

COMPLAINT NO: CC006000000055230

... **Complainants**

... Respondent

Complainants were represented by Mr. Sushil Gaglani, Adv. a/w Mr. Rohit Singh, Adv.
Respondent was represented by Mr. Sachin Desai, Adv.

January 01, 2019

1. The Complainants have purchased apartments in the Respondent's project 'OM SHIV SHANKAR CHS' situated at Parel, Mumbai via registered agreement for sale. The Complainants have alleged that the date of possession as stipulated by the said agreements is long over. Therefore, he prayed that since the Respondent has failed to hand over the possession of the apartment within the stipulated period, they be directed to pay interest, on delay as per the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the said Act*).
2. On the first date of the hearing, the learned Counsel for the Respondent explained that the construction work of the project could not be completed because of reasons which were beyond the Respondent's control. Further, he submitted the project has been registered under MahaRERA with a revised completion date of August 2019, which is in keeping with Rule 4 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017. He further added that he will endeavour to complete and handover possession of the apartment with occupation certificate in accordance with the revised time line. The parties then sought time to resolve the matter amicably.

3. On the next three dates of hearing the Respondent remained absent, despite service of notice. The learned counsel for the Complainant submitted that the Respondent did not come forward for any discussion to amicably resolve the matter.
4. The Complainant submitted that the said project is at standstill and most of the allottees in the said project are aggrieved by the same, as all such allottees who want to be associated with the project, are interested in early completion of the project.
5. On review of the project's MahaRERA registration it is observed that 60% of the super structure is completed and majority of the project work is yet to be completed. Further, the Respondent has put August 6, 2019 as the revised proposed date of completion.
6. In the *Neel Kamal Realtors Suburban Pvt. Ltd. and anr. Vs. Union of India and others* (hereinafter referred to as the *said Order*), the Honourable High Court in para 115 of its order has held that the object and purpose of this Act is to complete the development work within the stipulated time frame. Under the provisions of the said Act, MahaRERA has been established not only as a quasi-judicial body but is also entrusted with regulatory functions, to ensure that registered projects get completed. It is obligated to implement the said Act so as to ensure that all provisions of the Act are construed in a harmonious manner and not in isolation, so that interest of public at large and interest of all the stakeholders are protected.
7. Section 4 (2)(l)(C) of the said Act reads as follows:

...

(l) (C) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: — the time period within which he undertakes to complete the project or phase thereof, as the case may be;
8. Rule 4(2) of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 reads as:

...

The promoter shall also disclose the original time period disclosed to the allottees, for completion of the project at the time of sale including the delay and the time period within which he undertakes to complete the pending project, which shall be commensurate with the extent of development already completed.

...

Also, in para 86 of the said order, Honourable High Court has observed that the promoter is entitled to prescribe a fresh time limit for getting the remaining development work

completed, which in the instant case as per the declaration of the promoter binds him to complete the balance work by August, 2019.

9. Section 4 (2)(l)(D) of the said Act reads as follows:

...
(D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:

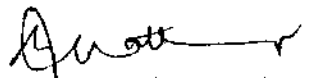
Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:

Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

Keeping in mind the larger interest of all the allottees of the said project, awarding interest at this stage of the project where only 60% of the super structure work is completed, would mean jeopardising the project completion.

10. In view of the above facts, in case the promoter fails to take the project towards completion by August, 2019, the Complainant, through the association of allottees, shall be at liberty to seek remedy under section 7 of the said Act.

11. Consequently, the matter is hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA