BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

1.Complaint No. CC006000000220847

Subhash Bhoir ... Complainant

Versus

Nimesh Patani

(M/s. Neeleshwar Builder and Developers) ... Respondent

Along with

2.Complaint No. CC006000000251633

Vinod Verma ... Complainant

Versus

M/s. Neeleshwar Builder and Developers ... Respondent

MahaRERA Project Registration No. P51800021643

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

The complainants appeared in person.

Ld. Adv. Rohan Pawaskar appeared for the respondents.

ORDER

(Thursday, 7th December 2023)

(Through Video Conferencing)

1. The complainants above named have filed these two separate online complaints before the MahaRERA on 16/04/2022 and 29/06/2022 respectively seeking directions to be given to the respondent-promoters to handover possession of their respective flats along with interest on account of delay as per the provisions of section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the

booking of their respective flats in the respondent – promoter's registered project known as **"JAI AMBE SRA CHS LTD"** bearing MahaRERA registration no. **P51800021643** located at Jogeshwari West, Andheri, Dist. Mumbai.

2. These complaints were clubbed together and heard on several occasions and the same were heard finally on 18/07/2023 as per the Standard Operating Procedure dated 12-06-2020 issued by the MahaRERA for hearing complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing. Accordingly, the both the parties appeared for the said hearing and made their respective submissions.

3. After hearing the arguments of both the parties, the following Roznama was recorded in these complaint's –

"Both the parties are present. The respondent has filed its reply to these complaints along with its written arguments. However, the complainants have not filed their rejoinder or written arguments despite directions in the previous hearing. Therefore, the complainants are granted two weeks time i.e. till 01-08-2023 to file their rejoinder to the reply of the respondent along with their written arguments. The respondent has argued that the project has been inordinately delayed due to delay by the status quo order granted by HPC, SRA. Further, the respondent has pointed to the case law of the Hon'ble Supreme Court as well as NCDRC judgement on refund, that after such a long delay, the best course of action for the allottee is to seek refund along with interest and compensation. Both the complainants have paid substantial amounts as consideration (85% in Sr. No. 4 and 70% in Sr. No. 6), therefore, both the complainants pray for possession along with interest and compensation and also to restrain the respondent from seeking escalation since the agreements for sale were signed in 2005 (for Sr.

No. 4) and in 2013 (for Sr. No. 6). The respondent is also granted 2 weeks' time i.e. till 15-08-2023 to file sur - rejoinder, if any, to the rejoinder of the complainants. In view of the above, these matters are reserved for orders suitably after 15-08-2023 based on the arguments of both the sides in the hearings as well as reply, rejoinder, sur - rejoinder and written arguments filed in the complaints."

4. It is the case of the complainant at sr. no.1 that he had agreed to purchase the said flat vide a registered agreement for sale dated 28/12/200 and that he has already paid the entire consideration amount to the respondent. As per the said Agreement for Sale, the respondent had agreed to handover possession of the said flat on or before 31st December 2006. The complainant further stated that, despite receiving the consideration amount, the respondent is demanding additional acceleration cost of Rs. 3250/- built up square feet area which amounts to Rs.36,56,250/- and interest thereon, from the complainant. The complainant stated that he is unwilling to pay the amounts demanded by the respondent as the respondent has failed and neglected to complete the said project. Hence, the complainant has sought directions to be given to the respondent to handover possession along with interest and compensation under section 18 of the RERA.

5. It is the case of the complainant at Sr. no.2 that he had agreed to purchase the said flat vide a registered agreement for sale executed on 06/03/2013 for a total consideration of Rs. 1,23,12,000/- out of which he has already paid a total consideration of Rs. 66,07,530/- to the respondent and balance amount of Rs.59,07,530/- was disbursed from DHFL Ltd. As per the said agreement, the respondent has agreed to handover possession of the said flat on or before 31st March 2014. Thereafter, the complainant received a message for demand of additional amount to complete the said project. Pursuant to the same, the

complainant received a demand letter from the respondent demanding additional escalated cost of Rs. 3250/- per sq. fts from the complainant. The letter further stated that failing to pay the additional amount, the respondent will be at no choice but abandon the said project and to terminate the said agreement. The respondent kept on sending demand notices to the complainant for the additional escalated cost whereas the project should have been completed in 2014. Thereafter, the complainant received a termination notice from the respondent on 30th September,2019. The complainant stated that he replied to the said termination notice on 1st November, 2021. The complainant contended that he is not in position to pay the additional escalated amounts demanded by the respondent as in the year 2013 itself the complainant has paid 70% of the total consideration amount and has been paying Rs.60,000/- per month as and by way of interest on the loan facility availed for the same. The complainant submitted that the respondent has failed and neglected to complete the said project and thus has violated section 18 of the RERA. Hence, the complainant is seeking possession along with interest and compensation.

6. The respondent uploaded its written arguments and written statement on 28-02-2023 and 14-03-2023 in complaint at sr.no. 1 and on 14-03-2023 and 19-05-2023 in complaint at sr. no. 2. The respondent at the very outset contended that these complaints filed by the complainants are false, frivolous, and bad in law, as correct facts are not placed on record. Further, the respondent stated that the cause of action has not arisen yet, and hence, the question for delay in handing over the flats to the complainants does not arise as the completion date on the MahaRERA website is 30/06/2023. Therefore, these complaints are pre-mature. The respondent also stated that the said project was registered with the MahaRERA on 16/07/2019. Thereafter, the MahaRERA extended the

completion date till 30/06/2023 and in such circumstances the delay in possession of the said flats of the complainants are being novated by operation of law. Therefore, the complainants are not entitled for interest under section 18 of the RERA.

7. The respondent also stated that the agreements for sale of the complainants are now frustrated for reasons of inadvertent delay in construction of the project which is beyond the control of the respondent. The respondent further stated that the complainant at sr.no.1 himself is the defaulter in making regular payments and respondent never charged any interest on delayed payments. The complainants availed housing loan for purchase of the respective flats. However, the bank stopped the disbursement of loan amount after making 1st disbursement for reasons unknown to the complainant at sr.no.1. In respect of sr. no. 2 as well the bank has stopped payments since 2013. Accordingly, as per stage wise construction the respondent issued demand notice to the complainants. However, the complainant at sr. no.1 has till date paid only 73% as against the demand of 95% of the total consideration. In respect of complainant at sr. no. 2, the respondent claimed that it has received only 70% of the total consideration amount.

8. The respondent also pointed out the reasons for delay in possession and stated that the said project being SRA project was hit by series of litigations consequently resulting into delay in completion of the sale building. The respondent further stated that the said project was stayed by the High Power Committee in the year 2010, which was vacated in the year 2020. Thereafter, the said project was hit by Covid-19 pandemic, resultantly the cost of construction has escalated over the years. Hence, the respondent pointed out that the delay was beyond its control for completion of the said project. The respondent further stated that they have completed 17th slab and completed all

internal amenities and have initiated the process of part occupancy certificate upto the 14th floor.

9. The respondent further stated that the members of association of flat purchasers have paid 95% of total consideration and Rs. 3,250/- per sq.ft built -up area towards additional cost and hence, the complainants also are liable to pay the additional escalated cost which are yet to be paid by the complainants to the respondent.

10. The respondent further submitted that since the complainants have been waiting for unreasonable period of more than 14 years for seeking possession of their flats and since there is absolute uncertainty in handing over the possession of flat on a specific date the respondent is ready and willing to refund the entire consideration amount to the complainants along with 9% interest as contemplated in the then Housing Policy (i.e. Maharashtra Ownership of Flats Act, 1963). In support of this contention, the respondent has referred to the case laws of the Hon'ble Supreme Court as well as NCDRC judgement on refund, that after such a long delay, the best course of action for the allottee is to seek refund along with interest and compensation.

11. The complainant at Sr. no.1 had not uploaded any rejoinder to the written arguments of the respondent.

12. The complainant at Sr. no. 2 uploaded his re-joinder to the written arguments of the respondent on 01/08/2023. The said complainant has refuted all the contentions pleaded by the respondent and at the outset has pointed out that none of the documents which were mentioned to be attached in the reply are uploaded, irrespective of the communication in respect of the same by the complainant's advocate. He further stated that the respondent was to give

the possession of the said flat long back but there has been inordinate delay, and also several new possession dates were given to him by the respondent. Also, this complaint is not pre-mature as the date of possession mentioned in the agreement for sale has already lapsed. The delay was caused by the respondent for timely construction of the said project and hence, the respondent was bound to seek extension of time from the MahaRERA to complete the project. Hence, the complainant stated that the delay is caused due to the gross mismanagement at the behest of the respondent. Further, if the project was stayed by the order of the High Power Committee, the respondent should not have entered into the agreement with him in the year 2013. The complainant also refuted the respondent's contention that the delay was due to several litigations of the respondent and submitted that the respondent is bound to abide by the terms of the agreement for sale executed and hence should have given the possession as agreed in the agreement for sale. Further, the complainants contended that they have availed loan facility and the bank has already disbursed 70% of the amount and since there was no progress in the project since 2013, the bank has not disbursed further amount into the accounts of the respondent.

