

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI  
COMPLAINT No. CC006000000044518

Mr. Nimesh Pandya ..... Complainant  
Versus  
M/s. P.G. Enterprises ..... Respondent

MahaRERA Registration No. P51800002838

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

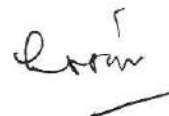
The complainant appeared in person.

Adv. Arvind Giriraj appeared for the respondent.

Order

(10<sup>th</sup> August, 2018)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to pay interest and compensation for the delayed possession of the flat under section 18 of the RERA Act, 2016, in respect of booking of a flat bearing No. 303, on the 3<sup>rd</sup> floor in the project known as "Om Palace" bearing MahaRERA registration No. P51800002838 at Malad West, Mumbai.
2. The matter was heard on several occasions when the complainant appeared in person and Advocate Arvind Giriraj appeared for the respondent. During the hearings, the complainant argued that he had booked a flat in the respondent's project and the registered agreement for sale was entered into between them on 15<sup>th</sup> April, 2014. According to clause No. 10 of the said agreement, the respondent was liable to



handover possession of the said flat to him on or before 31-03-2016. Till date the complainant has paid an amount of Rs. 54 lakh to the respondent which includes 20 lakh by cash and Rs. 34 lakh by cheque. However till date the respondent has not handed over possession of the said flat to the complainant. Hence the complaint has been filed seeking interest and compensation for the delayed possession from 31<sup>st</sup> March, 2016 till the actual date of possession and also EMI for the financial loss suffered by him.

3. The respondent disputed the claim of the complainant as well as payment done by the complainant and argued that the present complaint is not maintainable before the MahaRERA since the agreement between the complainant and the responded was executed under the provision of MOFA Act and the said Act has been repealed. Moreover as per clause No 39 of the said agreement in case of any dispute arises between them, the matter is to be referred to the arbitrator. The complainant without availing that remedy has wrongly filed this complaint before MahaRERA.
4. The respondent further argued that the complainant is not a genuine allottee. But, he is an investor and therefore cannot seek any relief as compensation since as per the ledger account he has returned an amount of Rs. 2 lakh to the complainant and now only Rs 34 lakh is retained with the respondent. He further argued that after booking of the said flat and after payment, the complainant never contacted the respondent for possession like genuine purchaser and he has not even clarified in his complaint whether he wants to continue in the project or

seeking withdrawal. The respondent, therefore, requested for dismissal of this complaint.

5. The MahaRERA has examined the facts of the present case. It is admitted fact that there is a registered agreement for sale executed between the complainant and the respondent dated 17-04-2014, whereby the respondent has sold the flat to the complainant. The contention of the respondent that the complainant is an investor and not genuine purchaser can not be accepted as per the definition of "Allottee" provided under section 2 (d) of the RERA Act, which states that the person to whom a plot /apartment or building has been allotted free hold or leasehold. Therefore the complainant squarely covers within the definition of the allottee.
6. With regard to the issue raised by the respondent regarding the jurisdiction of the MahaRERA for deciding the present complaint, the MahaRERA feels that the complainant is an allottee in the ongoing project which is registered with MahaRERA under Section-3 of the RERA Act, 2016. The jurisdiction of this Authority on such project continues till the project gets completed fully and obligation of the promoter regarding the project get fully discharged. This Authority, therefore, has the jurisdiction to hear the complainant's grievances concerning the project.
7. Since rival submissions made by both the parties regarding the payment made by the complainant by cash, the MahaRERA has perused the notarized affidavit dated 4-07-2018 filed by the complainant on record of MahaRERA stating that he has paid an amount of Rs. 34 Lacs to the

respondent by cheque and Rs. 20 lacs by cash. The said contention has been denied by the respondent by filing reply dated 17-07-2018 stating that he has not received such payment by cash. He has also filed police complaint for such false transaction. The said issue doesn't come within the purview of MahaRERA. Hence the parties are at liberty to take appropriate proceeding for the same. However the MahaRERA take into consideration that the complainant has made payment of Rs. 34 lacs to the respondent for booking of the said flat till date.


8. In respect of payment of compensation of Rs. 46,24,992/- , rent and EMI to the complainant,, this Authority is of the view that there is no provision in RERA Act, 2016 for the same. However after the provisions of Real Estate (Regulation and Development) Act, 2016, which came into effect, the home buyers were entitled to claim interest under section 18 of the RERA Act, 2018 for delay in getting possession of the flat till it is handed over with occupancy certificate. Moreover the complainant wants to continue in the project and he can claim only interest for the delayed possession and not the compensation under the provision of section 18 of the RERA Act, 2016.
9. The arguments given by both the parties have been examined by MahaRERA and it was found out that admittedly the respondent could not handover the possession of the flat to the complainant within the stipulated time period mentioned in the clause No. 10 of the registered agreement for sale and there is delay in handing over possession of the flat to the complainant. According to Sec 18(1) of the Act, if the promoter fails to complete a project or unable to give possession of an apartment, plot or building, the allottee shall be paid interest for the period of delay till handing

over of the possession at such rate as may be prescribed. Therefore the complainant is entitled to seek relief under section 18 of the Real Estate (Regulation & Development) Act, 2016. There was enough time for the respondent to complete the project before the relevant provisions of Real Estate (Regulation & Development) Act, 2016 came into force on 1<sup>st</sup> 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. The MahaRERA also feels that, the payment of interest on the money invested by the home buyer 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 above cited judgment dated 6<sup>th</sup> December 2017 passed in W.P. No. 2737 of 2017. The respondent is liable to compensate the home buyer accordingly.

11. In the light of the above facts and circumstances of this case, the MahaRERA directs the respondent to pay interest to the complainant for the delayed possession at the prescribed rate under RERA Act, 2016, and the Rules made there under from 1<sup>st</sup> May, 2017 till the actual date of possession on the amount of Rs. 34 lakh paid by the complainant.

12. With these directions, the complaint stands disposed of.

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