

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI
COMPLAINT NO: CC006000000001323 of 2017

Mr. Tarun Joshi & Others.

.... Complainant

Versus

The KT Group Ujjawala

MahaRERA Registration No - P51800003743

..... Respondent

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

The complainant appeared through its Advocate Anil D'souza alongwith Advocate Mr. Omkar Khanwilkar.

Mr. Vikas Shinde appeared for the respondent.

Order

[5th March, 2018]

Facts:

1. The complainants are allottees in the MahaRERA registered project belonging to the respondents bearing project registration No. P51800003743. On 23-02-2015, the complainants purchased a flat No. 503, admeasuring 425 sq. ft. carpet area on 5th floor in "A" wing, in the building known as "Dahisar Ujjawala" CHS Ltd. by executing registered agreement for sale. As per the agreement, the respondents were liable to handover possession of the flat to the complainants within a period of 24 months from the date of execution of the said agreement. However, complainants could not get possession of the said flat till date as per the registered agreement. Hence, the present complaint has been filed by the complainants seeking following directions from this Authority.

- a) to declare that registered agreement of sale creates vested right in the complainants in respect of the suit flat;



- b) to order and decree the respondents its Directors/Proprietor/servants/ officers and agents to jointly and severally specifically perform the registered agreement of sale;
 - c) to do all acts deeds matters and things necessary including procuring all approvals, sanctions orders as may be necessary for sanctioning the project and handing over possession of the suit flat to the complainants within a reasonable time as directed by this Authority;
 - d) for appropriate compensation/interest and damage for the delayed possession of the said flat.
2. This matter was heard on given dates. During the hearings, the respondents denied all allegations made by the complainants. The respondents informed the Authority that they had completed 14th Floor and rest of the floors were to be constructed. They further stated that the construction was held up due to change in Government policies. Further, the respondents confirmed that they had not created any third-party rights for the said flat. They further stated that they could hand over the possession of the said flat on receipt of completion/occupation certificate from MCGM. Further, as per records of this Authority, the project completion date is 31st December, 2018.
3. Considering the arguments made by both the parties, this Authority has noticed that there has been a delay in giving possession to the complainant as per the registered agreement i.e. before 23rd February, 2015. The factors of delay as mentioned by the respondents are general in nature, such as, changes in the DCR rules of MCGM and demonetisation. He could not elaborate further as to hold those reasons resulted in delay of his project. Even if we consider all these reasons and change in policy, the respondents could have taken necessary action to complete the project in time. Hence, a period of six months is adequate to overcome these constraints. Hence, the date of possession can be extended by six months to calculate the period of interest payment to the complainants.
4. As far as the specific performance of the registered agreement for sale dated 23-02-2015 executed between both the parties is concerned, the respondents



in his written explanation has agreed to handover possession of the flat to the complainants. Hence this Authority need not consider the other prayers of the complainants.

5. However, with regard to the payment of interest to the complainants, it is very clear from the above discussion that the reasons cited by the respondents 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 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 6th Dec. 2017. The respondents is liable to pay interest for the remaining period of delay.
6. 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 the delay till the possession of the flat is handed over.
7. In view of above facts of this case, the respondents are directed to pay interest to the complainants from 1st September 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.
8. With these directions, the complaint stands disposed of.



(Dr. Vijay Satbir Singh)
Member 1, MahaRERA