13. Further, the complainants contended that some of the allottees might have paid the escalated cost of construction, as they had purchased the flats in 2003 at a very meagre price and hence, they were in a position to pay the escalated cost of construction demanded by the respondent. However, the same is not applicable to the complainant. Furthermore, the complainant claimed that the demand notices issued by the respondent are unlawful and do not hold any legal sanctity.

14. The complainant further pointed out that the respondent had failed to provide

or show how many actual purchasers paid the escalated amounts to the respondent. The complainant further submitted that the claim of the respondent in respect of completion of the 17th slab is not supported by any documentary evidence.

15. In respect of the case laws of the Hon'ble Supreme Court as well as NCDRC judgement on refund, the said complainant submitted that the same are not applicable to this complaint for the reason that in these judgments, the complainant/petitioner therein had specifically prayed for refund and in this case the complainant has no-where prayed for refund. The complainants have relied on the order dated 11-09-2020 passed by the MahaRERA in CC006000000110770 filed by the other allottees of this project to support their claims, wherein the said complainants-allottees were awarded interest on delayed possession. Hence, the complainant prayed that the complaint of the complainant be allowed.

16. The MahaRERA has examined the submission made by both the parties and also perused the available record. The complainants herein who are the allottees of this project by filing these complaints have approached the MahaRERA mainly seeking reliefs under section 18 of the RERA towards the possession of their flats along with interest and compensation on account of delayed possession. They further claimed that they are not liable to pay any escalation price sought by the respondent promoter. The said claims have been sought by them by virtue of the registered agreements for sale dated 28-12-2005 and 6-03-2013 respectively.

17. The respondent promoter on the other hand has refuted the said claims of the complainants by filing its detailed reply on record of MahaRERA. It has mainly contended that the project has been inordinately delayed mainly due to the

status quo order granted by High Power Committee of SRA, Covid-19 pandemic etc. Further, the respondent has also contended that there are various case laws of the Hon'ble Supreme Court as well as NCDRC on the issue of refund, when there is inordinate delay in completion of the project. Hence, it has contended that since the project is inordinately delayed the best course of action for these complainant- allottees is to seek refund along with interest and compensation. As far as the escalation of price at Rs. 3250/- per sq.ft., the respondent has contended that the association of the allottees formed in this project has agreed to pay the same. Hence, the complainants being part of the said association, are also liable to pay the same.

18. From these submissions made by both the parties and after perusing the available record, the MahaRERA has prima facie noticed that admittedly, there are registered agreements for sale dated 28-12-2005 and 06-03-2013 (respectively) duly signed by both the parties. By signing the said agreements for sale, the respondent promoter has agreed to handover possession of the said flats to the complainants on or before 31-12-2006 in complaint at sr. no. 1 and on 31-03-2014 in complaint at sr. no.2. However, admittedly the possession of the said flats has not been handed over to these complainant-allottees.

19. 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."

20. 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 or to continue in the project. If the allottee intends to withdraw from the project, the promoter on demand of the allottee is liable to refund the entire amount paid by the allottee along with interest and compensation as prescribed under RERA. If the allottee is willing to continue in the project, in that event, the promoter is liable to pay interest for the delayed possession.

21. Likewise, in the present case, the complainants have decided to stay in the project and hence, they have filed this complaint seeking interest and compensation on account of the said delay caused by the respondent in handing over possession of the said flats to them.

22. As far as the claim of compensation sought by the complainant, the MahaRERA is of the view that as stated hereinabove the complainants in this case are willing to continue in the project and to have possession of their flats. Hence, in view of the aforesaid explicit provision of section 18(1) of the RERA, they are entitled to seek interest on account of delay. Therefore, their claim

for compensation stands rejected. Needless to state herein that the MahaRERA has no power to grant any compensation as per the law laid down by the Hon'ble Supreme Court of India in case of M/s. Newtech Promoters and Developers Pvt Ltd vs State of U.P and Ors.

