

**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.

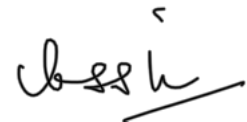
ORDER

(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.

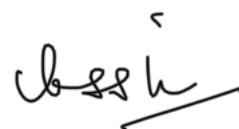
2. This complaint was heard on 15-01-2020 in presence of both the parties,



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.

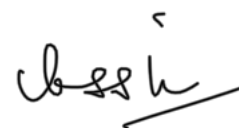
(ii) Impugned Order dated 4th February 2021 is set aside.

(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.

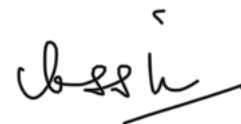
(v) Parties to appear before MahaRERA on 31st January 2022.”

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



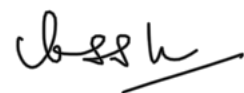
Operating Procedure dated 12/06/2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions, if any. Accordingly, both the parties appeared for the said hearing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



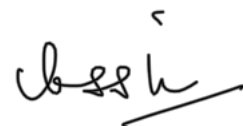
give possession. Thereafter, it has obtained the occupancy certificate on 24-01-2019. Despite the OC being received for the project, the respondent did not handover the possession of the flat to them. Hence, they approached the respondent, but the respondent started demanding excess payment from them 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.

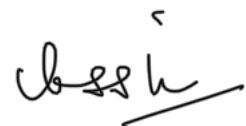
16. In this regard, it is necessary to peruse the provision of section 18 of the RERA, which reads as under:

“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.”

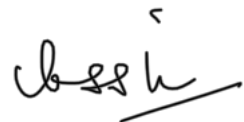


17.The aforesaid explicit provision under section 18 of the RERA clearly provides that on failure of the promoter to handover possession of the flat to the allottee on the agreed date of possession mentioned in the agreements for sale, the allottee has two choices either to withdraw from the project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

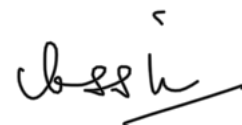


of the complainants however, it has failed to produce any cogent documentary proof on record of MahaRERA to show that after occupancy certificate it has ever offered possession of the said flat to the complainants. Hence, the MahaRERA feels that the complaint filed by the complainants under section 18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

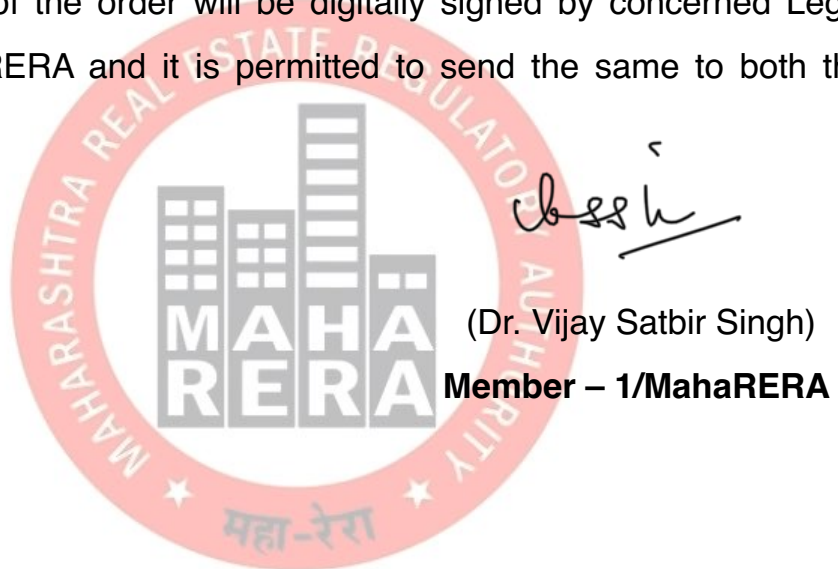
23.As far as the issue of deficit area in the said flat about 74.68 sq. ft., the MahaRERA has prima facie observed that the complainants have not produced any cogent documentary proof on record of MahaRERA to substantiate the said claim. On the contrary, the respondent has submitted the architect's letter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



Review Application Cum Complaint No. CC006000000210365

In Original Complaint No. CC006000000089695

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

1. Review Application Cum Complaint No. CC006000000210365

In

Original Complaint No. CC006000000089695

R S Enterprises

... Complainant/s

Versus

Rajesh Singh

Seema Singh

... Respondent/s

Along with

2. Non-execution Application

In

Complaint No. CC006000000089695

Rajesh Singh

Seema Singh

.....Complainants

Versus

R.S. Enterprises

.....Respondent

MahaRERA Project Registration No. P52000007221

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

Ld. Adv. Anwar Landage i/b Ld. Adv. Harshad Bhadbhade appeared for the Applicant -promoter.

