

complainant has uploaded his written submissions on record of MahaRERA on 05-01-2023. The same is accepted and taken on record. However, despite direction the respondent has failed to upload any reply or written submissions on record of MahaRERA within the stipulated time period given by the MahaRERA. Hence, the MahaRERA perused the available record.

5. It is the case of the complainant that he purchased the said flat for total consideration of Rs. 60,00,000/- and paid the advance amount of Rs. 15,00,000/- vide a registered agreement for sale according to which, the respondent promised to handover the possession of the said flat by the end of December 2018. The respondent also obtained Rs. 41,34,123/- from the DHFL Ltd. as disbursement of home Loan amount and as such respondent has received in total an amount of Rs. 56,34,123/- for the said flat. However, the respondent couldn't handover the possession of the flat on time and also as per scheme in which the flat was purchased Further, the respondent is irregular in paying the Pre-EMIs, due to which the complainant has received notices, mails, phone calls from the Bank for the EMI's, despite the fact that the said payment of Pre-EMI's till fit-out of the flat is the responsibility of the respondent. The CIBIL record of the complainant is also affected. The complainant has sent a notice to the respondent asking for compensation for his mental harassment and for not providing the possession of the flat within the stipulated time period. The respondent received the notice but has not responded well to the complainant and still the possession of the flat is not handed over to him. Hence, the complainant has filed this complaint seeking refund of the entire amount paid by him to the respondent. He also prayed that as promised in

subvention scheme the respondent is directed to pay all pending pre EMI's along with delay charges & fine to DHFL.

6. The complainant has filed its written arguments on 05-01-2023 stating that he is receiving calls from the financial institution for recovery of EMI's which are to be paid by the respondent as per the subvention scheme. Further, the concerned institution has also sent a Demand Notice as per the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Act 2002 due to which he is suffering from continuous mental harassment. The complainant has also sent one more notice to the respondent on 24/06/2022 and narrated all the facts to the respondent and also demanded him to pay the EMIs within 15 days from the receipt of the said notice and compensation to the tune of Rs. 50,000,00/- for harassment. But the respondent has never paid the EMI's nor has replied to the said notice. The complainant further stated that the planning for his life and family has been affected mentally and economically very badly. Now it seems that he is not going to get the possession of the flat in further 5 years also, as the respondent has not yet renewed the project registration. Further, the construction of the building is stopped completely and no representative of the respondent is available at the construction site. Hence, he prayed to allow this complaint.

7. The MahaRERA has noticed that the complainant has filed this online complaint before MahaRERA on 21-03-2021. However, till date the respondent has not bothered to file its reply / written submissions/ written arguments to this complaint, though the said complaint is visible to the respondent in its project login on MahaRERA website. Further, as

per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of the complaint in online form, the respondent was liable to upload its reply in a digital form in this complaint within a period of 15 days. However, the respondent till date has not complied with the said directions. Furthermore, though the notices for the virtual hearings held before the MahaRERA dated 28/09/2021, 02/11/2022 and 29/12/2022 were duly served on the respondent, however, it has neither appeared nor filed any reply to this complaint, despite a last opportunity in compliance of principles of natural justice being granted to it. This 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.

8. The MahaRERA has examined the submissions made by the complainant and has also perused the available record. In the present case by filing this complaint, the complainant is mainly seeking relief under section 18 of the RERA for refund of the money paid by him along with interest /compensation on account of the delay in handing over possession of the said flat to him as per the agreement for sale dated 24-03-2017. To support his contentions, the complainant has uploaded the relevant pages of the agreement for sale on record of MahaRERA. The complainant has also prayed for directions to the respondent to settle the issue of Pre-EMI's payable by it to the Bank under the subvention scheme.

9. However, the said contentions of the complainant have remained unchallenged since the respondent has failed to file any reply /written

submissions on record of MahaRERA refuting the same.

10. 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***."

11. 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 and seek refund along with interest and compensation or to remain in the project and to seek interest for the delayed possession.

