

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

COMPLAINT No. CC006000000011459

Mrs. Hemlata Agrawal & Anr.

.... Complainants

Versus

M/s. Marveledge Realtors Pvt. Ltd. & Anr.

.... Respondents

MahaRERA Registration No. 52100036590

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

Mr. Ramesh Prabhu, C.A. appeared for the Complainants.

Adv. Abhijeet Pawar appeared for the respondents.

Order

(30th August, 2018)

Facts in brief: -

1. The complainants have filed the aforesaid complaint seeking directions of MahaRERA to the respondents to provide final possession date with full occupancy certificate along with the amenities and also to pay interest for delayed possession u/s. 18 & 19(1) of the RERA Act, 2016. They have also requested to direct the respondents to make arrangement for payment towards the EMI on loan taken for the said flat in respect of booking of a Unit No. 6030 on 6th floor in Wing 'H' of the building known as 'Marvel Edge' bearing MahaRERA Regn No. 52100036590 at Pune.
2. This matter was heard at length, when both the parties have appeared through their respective advocates.

Arguments by the complainants: -

3. During the hearings, the complainants stated that the respondents had agreed to give to them a unit No. 6030 in their project for a period of 999 years on lease, commencing from the date the said unit is ready for use and occupation. The respondents charged an amount of Rs.1,72,13,500/- towards the one time premium for the said Unit. Accordingly, the respondents executed an agreement for lease dated 22nd June, 2015, and

as per clause No. 6(b) of the said lease agreement, the respondents were to hand over the possession of the said unit to the complainants on or before 31st October, 2015, along with one parking space. However, till date they have not handed over possession of the said unit to the complainants. Therefore, the complainants have approached the respondents for the possession of the said unit and they also sent them a legal notice dated 30th June 2016. However, the respondents never replied to the same. Hence, the present complaint has been filed.

Arguments by the respondents:-

4. The respondents argued that the contents of complaint were not true or based on facts. The RERA Act has no retrospective effect and also complainants are not allottees as per the definition of allottee under Sec. 2(d) of the Act as the agreement was registered prior to 1/5/2017, when the provisions of RERA Act, 2016 was not in force. The Agreement executed by respondents is a Lease Agreement which does not come under the RERA ambit since the said document is not stamped under conveyance deed contemplated by Article-25 of Maharashtra Stamp Act and is valued at 90% of market value. It is not covered under Sec. 18 of RERA Act. Mere registration of the Project does not give a right to file a complaint under RERA Act. This is not an agreement for sale as they can transfer their rights vide clause No. 36. The definition of "Allottee" under Sec. 2(d) makes a distinction between 'Lease' and 'Rent'. The word 'sale' as defined in Sec.54 of Transfer of Property Act is a transfer of ownership in exchange for a price paid or promised to be paid. Sec. 2-C of RERA Act defines 'Agreement for Sale' as Agreement entered into between the Promoter and allottee. The agreement for lease is not covered under it. Sec. 3 of RERA Act prescribes that promoter cannot sell any part of the project without registering the project with MahaRERA. Therefore, only because promoter has registered the project with RERA does not mean that the agreement with the complainants are sale agreement. Moreover the respondents have also preferred common appeal against the orders passed on 20th March, 2018 before Appellate Tribunal raising an issue

whether Sec. 18 of RERA Act would be applicable to the cases where the agreement for lease have been executed.

Discussion and conclusions:-

5. The MahaRERA has examined the submissions made by both the parties as well as the available record. In this case, the complainants are seeking interest for the delayed period of possession from the respondent u/s. 18 of the Real Estate (Regulation & Development) Act, 2016. The complainants have contended that as per the Agreement for Lease executed on 22nd June, 2015, the respondents were liable to hand over possession of the said Unit to the complainants on or before 31st October, 2015 subject to the complainants making payment towards the said premium amount. It is an admitted fact that the respondents have failed to fulfill the terms and conditions to hand over the possession of the said Unit to complainants. The complainants are, therefore, claiming interest for the delayed period of possession as per the provision of Sec. 18 of the RERA Act, 2016.
6. The respondents have raised an issue of jurisdiction of this Authority that, since there is no Agreement for Sale executed between the complainants and the respondents, the Section-18 is not applicable for the present case. In this regard, a perusal of the definition of allottee in section 2(d) of the RERA Act, 2016, clearly reveals that this definition is very broad and applicable to the buyers who get property whether on leasehold or freehold basis. The only exception being the cases where property is given on rental basis. The buyers in the present case of allotment of apartments on lease hold basis for a period of 999 years are clearly covered by this definition. Even the agreement registered for transaction is similar in contents to the agreement for sale. For the purpose of relief under Section-18 of the RERA Act, 2016, this agreement of lease in perpetuity has the same implications as the agreement for sale.
7. In practice, a lease agreement for 999 years is similar to sale agreement inspite of the use of word like lessor, lessee and premium. Moreover the project has been registered under RERA Act, 2016, which also strengthens

the arguments that the provisions of the RERA Act, apply in this case protecting the interest of the allottees.

8. Regarding the delay caused by the respondents to hand over the possession of the unit to the complainants, this Authority feels that the respondents have not given proper justification for the said delay to hand over the possession of the unit to the complainants. In fact, they had sufficient time to complete and hand over the unit to the complainants before RERA Act came into force. Therefore, they are liable to pay interest to the complainants for the delayed possession under Section -18 of the RERA Act.
9. It is very clear from the above discussion that plea taken by the respondents to defend the present complaint filed by the complainants and also for the delay in completing the project do not have any plausible explanation. Besides, the payment of interest on the money invested by the homebuyers is not a penalty, but a type of compensation for the delay as has been clarified by the Hon'ble High Court of Judicature at Bombay by the Judgement dated 6th December, 2017 passed in W.P. No. 2737 of 2017. The respondents are, therefore, liable to pay interest for the period of delay in accordance with the terms and conditions of the Lease Agreement.

Order

In view of these facts of the case as discussed above, this Authority directs the respondents to pay interest to the complainants on the actual payment made by them to the respondents from 1st May, 2017 till the actual date of possession @ Marginal Cost Lending Rate (MCLR) + 2% as prescribed under the provisions of Sec. 18 of the RERA Act and the rules made there under.

With these directions, the complaint stands disposed of.



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