The respondent no. 1 -allottee appeared in person.

ORDER

(Wednesday, 21st February 2024)

(Through Video Conferencing)

1. The applicant- promoter (hereinafter referred to as “**promoter**”) above named has filed this review application in the form of fresh complaint before the MahaRERA on 11-03-2022 mainly seeking directions from MahaRERA to review of the order dated 14-02-2022 (hereinafter referred to as the “**impugned order**”) passed by the MahaRERA in a complaint filed by the respondent - allottees (original complainants-hereinafter referred to as “**allottees**”) under the provisions of Section 39 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as ‘RERA’) read with Regulation 36 of the MahaRERA (General) Regulation, 2017 in respect of the flat bearing no. 403 on 4th Floor, admeasuring area 529sq. ft. (hereinafter referred to as the said flat) its registered project is known as “**Vankvanis Ela**” bearing MahaRERA registration No. **P52000007221** located at Ulwe, Dist. Raigarh.
2. The allottees have also filed the aforesaid non-execution application before the MahaRERA on 21-04-2022 seeking execution of the said impugned order dated 14-02-2022 passed by the MahaRERA in the aforesaid complaint filed by them.
3. The record shows that the said non-execution application was heard by the Ld. Adjudcating Officer/MahaRERA on 30-05-2022. On that date after hearing the submission made by the allottees, the following roznama was passed in the said non-execution application:-
“ None appeared for the respondent. Heard the complainant. He has submitted that order dated 14-02-2022 passed by the Hon’ble member has not yet been complained and hence he has reported the non-compliance on 21-04-2022. Since the order is passed by Hon’ble Member, MahaRERA, the NC application for

execution of the said order, will have to be placed before the Authority. Therefore, the matter is referred to Hon'ble Member-1/MahaRERA for consideration. With these directions, the proceedings before AO for non-compliance reported on 21-04-2022 hereby stands disposed of. Hence, the matter is referred to Hon'ble Member-1 for consideration."

4. Accordingly, the said non-execution was placed before the MahaRERA on 17-10-2023, when both the parties have appeared and made their submissions. After hearing the submissions made by both the parties, the following roznama was passed in the said non-execution application:-

"Non-Execution Application".

Both parties are present. The present non execution application has been filed against order dated 14/02/2022. However, the respondent contends that it has filed an application for review in the form of a fresh complaint bearing No. CC006000000210365 on 11-03-2022 before MahaRERA. In view of this, the present non execution application needs to be heard along with the said review application filed by the respondent. In the meantime, both parties may upload their necessary documents regarding the execution application as well as the review application. The matter is adjourned to a suitable strictly as per seniority.

5. Pursuant to the aforesaid directions issued on 17-10-2022, the aforesaid non-execution application was clubbed alongwith the aforesaid review application filed by the promoter.
6. Both these matters were heard on several occasions and finally on 21-09-2023 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 and made their respective submissions. The MahaRERA heard the submissions made by both parties and also perused the available records. After hearing the submissions made by both the parties, the following roznamas' were recorded by the MahaRERA:-

" Both the parties are present. This review application is filed by the original respondent-promoter in complaint no. CC006000000089695 (filed by the respondent-allottee) as a review application against the order dated 14-02-2022 passed by this Authority. Particularly, the applicant-promoter is aggrieved by the observations in para 20, 21 & 24 of the said impugned order. Therefore, the applicant-promoter (org respondent) claims that as the project was completed in 2018 and the occupancy certificate was obtained in January 2019, no interest is payable to the allottee. However, the respondent-allottee (original complainant) refutes this contention of the applicant-promoter (original respondent) and points out that even though occupancy certificate was obtained and an email was ostensibly sent by the promoter in February 2019, it did not mention the amounts to be paid or that the allottee should come forward to obtain possession. Therefore, the respondent-allottee avers that the order of the MahaRERA is valid and based on the documents uploaded in the complaint. The respondent-allottee (original complainant) has also filed his reply to this review application on 17-03-2023. Therefore, the applicant promoter may file a rejoinder along with its written arguments within a period of one week i.e. by 28-09-2023. The respondent-allottee(original complainant) mentions that the said reply of March 2023 may be treated as his written arguments. In view of the above, this review application is reserved for orders suitably after 28-09-2023 based on the record in the original