12. Likewise, in the present case, the complainant being an allottee of this project has filed this complaint seeking refund of the money 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 24-03-2017 entered into between the complainant and the respondent promoter. According to clause no. 5 of the said agreement, the respondent agreed to handover possession of the said flat to the complainant on or before 31-12-2018 with grace period of one year i.e., 31-12-2019. However, the possession of the said flat is not handed over to the complainant on the said date of possession mentioned in the agreement for sale dated 24-03-2017. It shows that the respondent has violated the provisions of section 18 of the RERA. Hence, the complainant is entitled to seek refund along with interest under the said provision of section 18 of the RERA.

13. . In addition to this, in the present case, the MahaRERA has also noticed that while registering this project with MahaRERA, the respondent has mentioned the proposed completion date of this project as 31-03-2019 and revised completion date as 30-12-2021 . Till date, the respondent has neither uploaded form 4 or completion certificate on MahaRERA website nor it has sought any extension in the project period. It shows that the project is still incomplete.

14. The respondent promoter has not cited any sufficient reasons of delay in handing over possession of the said flat to the complainant on the agreed date of possession mentioned in the said agreement for sale

dated 24-03-2017 as well as on the revised completion date of this project i.e. on 30-12-2021. As a promoter, having sound knowledge in the real estate sector, the respondent promoter was fully aware of the market risks when it launched the project and signed the agreement with the home buyers. Further, if the project was getting delayed due to the reasons known to the respondent promoter, then the respondent promoter should have informed the same to the complainant and should have revised the date of possession in the agreement at the relevant time by executing a rectification deed with the complainant. From the record, it prima facie appears that no such steps have been taken by the respondent promoter. It shows that the respondent has not only violated the provisions of section 18 of the RERA, but has also violated the provision of section 12 of the RERA. Hence, the complainant is entitled to seek refund along with interest.

15. In addition to this, the MahaRERA has also noticed that the complainant has uploaded a letter dated 28-04-2018 issued by the respondent for confirmation of the booking under CLP/Flexi subvention funding, whereby it has agreed to and represented to the complainant that he is not required to pay interest on the disbursed loan amount till fit out possession of the said flat to the complainant. Admittedly, in this case, possession either for fit out or for occupation has not been handed over to the complainant by the respondent till date. Hence, the complainant is not liable to pay the pre EMI's interest to the bank under the subvention scheme offered by the respondent.

16. In the present case, the MahaRERA has also noticed that the project

validity period has also lapsed on 30-12-2021 and the respondent till date has neither uploaded the Architect Certificate Form- 4 or completion certificate. It shows that the project is still incomplete and the respondent has not sought any extension in the project.

17. In view of the aforesaid facts, the following order is passed:

a) The present complaint is partly allowed.

b) The respondent promoter is also directed to refund the entire money paid by the complainant towards the consideration of the said flat 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 thereunder, from the date of payment till the actual realisation of the said money to the complainant.

c) Needless to state here that the actual amount as provided under section 18 of the RERA means the amounts paid by the complainant towards the consideration of the said flat only, excluding the stamp duty, registration charges and taxes etc., paid to the government.

d) However, in view of the mitigating circumstances beyond the control of the respondent promoter and also to ensure that the said project is not jeopardised due to the outflow of finances and is completed keeping in mind the interest of the other buyers of the said project at large, the amount of refund along with interest payable by the respondent to the complainants be paid within a period of 6 months in six equal instalments. Till then, the complainant shall have claim on the said flat.

e) The complainant is also directed to execute a cancellation deed before

the payment of last instalment.

f) The respondent is directed to settle the issues with the Bank under the subvention scheme as per its letter dated 28-04-2017.

g) 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.

h) Further, the respondent is also directed to take immediate steps for seeking extension of the said project within 30 days from the date of this order failing which the respondent shall be liable to pay penalty of Rs.1,00,000/-under section 63 of the RERA.

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

(Mahesh Pathak)

**Member – 1/MahaRERA**