BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Complaint No. CC006000000161248

Nitin Tripathi

Sachin Tripathi .... Complainants

Versus

M/s Mateshwari Realtors Pvt. Ltd

Paresh Babulal Patel .... Respondents

MahaRERA Project Registration No. P51700010188

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

Ld. Adv. Ramesh Tiwari appeared for the complainants.

Ld. CA. Mr. Ashwin Shah appeared for the respondents.

ORDER

(Tuesday, 17th May 2022)

(Through Video Conferencing)

1. The complainants have filed this complaint seeking directions from MahaRERA to the respondents to refund the entire amount paid by them along with interest/ compensation for the delayed possession 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 a flat No. 405, on 4th Floor, in the respondents'

registered project known as **"Mateshwari Altura B and C Wings"** bearing MahaRERA registration No. **P51700010188** located at Dombivali, Dist. Thane.

2. These complainants have sought reliefs under section 18 of the RERA for refund along with interest and compensation. Hence, vide an interim order dated 22-11-2019 this complaint was transferred to Ld. Adjudicating Officer/ MahaRERA to take appropriate decisions. Accordingly, the parties appeared before the Ld. Adjudicating Officer/ MahaRERA.

3. Thereafter on 13-04-2021, this complaint was again transferred to MahaRERA by the Ld. Adjudicating Officer/ MahaRERA to review the said interim order transferring this complaint to Ld. Adjudicating Officer/ MahaRERA in view of judgment passed by the Hon'ble Maharashtra Real Estate Appellate Tribunal in case of Mr. Pankaj Agarwal.

4. Accordingly, this complaint was heard finally on 25-01-2022 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 both the parties appeared for the said hearing and made their respective submissions. After hearing the submissions

made by both the parties the following roznama was passed: -

"Both the parties are present. This complaint is transferred from Ld. Adjudicating Officer MahaRERA Mumbai in view of the Judgement passed by the Hon'ble Appellate Tribunal in the case of Pankaj Agarwal. Heard the submissions of both the parties. The complainant is seeking refund along with interest and compensation. The complainant also filed application seeking amendment in this complaint. The respondent states that the complainant has joined the respondent no. 2 partner as a party respondent and hence he has to serve the copy of the same to the respondent no. 2 who will have to file its reply to this complaint. Heard the submissions. The hearing is concluded. order is reserved".

5. Pursuant to the said hearing held on 25-01-2022, the learned advocate for the respondents filed an application seeking corrections in the aforesaid roznama dated 25-01-2022 and stated that the said hearing was held for hearing on the amendment application filed by the complainants and not for final hearing. Hence, he requested to pass interim order on amendment application and list the matter for filing reply of the respondent.

6. MahaRERA heard the submissions made by both the parties and also perused the available record. However, it was not possible to decide

the matter expeditiously since the office work was severely impacted by Covid 19 pandemic, heavy workload on the subordinates and shortage of staff.

7. In the present case, during the course of hearing the representative of the respondent no. 1 stated that during the last hearing before the Ld. Adjudicating Officer/ MahaRERA, the complainants have filed amendment application modifying their reliefs, to which the respondent no. 1 has filed reply on record of MahaRERA. The hearing was pending on the said amendment application and in the meantime, this complaint was again transferred to MahaRERA.

8. The complainants on the other hand have stated that initially they filed this complaint they sought reliefs towards possession of their flat along with interest and rent for the delayed possession under section 18 of the RERA. Thereafter they filed an application for amendment of this complaint on record of MahaRERA on 9-12-2020. The complainants stated that they executed registered agreement for sale in respect of the said flat for total consideration of Rs. 30,66,225/- out of which they have paid Rs. 21,90,358/- and as per the said agreement, they were promised the possession of the said flat on or before December, 2016 while as per clause 10 of the said agreement if the respondent fails to give possession then he is liable to refund the amount along with interest from the date of possession till date refund is received by them. They further stated that they are

forced to stay in a rented flat due to the non-possession of the said flat. Since the respondents failed to handover possession, they sent a legal notice calling upon them to either refund the amount with interest or to provide peaceful and vacant possession and to pay the rent of the flat in which they are living however, neither refund was given nor possession was handed over to them. Hence, they initially filed present complaint was praying for possession and interest and not to create third party interest in the said flat. However, now by filing amendment application on record of MahaRERA, they are seeking refund along with interest under the provision of section 18 of the RERA.