23. In this case, the MahaRERA has noticed that the respondent herein apart from the reasons of delay has raised mainly two issues with regard to these complaints filed by the complainants and has prayed for dismissal of these complaints viz i) The date of completion mentioned on the MahaRERA website while registering this project with the MahaRERA supersedes the date of possession mentioned in the agreements for sale signed with these complainants under the provisions of MOFA, ii) There is inordinate delay in completion of this project and hence as per the case law of Hon'ble Supreme Court of India as well as the NCDRC, the only option the complainants can raise is refund along with interest and compensation.

24. As far as the contention raised by the respondent at para (i) above that the RERA completion date mentioned in the project is applicable to the complainants has no legal substance, in view of the order dated 6-12-2017 passed by the Hon'ble Bombay High Court in the case of Neelkamal Realtors and Suburban Pvt Ltd versus Union of India and Ors. wherein the Hon'ble Court has held that the RERA cannot rewrite the contracts signed by and between the parties under the provisions of MOFA.

25. As far as the issue at para (ii) raised by the respondent, the MahaRERA is of the view that the facts and merits of each case are different and hence the respondent cannot seek any benefit by citing the ratio held the judgments of Hon'ble Apex Court. Further, the aforesaid explicit provisions of section 18 of

the RERA gives the allottee choice either to withdraw from the project or to remain in the project in case the promoter violates the terms and conditions of the agreement for sale. Likewise, in this case admittedly, the respondent has failed to handover possession of the said flats to these complainants on the agreed dates of possession mentioned in the said agreements for sale. Hence, if the allottees choose to remain in the project, the respondent cannot force them to withdraw from the project and to seek refund along with interest and compensation. Therefore, the MahaRERA does not find any merits in such contentions raised by the respondent.

26. As far as the substantive issue raised by these complainants about interest on account of delayed possession, as pointed out by the complainants herein, the MahaRERA has noticed that in this project, the Ld. Erstwhile Member-1/MahaRERA has passed an order on 11-09-2020 in Complaint No. CC006000000110770 filed by similarly placed complainant-allottees viz. Mrs Rajni Seru and Mr Rohit Seru. In the said order, the Ld. Erstwhile Member-1/MahaRERA has considered the facts and merits of the case and issued following observations and directions:-

"8. With regard to the delay in the project, the respondent has stated that the project got delayed mainly due to the litigation filed by the slum dwellers. The said reasons cited by the respondent have been denied by the complainants stating that the same got disposed of in the year 2012, however no steps were taken by the respondent from the year 2012 to complete the project.

9. With regard to the above issues as contended by the respondent in response to the complaint, the MahaRERA feels that the reasons cited by the respondent do not give plausible explanation. As a promoter, having sound knowledge in the real estate sector, the respondent was fully aware of the

market risks when it launched the project and signed the agreements with the home buyers. Moreover, if the project was getting delayed due to litigation, in that event it could have approached the competent forums including the court of law for expediting the required permissions for completion of this project. However, no such steps seem to have been taken by the respondent. Further the MahaRERA feels that being a promoter of the project, it was the duty of the respondent promoter to obtain the necessary permissions from the competent authority. The allottees have nothing to do with the same.

10. *Further, if the project was getting delayed due to the aforesaid reasons cited by the respondent, then the respondent should have informed the same to the complainant and should have revised the date of possession in the agreement at that relevant time or should have offered refund of the amount to the complainants, if the said delay was not acceptable to them. From the record, it prima facie appears that no such steps have been taken by the respondent. Hence now it cannot take advantage of the said reasons of delay.*
11. *.It is clear from the above discussion that the reasons cited by the respondent for the delay in completion of the project do not give any satisfactory explanation. Moreover, the payment of interest on the money invested by the home buyers is not a penalty, but a type of compensation for the delay as has been clarified by the Hon'ble High Court of Judicature at Bombay in its judgment dated 6th December, 2017 passed in W.P. No. 2737 of 2017. The respondent is therefore liable to pay interest for the period of delay in accordance with the terms and conditions of agreement.*
12. *Even if all the factors pointed out by the respondent due to which the project got delayed are taken into consideration, there was enough time for the respondent to complete the project before the relevant provisions of The Real Estate (Regulation & Development) Act, 2016 which came into*

force i.e. on 1st May, 2017. However, after commencement of RERA the promoter is liable to pay interest for the delayed possession under section 18 of the RERA.

