BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

COMPLAINT No: CC006000000012707

Mr. Richard Dsouza ..... Complainant

Versus

M/s. Neelkamal Realtors (Suburban) Pvt. Ltd.,

..... Respondent

MahaRERA Registration No - P51700003433

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

Adv. Chettiyar appeared for the complainant.

Adv. Sushant Chavan a/w Mrs. Vidya Shetty appeared for the respondent.

ORDER

(18th May, 2018)

1. The complaint has filed this complaint in the project registered with MahaRERA bearing No. P51700003433 known as "DB Ozone" at Mira Road, Thane. He has filed this complaint under section-18 of the Maharashtra Real Estate (Regulation and Development) Act, 2016 seeking directions from this Authority to the respondent to pay interest for the delayed period of possession in respect of booking of their flats in the said project of the respondent. As per the registered agreement for sale executed between him the respondent was liable to handover possession of the flat to the complainant on 31-12-2014 with a grace period of one year i.e. on 31-12-2015. However, till date, the respondent has failed to handover the possession of the flat to the complainant.

2. During the hearings, the concerned parties sought time to settle the matter amicably. However, in spite of several meetings, they failed to reach any mutually acceptable solution. The matter was heard finally at length.

3. The respondent raised the issue of maintainability of this complaint on the ground that the agreement had been registered under the provisions of MOFA Act (still in force), the present complaints were governed by provisions of MOFA and not RERA Act, 2016.

4. The respondent further clarified that the project was a part of Rental Housing Scheme of MMRDA, having a total number of 25 buildings within the jurisdiction of Mira Bhayandar Municipal Corporation at Thane District. The construction work of the said project started after obtaining the commencement certificate in the year 2010 and is going on in phase-wise manner. As per clause No. 29 of the agreement for sale executed between them, the agreed date of possession with grace period was December 2015. The said clause also mentioned that the date could be extended if the project got delayed due to non-availability of steel/construction material, war, civil commotion or an act of God, any notice /order /rule /notification of the Government/MBMC/Public authority/court/tribunal, economic downturn or any event beyond the control of the developer or force majeure etc., The project could not be completed due to following reasons.

    a) Due to economic downturn/crises, the flats could not be sold in the market and hence, they could not generate the required funds for construction purpose.

    b) There was an undue delay in availability of sand on time for construction of the said project as the sand mining was banned in all coastal regulated areas across the State of Maharashtra. Even the quarrying of stone was simultaneously banned in the entire State by the Environment Ministry, which resulted into non–availability of stone for construction as per the order passed by the Hon'ble High Court in PIL No. 138 of 2006. The said ban was lifted only in the month of February, 2014 by the order of National Green Tribunal.

c) The State Environment Impact Assessment Authority (SEIAA) is not providing any clearance for stone quarry and has stopped issuing permissions to stone-crushing units.

d) The respondent stated that he had given the date of 31-12-2019 as the revised completion date under MahaRERA to cover the unforeseen delay in view of the extension provision being restricted under the RERA Act. Since the project got delayed, the respondent is ready and willing to refund the amount paid by the complainant till date with interest. Hence, the respondent requested to dismiss the present complaints on the ground of maintainability.

5. The above issues as contended by the respondent in response to the complaint are discussed as under.

i) **Jurisdiction.**

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 complainants' grievances concerning the project.

ii) Economic downturn.

The respondent's arguments that the project got delayed due to economic downturn do not come under the clause of force majeure. As a promoter, having sound knowledge, in the real estate sector, the respondent was fully aware of the market risks when he launched the project and signed the agreement with the home buyers. Moreover, the nation's economy as a whole has shown consistent growth over the last so many years without any major incidents of recession or inflation.

iii) **Ban on sand mining and quarrying of stones.**

Another factor which the respondent has pointed out is that, the project got delayed because of ban on sand and stone mining. However, the said ban was placed in the year 2007 and same was lifted in the year 2014. In this case, the agreement was executed between the respondent and the allottees in 2013 and the respondent was very well aware of all these constraints. Therefore, he cannot make this factor as an excuse for the delay in completion of his project.

iv) **Date of completion mentioned in the registration with MahaRERA.**

The respondent further stated that the revised date of completion as mentioned in MahaRERA registration of 31-12-2019 should be considered as date of possession and no relief should be granted to the complainants. This cannot be accepted as the date of completion of the project. The date of possession mentioned in MahaRERA registration cannot re-write the date in the agreement for sale signed by both the parties.

6. It is very clear from the above discussion that the reasons cited by the respondent for the delay in completion of the project, do not give any plausible 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 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.
7. 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, 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. Moreover the complainant has also shown his willingness in writing to accept the interest from 1st May, 2017.

8. In view of above facts and discussion, the respondent is directed 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.
9. Accordingly, the complaint stands disposed of.

(Dr. Vijay Satbir Singh)
Member 1, MahaRERA