9. The respondents have filed their objection to the amendment application stating that it is not maintainable as it changes the nature of relief in its entirety viz. that prayer b) in the original complaint seeks possession be allowed whereas the amendment application seeks to change the relief to claim of refund of principal with interest and compensation. They have relied upon certain judgements passed by the Supreme Court holding that the amendment should not be permitted if it changes the basic structure or nature of the suit.

10. The complainants have filed a reply on record on 14/1/2021 to the objection raised by respondents stating that there is no change in the nature of relief sought except the prayer for possession was withdrawn on the order of MahaRERA. The said complaint was heard

on 18/11/2019 by MahaRERA who was pleased to pass an interim order dated 22/11/2019 with the following observation:

***"The respondents were liable to handover the possession of their flat on or before Dec 2016 but the respondents failed to do so hence, they were now seeking refunds paid by them. Also they have addressed the complaint to be heard before Adjudicating Officer MahaRERA, the respondent also concurred with the prayer for adjudication. H*ence the complaint is transferred to the adjudicating officer.**

11. The citations provided by the respondents are not relevant to the present case as there is no change of nature in the present amended complaint as prayer of possession is only withdrawn on the order of MahaRERA.

12. The MahaRERA has examined the arguments advanced by both the parties and also perused the available records. In the present case, admittedly the complainants by filing this complaint have approached MahaRERA seeking main prayer towards possession of their flat along with interest and compensation/ monthly rent as provided under section 18 of the RERA. However, now by filing this amended application on record of MahaRERA they are seeking amendment in main prayer clause of this complaint from possession of their flat to refund with interest and compensation under section 18 of the RERA,

however their claim towards the delay in handing over possession of their flats remains unchanged.

13. The said amendment in the main prayer clause of the said complaint was already considered by MahaRERA while passing the interim order dated 22-11-2019 as cited hereinabove and the present complaint was referred to the Ld. Adjudicating Officer/MahaRERA. It shows that the said amendment was impliedly allowed by the MahaRERA and the said decision of MahaRERA has not been challenged by the respondents till date. Hence, the MahaRERA feels that there is no substance in the submissions made by the respondents in reply to the said amendment application.

14. Moreover, in the present case, admittedly, the possession was to be handed over to the complainants on or before 31-12-2016, which the respondent promoters have failed to adhered to and hence, the complainants being allottees of this project are entitled to seek relief under section 18 of the RERA, which permits the allottee to seek withdrawal from the project or to be in a project and have interest for the delayed possession.

15. Likewise, in the present case, the complainants have chosen to withdraw from the project. Hence, the MahaRERA is of the view that the complainants are entitled to seek refund along with interest for the delayed possession under section 18 of the RERA.

16. The respondent promoters by citing technical issues cannot be permitted to shy away from their statutory obligation cast upon it under section 18 of the RERA. Moreover, though the respondents by executing the registered agreement for sale have agreed to handover possession of the said flat to the complainants on or before 31-12-2016, even till date they has failed to complete the said project and even failed to obtained occupancy certificate for the complainant's flat. Moreover, no plausible explanation for the said delay has been given by the respondents except by raising mere technicalities.

17. In addition to this the complainants have filed this online complaint with respect to the MahaRERA registered project and hence even if they have joined either promoter 's firm as respondent or its partner as a respondent make no difference as they both are liable under section 18 of the RERA.

18. In view of above facts and discussion, the respondents are directed to refund the entire amount paid by the complainants towards the consideration of their flat along with interest at the rate of SBI's Highest Marginal Cost of funds based Lending Rate (MCLR) plus 2% as prescribed under the provisions of section-18 of the RERA and the Rules made there under from the date of payment till the actual realisation of the said amount to the complainants.

19. However, in view of the mitigating circumstances beyond the control of the respondent promoters 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, it is directed that the amounts of refund along with interest shall be paid to the complainants by the respondent promoters within a period of 6 months from the date of this order in equal instalments.

20. With regard to the payment of interest to the complainants, the MahaRERA further directs that the respondent promoters are 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.

21. With the above directions, the present complaint stands disposed of.

22. The certified copy of this order will be digitally signed by the concerned legal assistant of the MahaRERA. It is permitted to forward the parties a copy of this order by e-mail.

(Dr. Vijay Satbir Singh)

Member – 1/MahaRERA