BEFORE THE MAHARASHTRA

REAL ESTATE REGULATORY AUTHORITY, MUMBAI

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

Complaint No. CC006000000196221

Birendra Ram Karan Shukla ...Complainant/s

Vs

M/s. Assets Reality ...Respondent/s

MahaRERA Project Registration No. P51700008568

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Complainant present in person
Advocate Yatin Gujrathi for the Respondent

Order

August 05, 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 Respondents are Promoters/Developers within the meaning of Section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016. The Respondents have registered their project **"THE CHALETS AVENUE"** under section 5 of the Real Estate (Regulation and Development) Act, 2016 (**"RERA"**) bearing MAHARERA **Registration No. P51700008568** (hereinafter referred to as the **"said Project"**).

2. On 18.05.2021, the following roznama was passed by this Authority:

"Complainant present in person. Mr. Yatin Gujrathi, Advocate appear for Respondent. The complainant states that he had booked a flat in 2016 and was to get possession March 2018. The complainant also contends that he has paid substantial amount.

The Ld Counsel for Respondent contends that the RERA completion date was extended to December 2018 and subsequently to June 2021. Further, he

contends that Respondent would be able to complete and handover possession by June 2021.

The complainant however contends that in view of delay his financial planning is disturbed and he his finding it difficult to make further payments.

Both parties to attempt to arrive at an amicable settlement by 31/05/2021.

The Ld Counsel for Respondent is requested to take the lead to bring about an amicable settlement. In case no settlement terms are arrived at by 31/05/2021, the matter will be closed for orders."

Though the Ld. Counsel for Respondent was requested to bring about an amicable settlement in the matter, but no settlement is arrived between the parties.

3. The reliefs sought by the Complainant is as follows:

"a) *The Respondent is directed to pay the interest to the Complainant as per Section 18 under Real Estate Regulation and Development Act, 2016. Withing Stiputlated time period as deem fit by the Maharera Authortiy.*

b) Respondent be directed to refund the cost of litigation incurred of the current complaint.

c) Respondent be imposed a penalty for violating the RERA rules and regulations.

d) The Respondent be directed to strictly adhere to Real Estate Regulation and Development Act, 2016 and its Rules and Regulations.

e) Any other relief as this Hon'ble Authority may deem fit and proper."

4. The submission of the parties in the hearing held on 18.05.2021 are as under:

A) The submission of the Complainant is as follows:

a. Vide an agreement of sale dated 02.03.2017, an apartment No. 702 on the 7th floor, in wing "A", admeasuring 503 sq. ft (carpet) in the said Project for a total consideration of Rs.12,07,200/- (including all taxes total amount of Rs.14,51,974/-) (hereinafter referred to as **"said apartment"**)

was agreed to purchase by the Complainant (hereinafter referred to as **"said agreement"**).

b. Total amount paid by the Complainant was Rs.11,77,110/- and balance amount of Rs.2,74,861/- (including tax amount) remains to be paid by the Complainant.

c. The possession date as per the said agreement was March 2018 which till date has not been handed over.

d. The Respondent has till date not provided the possession of the said apartment to the Complainant because of which the Complainant mentioned that his financial planning is disturbed and he his finding it difficult to make further payments.

5. The submissions of the Respondent are as follows:

a. It is admitted that the said apartment has been booked by the Complainant vide the said agreement in the said Project which for agreed consideration.

b. That the Complainant is in default of his slab wise payment. Therefore, Complainant has violated section 19 (6) of RERA and Complainant is liable to pay interest to Respondent under section 19(7) of RERA as stated in the affidavit in reply dated 15.05.2021 @ para 5 & 10.

c. It is also mentioned that ex - partner Mr. Pankaj J. Trivedi of the Respondent had defrauded the firm and misappropriated monies from firm's account and for this reason there is delay in handing over possession as stated in the affidavit in reply dated 15.05.2021 @ para 12.

d. That the 90 % construction is completed and in the near future OC shall be obtained and possession shall be given to the complainant.

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 seek interest for delayed possession of the said apartment?*

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. However, from the plain reading of section 18 it is clear that if the Promoter (Respondent herein) fails to handover possession as per the terms of the agreement for sale 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) and in case the Allotee (Complainant herein) chooses to stay in the said Project he is entitled to claim interest for the delay till handover of possession.

9. Thus, in the present complaint, the following observations are noteworthy:

   a. That the Respondent has not disputed and/ or refuted to the possession date i.e. March 2018 and he has admitted same fact in their reply dated

15.05.2021. Thus, there is no dispute with regard this date of possession by the Respondent.

b. Further the provisions of section 18 are clear that if the Respondent fails to handover possession by the specified date i.e. March 2018 is liable to pay interest to the Complainant and this provision does not provide for any waiver or disclaimer or exception or force majeure event happening. It is an absolute provision. Reasons for delay as stated by the Respondent can be grounds for consideration with regard to seeking extension of the completion date under MahaRERA for the said Project and not otherwise.

10. Thus, from the above observations is it clear that the Respondent has violated provisions of section 18 which is clear from its own admission and hence the Respondent is liable to pay interest to the Complainant for the delay in handing over the possession from 01.04.2018 onwards till date of handing over the possession. Thus, the answer to **issue no. a is affirmative**.

FINAL ORDER

The Respondent is directed to pay interest from 1st April, 2018 at the rate as prescribed *under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules 2017* till the handover of possession of the said apartment.

(Ajoy Mehta)
Chairperson, MahaRERA