complaint and the reply, rejoinder and written arguments filed in this review application. “

7. However, despite specific directions being issued in the hearing held on 21-09-2023, the promoter failed to upload its rejoinder on record of MahaRERA. Hence the MahaRERA has perused the available record.
8. In the present case, the applicant-promoter has filed this review application in the form of fresh complaint seeking review of the impugned order dated 14-02-2022 wherein the applicant-promoter was directed to pay interest for the delayed possession to the allottees from 1-04-2018 till the actual date of possession of the said flat to the allottees i.e. 27-02-2020 for every month on the actual amount paid by the allottees towards the consideration of their flat 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. The promoter has stated that there are errors apparent on the face of the record while passing the said impugned order. Therefore, the promoter has filed this review application on various grounds. At the outset the promoter has stated that email dated 06-02-2019 which was uploaded by the promoter on the website was not taken into consideration by MahaRERA while passing the said impugned order. Furthermore, it stated that the MahaRERA erred in the conclusion and recorded that *“the respondent has failed to produce any cogent documentary evidence proof on record of MahaRERA to show that after occupancy certificate it has ever offered possession of the said flat to the complainant/s”*. Whereas after hearing the promoter had immediately uploaded its email dated 6-02-2019 addressed to the allottees intimating them that the OC has been received and the flat is ready for occupancy. Further, it stated that the balance amount of 2 % was to be collected from the bank and therefore nothing about receivable was mentioned

in the said email. Notably, other charges are the part of registration of the agreement for sale which was very well known to the allottees and therefore the same were not separately demanded again. The promoter thus claims that it has completed the project and obtained OC and after receipt of OC also had offered the possession to the allottees but the allottees never turned up to take possession. Furthermore, it stated that other allottees of the said project have already taken possession within the time. However, the allottees have delayed the same to extort money. In view of these facts, promoter has prayed to set aside the impugned order and pass the appropriate order on merits of the case and stay the implementation of the impugned order.

9. The promoter uploaded its written submission on the record of the MahaRERA on 05-10-2023 which is mere repetition of what it has stated in its review application.
10. The allottees have filed their reply to this review application filed by the promoter on record of MahaRERA on 17-03-2023 in hard copy through dispatch. At the outset the allottees have refuted the contention made by the promoter in this review application. They have further contended that the issue in question of review is whether an email dated 06-02-2019 could be considered the possession demand letter and the same has been dealt with by both the Adjudication Authority and the then presiding Member 1, MahaRERA. Further in the impugned order the MahaRERA has specifically dealt with the issue of handing over of possession in para nos. 19, 20 and 21 of the impugned order which reads as under:

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 filed 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 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.

11. Thus, the allottees have mainly contended that the promoter did not furnish documentary evidence which shows that it has ever issued possession demand letter to them till 20-02-2020. Moreover, it has not even raised any demands in respect of the balance 2% of the consideration or in respect of payments to be made at the time of possession. The allottees further stated that they had sent emails dated 21-02-2019 and 4-04-2019 requesting the promoter to issue demand letter if any amount is due. But instead of issuing demand letter, the promoter demanded money in cash. The allottees therefore issued legal notice requesting the promoter to issue demand notice, if any, but in vain. Consequently, they approached the MahaRERA. The allottees further stated that in lieu of filing the review application, the promoter should have filed the appeal before the Hon'ble Maharashtra Real Estate Tribunal and further apprehended that review shall delay the execution of the order. Further, as per the policy of SBI, the last 2% of the total consideration will

be issued by the bank after getting the demand letter or possession letter from the respective promoter. However, despite much follow up the promoter failed to provide a demand letter /possession letter in their favour. Further, as per the impugned order, MahaRERA has directed the allottees to upload documentary proof to show that the possession was ever offered to them after the receipt of occupancy certificate. Accordingly they, on the very same day, uploaded all the necessary screenshots of the intimation emails to the promoter whereas the promoter has failed to prove its point that it had offered the possession letter to them. Hence the allottees have submitted that the impugned order dated 14-02-2022 is just, proper, and legal in nature. Furthermore, they have refuted all the contentions in a para-wise manner which is mere repetition. The allottees therefore prayed for dismissal of this review application and also prayed to allow the non-execution application filed by them with heavy penalty.

