

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

Complaint No. CC006000000089695

Rajesh Kumar Singh

Seema Singh

.... Complainants

Versus

M/s R. S. Enterprises through Proprietor

Mr Suresh Ramchand Vankvani

.... Respondent

MahaRERA Project Registration No. P52000007221

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

Ld. Adv. Kunal Mhaskar appeared for the complainant.

Ld. Adv. Harshad Bhadbade appeared for the respondent.

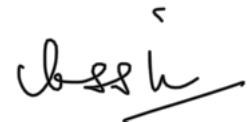
ORDER

(Monday, 14th February 2022)

(Through Video Conferencing)

1. The complainants have filed this complaint seeking directions from MahaRERA to the respondent to handover the possession of the flat and to pay interest 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 booking of a flat in the respondent's registered project known as "**Vankvanis Ela**" bearing MahaRERA registration No. **P52000007221** located at Ulwe, Dist. Raigarh. The complainants also sought refund of the excess amount taken by the respondent and the compensation of the deficit area provided by the respondent in their flat.

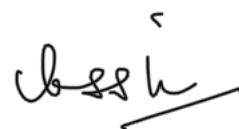
2. This complaint was heard on 15-01-2020 in presence of both the parties,



when the complainants informed MahaRERA that the respondent promoter has reduced the area of their flat and hence sought the refund of the additional amount paid by them along with compensation under the provisions of section 18 of the RERA. Hence, vide an interim order dated 15-01-2020, this complaint was transferred to Ld. Adjudicating Officer/ MahaRERA Mumbai to decide the claim of the complainants for refund/ compensation under section 18(3) of the RERA.

3. Accordingly, both the parties appeared before the Ld. Adjudicating Officer/ MahaRERA, Mumbai and after hearing the arguments and submissions made by both the parties, the Ld. Adjudicating Officer/MahaRERA was pleased to pass an order on 4-02-2021 and granted interest for the delayed possession to the complainants under section 71(3) of the RERA.
4. Being aggrieved by the aforesaid order dated 4-02-2021 passed by the Id. Adjudicating Officer/MahaRERA, the respondent preferred an appeal No. AT006000000053108 before the Hon'ble Maharashtra Real Estate Appellate Tribunal. In the said appeal, the hon'ble Appellate Tribunal pleased to pass an order on 13-01-2022, and partly allowed the said appeal with following observations:

“10) It is significant to note that initially complaint was filed before the Authority and by interim order it was transferred to the Adjudicating Officer. As per Rule 6 of The Maharashtra Real Estate (Regulation and Development) (Recovery of interest, Penalty, Compensation, fine payable, Form of Complaints and Appeal, etc) Rules, 2077 (for short "Rules of 2017"). Complaint to Authority is to be filed in form "A" and as per Rule 7 complaint for compensation is to be filed before Adjudicating Officer in form "B". In the case on hand combine complaint for compensation and other reliefs came to be filed by complainants and

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final y complaint has been decided by Adjudicating Officer.

11) Needless to state that where the law requires the Authority to act or decide, it is implicit that exercise of power by the said Authority should be done objectively, fairly and reasonably. The exercise of power vested with the Authority requires reasonable approach and it is expected of the Authority to be guided by the principles provided in the statute or rules or regulations

12) In the case on hand despite exhaustive pleadings particularly in respect of refund and interest and comprehensive submissions made by the parties , Authority by interim order transferred the entire complaint seeking various reliefs than compensation to Adjudicating Officer. The statutory framework under the Act of 2016, subject matter to be dealt with and judicial pronouncement of the Hon'ble Supreme Court in case of Newtech (supra) make it clear that impugned order does not sustain in law. The same is therefore liable to be interfered with in this appeal. Hence, the following order –

(i)Appeal is partly allowed.

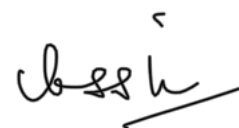
(ii) Impugned Order dated 4th February 2021 is set aside.

(iii) Complaint No.CC006000000089695 in respect of reliefs other than compensation is restored to the file of Authority for its disposal in accordance with law.

(iv) Liberty to appellants to take appropriate recourse to get their grievances regarding compensation redressed as per law.

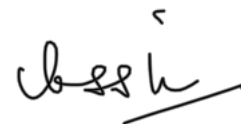
(v) Parties to appear before MahaRERA on 31st January 2022.”

5. Pursuant to the aforesaid directions, this complaint was scheduled for hearing before the MahaRERA on 31-01-2022 as per the Standard



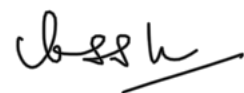
Operating Procedure dated 12/06/2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions, if any. Accordingly, both the parties appeared for the said hearing and made their respective submissions. The MahaRERA heard the submissions made by both the parties and also perused the available record.

