BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Complaint No. CC006000000198359

Vivekanand .... Complainant

Versus

M/s Mateshwari Realtors Pvt. Ltd

Paresh Babulal Patel .... Respondent

MahaRERA Project Registration No. P51700010188

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

The complainant appeared in person.

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

ORDER

(Wednesday 18th May 2022)

(Through Video Conferencing)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to refund the entire amount paid by him 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. 704, on 7th Floor, in the respondent's registered project known as **"Mateshwari Altura B and C Wings"** bearing MahaRERA registration No. **P51700010188** located at Dombivali, Dist. Thane.

2. This complaint was heard finally on 25-01-2022 along with other connected this complaint of this project 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. The respondent has prayed to dismiss the complaint as it is filed without any grounds and same filed in proper format as prescribed under relevant Rules made under RERA. The hearing is concluded. order is reserved. Final order would be passed after going through the submissions made by both the parties.".

3. 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.

4. It is the case of the complainant he has purchased the said flat on 30-06-2018. The respondent has agreed to handover possession of the said flat to him on or before 31-03-2019. However, it has failed to handover possession of the said flat to him on the agreed date of possession and still the construction is going on. He tried to contact the respondent multiple times about possessions via Email, Phone, Message, what's app etc, but he has not received any response from the respondents, though he has paid 85% amount to the respondent. Hence, he was compelled to file this complaint seeking refund along with interest under section 18 of the RERA.

5. The promoter M/s. Mateshwari Realtors has filed preliminary objection on maintainability of complaint since the complainant has not filed the complaint in proper format and has failed to bring on record statement of facts, grounds and relief in proper descriptive manner.

6. The respondent has filed its reply stating it has raised preliminary objections dated 26/10/2021 on the maintainability of the complaint on the ground that Rule 6 of the said rules is not followed while filing the complaint. The respondent was directed to file its reply within 10 days and the next date of hearing was fixed on 14/10/2021. Therefore, the complaint deserves to be dismissed on the ground of is incomplete facts, lack of evidences which are essential ingredients to establish that complainants are being aggrieved u/s 31 of the Act and hence the complaint filed is illegal and void ab initio and should

be dismissed with cost.

7. The MahaRERA has examined the submissions made by both the parties and also perused the available record. By filing this complaint, the complainant has approached MahaRERA seeking refund along with interest and compensation alleging the violation of section 18 of the RERA by the respondent as the possession has not been handed over to him on the agreed date of possession mentioned in the agreement for sale signed between him and the respondent.

8. As far as these technical issues with regard to the complaint filed by the complainant, the complainant has clarified that as laymen they were not aware of the procedure for filing of the complaint before the MahaRERA and hence he could not file the same as per Rule 6 as cited by the respondent.

9. In this regard, the MahaRERA has perused the online complaint filed by the complainant along with the documents attached therewith. In this complaint, the complainant has mainly sought refund of the money and has also uploaded the relevant copy of agreement for sale. The said relief and supportive documents make it clear that the said relief is claimed by the complainant under section 18 of the RERA. The respondent being promoter of this MahaRERA registered project should have been aware of the basic information about his allottees and their status. By raising such technicalities, the respondent cannot shy away from the responsibility cast upon him under the provisions of RERA. Once he has signed the agreement for

sale with the allottee, he is bound by the same, whether it was executed prior to RERA or after RERA.

10. Moreover, though the respondent has stated that the complaint is not filed under Rule 6 of the Maharashtra Real Estate (Regulation and Development) ((Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017, however there is no provision under RERA which provides for any prescribed form of filing of the complaint before the Authority. Moreover, section 31 of the RERA clearly provides that any aggrieved person can file complaint with MahaRERA for violation of any of the provision of the RERA.

11. Even if the preliminary issues of maintainability of this complaint cited by the respondent are accepted for the moment, the provisions of RERA give MahaRERA the jurisdiction to regulate its own procedure. In this regard, the MahaRERA has perused the provision of section 38 of the RERA, which reads as under:

38. (1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.

(2) The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate

its own procedure.

(3) Where an issue is raised relating to agreement, action, omission, practice, or procedure that—(a) has an appreciable prevention, restriction, or distortion of competition in connection with the development of a real estate project; or (b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely, then the Authority, may Suo motu, make reference in respect of such issue to the Competition Commission of India."

12. The aforesaid provision of section 38 (2) specifies that the MahaRERA has power to regulate its own procedure in compliance of principles of natural justice. Hence, if such power could be exercised by MahaRERA in that event, the MahaRERA has power to consider this complaint Suo moto on merits without considering the technical issues raised by the respondent.

13. In view of the aforesaid explicit provision under RERA, the MahaRERA does not find any merits in the preliminary issues raised by the respondent with regard to maintainability of this complaint. Hence, the same stands rejected.

14. Considering the claims of the complainant on merits, the MahaRERA has noticed that the complainant has submitted the relevant pages of the registered agreement for sale dated 26-07-2018 on record of MahaRERA showing the fact that the agreed date of possession. As

per clause no. 9.1 of the said agreement for sale, the respondent was liable to handover possession of the said flat to the complainant on or before 31-03-2019 and clause no. 9.2 he was entitled to seek 6 months grace period. It shows that as per the said agreement for sale, the respondent was liable to handover possession of the said flat to him on or before 30-09-2019. Admittedly, on that date the possession was not handed over to the complainant and till date the project is incomplete.

15. The respondent though filed the reply raising technical issues has not cited any valid reasons of delay in handing over possession of the flats to the complainant, though the complaint has been filed in the year 2021. Still the respondent kept silent on this complaint and not even bothered to file its reply on merits though the basic reliefs sought by the complainant is for refund. Hence, the MahaRERA cannot wait for an unreasonable period for reply of the respondent and keep the complainant allottees in suffering situation when the respondent himself has admitted the proposed date of completion of this project as 31-12-2016 as disclosed on MahaRERA webpage.

16. 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."

17. The aforesaid explicit provisions under section 18 of the RERA clearly, specifies 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.

18. 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.

19. In view of above facts and discussion, the respondent is directed to refund the entire amount paid by the complainant towards the consideration of their respective flats 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 RERA and the Rules made there under from the date of payment till the actual realisation of the said amount to the complainant.

20. 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, it is directed that the amounts of refund along with interest shall be paid to the complainant by the respondent promoter within a period of 6 months from the date of this order in equal instalments.

21. 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.

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

23. 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