12. The MahaRERA has examined the rival submissions made by both the parties and also perused the available record. There are two separate proceedings viz review application at sr. no.1 filed by the promoter against the impugned order dated 14-02-2022 passed by the MahaRERA and the non-execution application at sr.no. 2 filed by the allottees seeking compliance of the said impugned order dated 14-02-2022. As the review application filed by the promoter has bearing on the non-execution application filed by the allottees, hence the MahaRERA would first decide the review application filed by the promoter at sr. no.1.
13. In the present case, the record shows that the aforesaid original complaint filed by the allottees was transferred to the Ld. Adjudicating Officer/MahaRERA as the allottees were seeking reliefs under section 18(3) of the RERA. Accordingly, the Ld. Adjudicating Officer/MahaRERA was pleased to pass an order on 04-02-2021 and

granted interest to the allottees under section 71(3) of the RERA. However, being aggrieved by the said order passed by the Ld. Adjudicating officer/MahaRERA, the promoter preferred an appeal bearing no. AT006000000053108 before the Hon'ble Appellate Tribunal. In the said appeal the Hon'ble Appellate Tribunal was pleased to pass an order on 13-01-2022 and it set aside the aforesaid order dated 4-02-2021 passed by the Ld. Adjudicating Officer/MahaRERA and reliefs other than compensation were restored to the file of MahaRERA for disposal in accordance with law.

14. Accordingly, the said original complaint filed by the allottees was heard by the Ld. Erstwhile member-1/MahaRERA finally on 31-01-2022. After hearing the submissions of both the parties the said impugned order came to be passed. The same reads as under :-

"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 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:

(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 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."

15. Being aggrieved by the aforesaid impugned order passed by the MahaRERA, the promoter has filed the said review application.
16. The promoter has mainly contended that it is mainly aggrieved by the observations made by the MahaRERA in the aforesaid para nos. 20,21 and 24. The MahaRERA while passing the said impugned order has not considered the main issue that the project was completed in the year 2018 itself and the OC for the said project was obtained on 24-01-2019. Further, the said OC was intimated to the allottees vide an email dated 6-02-2019 and they were called upon to take possession of the said flat. However, the allottees have failed to take possession of their flat and have filed the said complaint before the MahaRERA on 12-06-2019. Hence, it is not liable to pay any interest to the allottees as granted by the MahaRERA vide the said impugned order.
17. The allottees on the other hand have assailed the said claim of the promoter on the ground that although the OC was obtained by the promoter on 24-01-2019, which was communicated to them on 6-02-2019 through an email, the promoter has not issued final possession demand letter asking for 2% of the balance payment towards the said flat. The allottees further stated that they had not been informed to take possession of the said flat by making the said payment. Hence, they have contended that the order is rightly passed by the MahaRERA.
18. Before dealing with this review application, the MahaRERA feels it necessary to peruse the provisions of Regulation 36 of the Maharashtra Real Estate Regulatory

Authority (General) Regulations 2017, whereby an order of the Authority can be reviewed. The said regulations read as under:-

"36(a) Any person aggrieved by a direction, decision or order of the Authority, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Authority.

(b)(e) When the Authority is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the decision or order, the review of which is applied for."

19. Further, in this regard, the MahaRERA also feels it necessary to peruse the relevant provisions of section 39 of the RERA, which reads as under:-

"39. The Authority may, at any time within a period of two years from the date of the order made under this Act, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties: Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act: Provided further that the Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act."