6. During the course of hearing, the complainants have mainly submitted that they have originally filed the complaint in form A and prayed for compensation and interest for the delayed possession. The same was transferred to Ld. Adjudicating Officer/MahaRERA (hereinafter referred to as the AO/MahaRERA) vide an interim order dated 15-01-2020 as the compensation part was included in the said complaint. Thereafter the Ld. AO/MahaRERA has decided the same vide an order dated 04/02/2021, whereby the Ld. AO/MahaRERA has awarded interest to them from the year 2018 till 2020. Thereafter, the respondent preferred an appeal against the said order before the Hon'ble Maharashtra Real Estate Appellate Tribunal in view of the Newtech's order passed by the Hon'ble Supreme Court of India.
7. Accordingly, the Hon'ble Appellate Tribunal set aside the order dated 4-20-2021 passed by the Ld. AO/MahaRERA and sent back this matter to MahaRERA. The matter is now listed to decide it afresh. The complainants further submitted that they have purchased the said flat in the respondent's project vide an agreement for sale dated 21-02-2017. The said flat was booked for total consideration amount of Rs. 41,46,000/- out of which 98% of the consideration has already been paid to the respondent. As per the said agreement for sale, the respondent has agreed to handover possession of the said flat to them on or before March, 2018. However, it has failed to



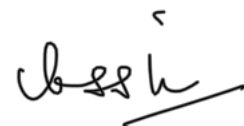
give possession. Thereafter, it has obtained the occupancy certificate on 24-01-2019. Despite the OC being received for the project, the respondent did not handover the possession of the flat to them. Hence, they approached the respondent, but the respondent started demanding excess payment from them under the context of development charges and other miscellaneous charges without issuing any demand letter. The respondent was expecting them to make the payment, but they refused to make payment in cash and without demand letter. The complainant agreed to make the payment under protest subject to outcome of the said complaint. Accordingly, they have taken possession of their flat on 27-02-2020.

8. The complainants further stated that after taking possession, they found that there is change in carpet area of their flat. They further stated that as per the agreement for sale the area of flat was 529 sq. ft. and there is a deficiency of around 74.68 sq. ft. carpet area. Hence the complainants are seeking compensation for the deficit in flat area.
9. The complainants further submitted that, the respondent has not allotted the car parking and it has demanded the development charges over and above agreement for sale. The complainants further stated that at the time of execution of the agreement for sale, they have paid a sum of Rs. 4,00,000/- towards all the Miscellaneous Charges. The respondent has again demanded the said amount from them. However, they have made the said payment on the pretext of getting the possession but that was under protest. Therefore, the complainants are seeking refund of the amount of Rs. 3,75,000/- that has been paid towards the development charges.
10. The respondent on the other hand has refuted the claim agitated by the complainants in toto. It has mainly stated that the possession was promised in the month of March 2018, and the building was complete by June 2018



and it has also applied for occupancy certificate to the competent authority. Moreover, it has uploaded architect's certificate and all other permissions on MahaRERA website. However, the occupancy Certificate got delayed due to the reasons that at relevant time there were elections going on. The said delay is caused by the government authorities and not because of the respondent. Further, it has received the same on 24-01-2019 and it immediately offered the possession to the complainants. The respondent also placed on record a letter addressed to the competent authority by its Architect saying that this project is complete in all sense and a copy thereof has also uploaded on record of MahaRERA. The respondent further stated that the agreement for sale provides that if there is a delay because of the delay on the part of the authority, the same is not attributable to the respondent, therefore the respondent is entitled to claim that delay. Therefore, the complainants cannot claim any interest for the delay which is done by the authority to grant occupancy certificate. As far as area dispute is concerned, it has stated that the agreement for sale was entered into between the parties, under the provisions of MOFA, now the area mentioned in MahaRERA is as per RERA. Hence, there is no deficit area in the complainants as alleged by the complainants.

11. The MahaRERA has examined the submission made by both the parties and also perused the available record. In the present case by filing this complaint, the complainants are mainly seeking interest for the delayed possession under section 18 of the RERA and the refund of the alleged excess amount taken by the respondent towards the development charges and compensation for the deficit area in their flat. The said claim has been disputed by the respondent stating that there is no violation of section 18 of the RERA by it and the said delay is attributed on the part of competent authority who delayed the occupancy certificate.