13. *.In this case the MahaRERA has observed the agreed date of possession stipulated in the agreements including the grace period was 30-06-2007. However, the complainants have not taken any steps to agitate their grievances by approaching any competent court of law nor has taken any legal action against the respondent till the year 2019 for such longer period of 13 years under the provision of MOFA prevailing at that time. Their demand for interest retrospectively was not justified. However, during the course of hearing, the complainants have stated that they are ready to accept the interest for the delayed possession from the date of commencement of RERA i.e. 1-05-2017.*

14. *With regard to the escalation sought by the respondent in this project due to increase in construction cost and other charges, the MahaRERA feels that the MahaRERA has no jurisdiction to give directions on the said issue. It is for both the parties to decide the same as per their agreement or agreed mutually.*

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

a) In view of above facts and discussion, the respondent is directed to pay interest to the complainants from 1st May, 2017 for every month till the actual date of possession on the actual amount paid by the complainants at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2% as prescribed under the provisions of section 18 of The Real Estate (Regulation and Development) Act, 2016 and the Rules made there under.

b) 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.

c) With regard to the issue raised by the respondent promoter for default in making payment by the complainant, the MahaRERA is of the view that in case of any default on the part of allottee or the promoter, either party would be entitled to seek interest for such a default as prescribed under section 18 of the RERA. Accordingly, if the complainants have made any default in timely payment as per the agreement for sale, the complainants are also liable to pay interest for the delayed payment at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2% as prescribed under RERA and the Rules made there under.

d) With the above directions, the complaint stands disposed of."

27. On bare perusal of the aforesaid order passed by the Ld. Erstwhile Member-1/MahaRERA, it appears that all the reasons of delay cited by the respondent, the non-payment of the outstanding dues by the allottees and also the issue of escalation in price sought by the respondent promoter has already been considered by the MahaRERA. Accordingly, the respondent promoter has been granted extension in date of possession mentioned in the agreement of sale signed under MOFA till 1-05-2017. Hence, these complainants being similarly placed complainant-allottees are also entitled to seek similar reliefs at par with the said allottees.

28. In addition to this, the MahaRERA has also noticed that in complaint at sr. no. 2, the respondent has issued the termination notice to the said complainant (for cancellation of the agreement for sale) on 30-09-2019 for non-payment of outstanding dues, to which the said complainant has given his reply on 1-11-2021. In this regard, it is pertinent to note that in such scenario when the respondent who is in continuous violation of section 18 of the RERA, cannot

take such highhanded steps for termination of the agreement for sale merely on the ground of non-payment of outstanding dues. Needless to state here that if there is any default on the part of the complainant allottee (as applicable), the respondent can seek interest on account of such delayed payment as provided under section 19(7) of the RERA. Hence, any such termination if done by the respondent is held to be invalid.

29. As far as the issue of escalation of price of Rs. 3250 /- per sq. ft. raised by the complainants, the MahaRERA is of the view that the said issue has already been dealt with by the Ld. Erstwhile Member-1/MahaRERA in the aforesaid order dated 11-09-2020. Hence, no further direction is required to be given in this regard.

30. In view of these facts , the following order is passed:-

a. Both these complaints are partly allowed.
b. The claim of compensation sought by these complainants stands rejected in view of the observations made in aforesaid para no.22.
c. The respondent is directed to handover the possession of the said flats to the complainants by obtaining the OC at the earliest.
d. The respondent is also directed to pay interest to the complainants from 1st May, 2017 (as per the earlier order dated 11-09-2020 of MahaRERA stated in aforesaid para-no.26) for every month till the actual date of possession of the said flats to the complainants on the actual amount paid by the complainants at 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.

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

f. With regard to the issue raised by the respondent promoter for default in making payment by the complainants (as applicable), the MahaRERA is of the view that in case of any default on the part of allottee or the promoter, either party would be entitled to seek interest for such a default as prescribed under section 18 of the RERA. Accordingly, if the complainants have made any default in timely payment as per the agreements for sale, the complainants are also liable to pay interest for the delayed payment at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2% as prescribed under RERA and the relevant rules made thereunder.

g. 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 interest shall be paid by the respondent promoter to the complainants after obtaining the full occupancy certificate. Also, the respondent promoter at the time of possession of the flats to the complainants, may set off the outstanding dues with the interest amount payable by it to the said complainants and the balance amount if any, by either party be paid at the time of possession.

h. With regard to the payment of interest to the complainants, 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, 18th May, 2020 and 6th August, 2021 issued by the MahaRERA and the Notification/Order which may be issued in this regard from time to time.

31. With these directions, both these complaints stand disposed of.

(Mahesh Pathak)

Member – 1/MahaRERA