

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

COMPLAINT No: CC005000000011950

Mr. Nitin Raosaheb Patil

.... Complainant

Versus

M/s. Karan Janhavi Development Corporation

.... Respondent

MahaRERA Registration No. **P52100004042**

Coram: Hon'ble Dr. Vijay Satbir Singh, Member-1

Adv. Makarand Raut appeared for the complainant.

Adv. Swapnil Yadav appeared for the respondent.

ORDER

(15th October, 2019)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to pay interest for the delayed possession as provided under section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as the RERA) in respect of booking of a flat No. 103, on 1st floor, in wing-A of the respondent's project known as **"Silicon Bay Phase I"** bearing MahaRERA registration No. P52100004042 at Pune. The complainant further requested MahaRERA to direct the respondent to obtain the occupancy certificate and pay compensation for the lesser area provided in the said flat.
2. The matter was heard on several occasions and same was heard finally on 28-06-2019. During the hearing both the parties appeared through their respective advocates and made their oral as well as written submissions on record of MahaRERA.



3. It is the case of the complainant that, he has booked the said flat admeasuring 94.20 sq. mtr. equivalent to 1014 sq. ft. carpet area for total consideration amount of ₹ 93,86,100/- and the registered agreement for sale was executed on 09-06-2014. However, at the time of registration of the said project with MahaRERA, the respondent has shown area of the complainant's flat as 88.29 sq. mtr. and thereby 8 sq. mtr. lesser area is shown. Further, the complainant has borrowed loan of ₹ 60,60,000/- from India Bulls Housing Finance Ltd and the respondent has received an amount of ₹ 59,77,191 from the said Bank. The complainant is paying monthly EMI of ₹ 59,084/- to the said Bank. According to the said agreement, the respondent was liable to handover the possession of the said flat to the complainant on or before 09-06-2016. Though the complainant has paid 83% amount to the respondent, the respondent has failed and neglected to handover possession of the said flat to the complainant. Hence the present complaint has been filed under section 18 of the RERA thereby seeking interest for the delayed possession. The complainant further stated that the respondent has provided lesser area in the said flat and also raised illegal demand of ₹ 12,00,000 from the complainant. Hence the present complaint has been filed seeking interest for delayed possession from 9-06-2016 till the actual date of possession and other reliefs as prayed for in this complaint.

4. The respondent has filed reply on record of MahaRERA and disputed the claim of the complainant. The respondent has stated that they have undertaken this project by obtaining development rights from the

owners and got various permissions from the competent authority on 24-07-2012. However, due to financial crises and bad market conditions and slowdown in real estate sector they could not complete the said project, though they were willing to complete the same. The respondent therefore brought new partners and completed 99% work on site except installation of Fire Fighting Equipments etc. The respondent has obtained all required NOC's from the concerned authorities and applied for occupancy certificate to PMC. With regard to the claim of the complainant, the respondent has denied that the lesser area has been provided to the complainant as alleged in this complainant. However, the extra area of 2.08 sq. ft. is given to the complainant. Further before the new partners joined in the said project, the respondent had taken meeting of all home buyers in the said project. Since the complainant lived out of India, his father represented him in the said meeting. In the said meeting all allottee accepted the unavoidable delay and showed willingness to get the possession of their respective flats, except the complainant.

5. In addition to this the respondent further stated that the respondent has done various changes in the complainant's flat as per his request and spent around ₹ 12,00,000. Since the complainant is avoiding to make the said payment has filed this false complaint seeking interest for the delayed possession. The complainant is defaulted in making payment towards the cost of the said flat and as on date an amount of ₹ 23,50,000/- is outstanding for which the respondent has also issued demand notice on 12-2-2018. The respondent therefore requested

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MahaRERA to direct the complainant to pay the outstanding dues as well as an amount of ₹ 12,00,000.

6. The MahaRERA has examined the rival submissions made by the both the parties as well as the record. In the present case the complainant has filed this complaint seeking interest for the delayed possession under section 18 of the RERA. According to the agreement for sale the respondent was liable to handover possession of the said flat to the complainant on or before June, 2016. However, the possession is not given. The respondent has stated that there is no intentional delay on their part and the project got delayed due to financial crises and bad market condition in real estate sector. The reasons cited by the respondent for the delay are not justifiable. Being a promoter of the said project it was the duty of the respondent to make arrangement of required fund in advance when they undertook the said development. The complainant allottee, who has paid substantial amount to the respondent by obtaining the Bank loan and waiting for home since last 3 years should not suffer due such inaction on the part of the respondent.
7. Hence, the MahaRERA feels that section 18(1) of the RERA , provides that on promoters' failure to give possession on the date specified in the agreement for sale, if the allottee is willing to continue in the project, the allottee is entitled to seek interest at prescribed rate under section 18 (1) of the RERA and the Rules and Regulations made there under on the actual amount paid by the allottee for every month of delay till the actual date of possession. In the present case admittedly the respondents have

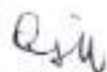
failed to handover possession of the said flat to the complainant on the agreed date of possession. Hence the MahaRERA is of the view that the complainant is entitled to get interest for the delayed possession under section 18 of the RERA.

8. Prima facie it appears that the reasons cited by the respondent for the delay in completion of the project, do not give any plausible explanation and therefore same can not be accepted by MahaRERA. Further the MahaRERA also feels that the payment of interest on the money invested by the home buyers is not the penalty, but, a type of compensation for delay as has been clarified by the Hon'ble High Court of Judicature at Bombay in the judgment dated 6th December, 2017 passed in W.P.No. 2737 of 2017. The respondent is liable to pay interest for the period of delay in accordance with the terms and conditions of agreement.
9. Even 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 Real Estate (Regulation & Development) Act, and 2016 came into force on 1st May, 2017. The respondent is, therefore, liable to pay interest to the complainant for delay in accordance with the provision of section 18 of the RERA Act, 2016.
10. In the light of these facts, the MahaRERA directs the respondent to pay interest to the complainant from 1st May, 2017 till the actual date of

possession at the rate of 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 there under. Since the project is nearing completion the MahaRERA directs that the actual amount payable to the complainant towards the interest shall be adjusted with the balance amount payable by the complainant if any and same shall be paid at the time of possession.

11. With regard to the other issue raised by the complainant about the lesser area of the said flat, the MahaRERA is of the view that the respondent is liable to handover possession of the flat to the complainant as per the area mentioned in the registered agreement for sale. If the area is less than what is agreed for, in that event, the respondent is liable to refund the amount for such lesser area.

12. With the above direction the complaint stands disposed of.


(Dr. Vijay Satbir Singh)
Member-1/MahaRERA