20. In view of the aforesaid explicit provision prescribed under Regulation 36, it is clear that an order passed by MahaRERA can be reviewed if there are new facts discovered or any important matter or evidence which was not within the knowledge of the parties or could not be produced by them at the time when the order was passed or if there are other sufficient reasons. Further, the provision of section 39 of the RERA empowers the MahaRERA to rectify the mistake apparent on face of the order.
21. Admittedly, this review application is filed within the stipulated time period mentioned in Regulation 36 of the MahaRERA (General) Regulation, 2017 and also there was no appeal filed by the allottees/ promoter against the said impugned order passed by the Ld. Erstwhile Member-1/MahaRERA. Hence, this review application is maintainable and the same can be heard and decided by the MahaRERA on merits.
22. The promoter in this case, has mainly contended that the MahaRERA erred in concluding that *"the respondent has failed to produce any cogent documentary evidence proof on record of MahaRERA to show that after occupancy certificate it has ever offered possession of the said flat to the complainant/s"*.
23. In this regard, it is pertinent to note that the aforesaid impugned order is passed on merits considering the submissions made by both the parties and also after perusing the supportive documents submitted by both the parties. As far as the aforesaid main issue raised by the promoter, it is about not considering the document whereby the allottees were called upon to take possession of the said flat by paying the outstanding dues, which was uploaded by it on record of MahaRERA on the same date when the hearing was concluded by the

MahaRERA on 31-01-2022.

24. Hence, the MahaRERA has perused the available record. From the record, the MahaRERA has noticed that the promoter has uploaded an email dated 6-02-2019 issued by it to the allottees on record of MahaRERA on 31-01-2022. The said email states as under:-

" Dear Sir, This is to inform you that we have received the OC of Vankvani's Ela and the flat is ready for occupancy."

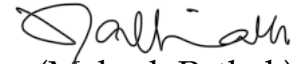
25. The aforesaid email clearly shows that the promoter by the said email has neither raised any final demand letter calling upon the allottees to make the payment nor has called upon the allottees to take possession of the said flat. Hence, taking into consideration, the said email dated 6-02-2019 the MahaRERA has passed the said order. The promoter in this case has not submitted any other documentary proof on record of MahaRERA which was although submitted before the MahaRERA but was not considered while passing the said impugned order. Hence, the MahaRERA does not find any merits in the review application filed by the promoter.

26. In addition to this, the MahaRERA has prima facie noticed that as stated hereinabove the impugned order was passed by the MahaRERA after considering the submissions made by both the parties on merits and the findings on the said issues have already been given in the said impugned order as mentioned hereinabove. Hence, now the promoter cannot be permitted to re-agitate similar issues which have already been considered by the MahaRERA. Also, the promoter cannot term it as an error apparent on the face of the record for the findings given in the said impugned order for which the promoter can

seek review of the same as it is a well-reasoned order passed by the MahaRERA. Moreover, the promoter has pleaded the grounds of appeal which are to be agitated before the Hon'ble Appellate Tribunal and hence the same cannot be taken into consideration by the MahaRERA while deciding this review application within the ambit of section 39 of the RERA and Regulation 36 of the MahaRERA (General) Regulation, 2017.

27. In addition to this, as stated hereinabove the promoter has neither brought any new fact on record of MahaRERA to seek review of the said impugned order dated 14-02-2022 nor has shown any error apparent in the said order as contemplated in Regulation 36 of the MahaRERA (General) Regulation, 2017 and section 39 of the RERA. Hence, the MahaRERA is not inclined to grant any reliefs to the promoter in this review application.
28. Consequently, the non-execution application filed by the allottees can now be proceeded with on merits.
29. Be that as it may, in any case all the non-execution applications are to be transferred to the Ld Secretary/Ld. Adjudicating Officer/MahaRERA as per the power delegation issued by Authority in the months of November, 2020 and April 2023. Therefore, the said non execution application now cannot be heard by the MahaRERA.
30. In view of the above, the following order is passed:-
 - a. The review application filed by the promoter at sr. no. 1 stands dismissed for want of merits.

- b. In view of the aforesaid observations made in para- 29, the non-execution application filed by the allottees at sr. no. 2 stands transferred to the appropriate bench for urgent hearing. Both the parties are at liberty to make their respective submissions at the time of hearing to be scheduled by the appropriate Bench.
- c. The Registry of this Bench is directed to take immediate action accordingly.


(Mahesh Pathak)

Member - 1/MahaRERA

