

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

Complaint No. CC006000000500486

Rajeshkumar Vishwakarma

..Complainant/s

Vs

Shriraam Pioneer Developers Pvt Ltd.

..Respondent/s

MahaRERA Project Registration No. P51700008949

**Coram: Shri Ashok Alaspurkar
Hon'ble, Adjudicating Officer,
MahaRERA.**

Appearance:

Complainant/s : Appeared in person

Respondent/s : None appeared

**O R D E R
(19.12.2024)**

1. The complainant had booked Flat No. 1105, 11th floor in building no. S4 in the respondent's registered project known as "Pushpanjali Residency" bearing MahaRERA Registration No. P51700008949. By registered Agreement for Sale dated 17.05.2019, possession was agreed to be given on 31.12.2021. The complainant did not get possession of the same and hence he has filed the complaint for compensation. He has pleaded as follows;

"I, Rajeshkumar Vishwakarma, am writing to formally lodge a complaint against Shriraam Pioneer Developers Pvt. Ltd. regarding the undue delay in possession of my property situated at Owale Godhbunder Road, under the project Pushpanjali Residency Phase III, MahaRERA Registration Number P51700008949. I booked the property on 17th May 2019 and, as per the agreement, the possession was promised by 31st December

2021. However, despite repeated assurances and follow-ups, the possession has been delayed significantly without any satisfactory justification from the developer. The delay has caused me immense mental distress, financial strain, and inconvenience. Builder has also changed the layout of the building premises. I booked the flat acc to the pool view but now the pool is removed from there and new building construction has been started which is also reducing the ratio of open area in premises."

2. The complainant's prayer is as follow;

"Compensation request: Considering the prolonged delay and the hardship faced, I request MahaRERA to direct Shriraam Pioneer Developers to compensate me for the delay in possession as per the provisions of the RERA Act and agreement article 4.1."

3. The complaint was taken up for hearing on 05.08.2024, 20.09.2024 and on 15.10.2024. In spite of the link sent, none appeared for the respondent for any of the dates. The complainant has submitted that the respondent has not obtained occupation certificate nor possession is handed over. The complainant has also submitted that the copy of the Complaint and Agreement for Sale were served on respondent by way of hard copy and also email communication. The complainant claims compensation as per Article 4.1 as per Agreement for Sale.
4. On 10.10.2024 the complainant filed a copy of Agreement for Sale, copy of complaint in Form B and synopsis. He has also uploaded the receipt dated 13.03.2017.
5. I have gone through all the documents. The complainant is claiming compensation under Article 4.1 of the Agreement for Sale. The

compensation is sought on account of delay in handing over possession, mental stress, financial strain and inconvenience. The complainant has also pleaded as to change in the layout of the building premises and blocking of pool view by construction of new building as well as reduction of open area in premises. The respondent had never appeared in hearing in spite of the link sent. However, on perusal of all the documents as well as the Agreement for Sale, following facts are evident. Article 4.1 clause (a) refers to non entitlement of claim for compensation for delay etc. for the reasons beyond control of the developer, clause (d) refers to clause (a) and states that in such event reasonable extension of 12 months for giving possession will be available in favour of the respondent sub clause (ii) speaks about the payment of compensation it is as follows;

"Claim for the compensation @ highest cost of marginal lending rate plus 2% per annum for the amounts paid towards the said premises for the delay exceeding the moratorium period of 12 months. The adjustment of compensation shall be done at the time of delivery of possession of the said Premises and not earlier.

However, the compensation shall not be paid if the completion of the said Project in which the said Premises is to be situated is delayed on account of force majeure circumstances mentioned herein after."

12. 6. The clause (g) also refers to circumstances in which the extension for delivery of possession etc. The respondent did not appear to show any of the circumstances as to delay in handing over of the possession. As per the Agreement for Sale possession was agreed to be handed over by 31.12.2021, even if the Covid period of one year between 15.03.2020 and 14.10.2021 is considered and the extension of period of one year is

considered. The possession ought to have been handed over by 31.12.2022. It is apparent from the submission of the complainant that the OC has not been issued nor the possession is handed over till date. When there is agreement between the parties as stated above, the rate of compensation to be determined is as stated in the clause (ii). However, there is specific agreement between the parties that the compensation to be paid has to be adjusted at the time of delivery of possession of the premises and not earlier. As such the compensation is not payable till the possession is handed over. It will not be appropriate to determine the compensation on the grounds other than the delay in handing over the possession as according to the complaint those grounds are still subsisting. It is also required to be considered that there is no specific claim of amount for any of the lapses as referred in the complaint. In circumstances, the present proceeding for compensation is required to be disposed of with liberty to the complainant to take the appropriate steps after obtaining possession in terms of the Agreement for Sale.

ORDER

1. The present complaint as to compensation is hereby disposed of.
2. The complainant is at liberty to file the fresh complaint after getting due possession as per the Agreement for Sale dated 17.05.2019, if required.
3. No order as to costs.

Date : 19.12.2024
Mumbai


(Ashok Alaspurkar)
Adjudicating Officer,
MahaRERA