12. Admittedly, the occupancy certificate has been obtained for the complainants' flat on 24-01-2019 and they have taken possession of their flat on 27-02-2020, during pendency of this complaint. The complainants have contended that they have taken possession of their flat by paying the outstanding dues under protest.
13. There is registered agreement for sale signed between both the parties dated 21-02-2017. According to the said agreement for sale the respondent was liable to handover possession of the said flat to the complainants on or before 31-03-2018. Admittedly the possession was not handed over to the complainants on that date.
14. The respondent has mainly contended that the project was ready on site and it has applied for occupancy certificate, however due to election held during that period it could not get the occupancy certificate from the competent authority. However, the same could only be issued on 24-01-2019. The respondent therefore contended that the said delay is due to inaction on the part of the competent authority and hence covered in the force majeure reasons cited in the agreement for sale. Moreover, the election in Maharashtra was held from the month of May, 2019, i.e. after the date of possession mentioned in clause no. 17 of the agreement for sale got lapsed. Hence, the respondent cannot blame the competent authority for such delay.
15. In addition to this the MahaRERA is of the view that the respondent as a promoter, having sound knowledge in the real estate sector, was fully aware of the market risks when it had launched the project and signed the agreements with the home buyers. Hence it was the duty of the respondent promoter to get all permissions in time and to complete the project in a time bound manner. If the project was getting delayed for the reasons cited by the respondent, in that event, the respondent should have approached the

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complainants allottees and should have informed the said delay to them and should have revised the date of possession mentioned in the agreement for sale. However, no such steps seem to have been taken by the respondent. Hence the reasons for delay cited by the respondent cannot be accepted as plausible explanation. Hence, the MahaRERA feels that the respondent has violated the provisions of section 18 of the RERA.

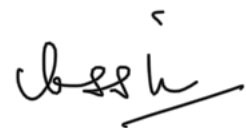
16. In this regard, it is necessary to peruse the provision of section 18 of the RERA, which reads as under:

“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.”

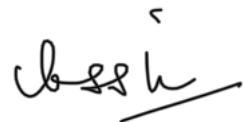


17.The aforesaid explicit provision under section 18 of the RERA clearly provides that on failure of the promoter to handover possession of the flat to the allottee on the agreed date of possession mentioned in the agreements for sale, the allottee has two choices either to withdraw from the project 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.

18.Likewise, in the present case, the complainants are willing to continue in the project and hence they are entitled to seek interest for the delayed possession under section 18 of the RERA.

19.However, in the present case, the MahaRERA has noticed that the respondent promoter has completed the construction and obtained occupancy certificate (OC) on 24-01-2019 and also intimated the same to the complainants vide its letter dated 6-02-2019. However, vide several communications the complainants have sought possession of their flat along with interest for the said delay in handing over of possession of their flat. Since no possession was handed over to them even after occupancy certificate, the complainants approached MahaRERA in the month of June,2019 and filed this complaint seeking reliefs as sought for in this complainant.

20.During the course of hearing it has been brought to the notice of MahaRERA by the complainants that though the intimation of the occupancy certificate was given to them by the respondent , however, it has not issued possession demand letter to them and the same was only issued in the month of February, 2020. The respondent though denied the said contention

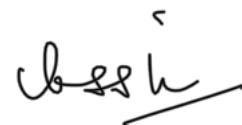


of the complainants however, it has failed to produce any cogent documentary proof on record of MahaRERA to show that after occupancy certificate it has ever offered possession of the said flat to the complainants. Hence, the MahaRERA feels that the complaint filed by the complainants under section 18 of the RERA is maintainable.

21.It shows that the respondent promoter, though has complied with its statutory duty cast upon it the provisions of section 11 of the RERA and obtained the OC, it has failed to give possession of the said flat to the complainant and the same was only handed over to the complainants in the month of the February, 2020. Hence the MahaRERA is of the view that the complainants are entitled to seek any interest for the delayed possession from the agreed date of possession till the date of actual possession of the said flat to the complainants.

22.As far as the refund of the excess amount as claimed by the complainants of Rs. 3.75,000/-, the MahaRERA has noticed that the complainants vide their letter dated 20-03-2017 have agreed to pay the development charges after completion of the said project and a copy thereof has been submitted on record of MahaRERA by the respondent. Hence, now the complainants can not seek refund of the said amount paid to the respondent.

23.As far as the issue of deficit area in the said flat about 74.68 sq. ft., the MahaRERA has prima facie observed that the complainants have not produced any cogent documentary proof on record of MahaRERA to substantiate the said claim. On the contrary, the respondent has submitted the architect's letter to show that the flat area of the complainant's flat is 529 sq. ft. Hence, the MahaRERA does not find any substance in the said issue raised by the complainants.



24.In view of these facts, the respondents are directed to pay interest for the delayed possession to the complainants from 1-04-2018 till the actual date of possession of the said flat to the complainants i.e. 27-02-2020 for every month on the actual amount paid by the complainants towards the consideration of their flats at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2% as prescribed under the provisions of section 18 of the RERA and the Rules made thereunder.

25.With the above direction, the complaint stands disposed of.

26.The certified copy of the order will be digitally signed by concerned Legal Assistant of MahaRERA and it is permitted to send the same to both the parties by e-mail.

