

**BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI**  
**COMPLAINT No: CC006000000001559**

Mr. Keshavlal B. Upadhyay ..... Complainant

**Versus**

M/s. Neelkamal Realtors Suburban Private Limited

MahaRERA Registration No - P51700003433

..... Respondent

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

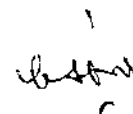
The complainant appeared in person.

Advocate Sushant Chavan appeared for the respondent.

**Order**

(7<sup>th</sup> March, 2018)

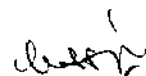
1. The complainant is an allottee in the MahaRERA registered project belonging to respondent bearing project registration no. P51700003433 known as "DB Ozone" at Mira Road. The complainant purchased flat No. 1105 having carpet area of 628.09 sq.ft. in Building No. 18 in the said project vide registered agreement for sale dated 17-04-2013, in which the date of possession was mentioned as 31-12-2015 with a grace period of 12 months, i.e. 31-12-2016. However, the complainant could not get possession of the flat so far. Hence, the present complaint has been filed. The complainant has claimed interest for delayed possession under section 18 of the Real Estate (Regulation and Development) Act, 2016.
2. During the hearings, the respondent raised the issue of maintainability of this complaint, on the ground that, since the agreement had been



registered under the provisions of MOFA Act (still in force), the present complaint was governed under the provisions of MOFA Act only. This complaint was, therefore, not maintainable before this Authority under the RERA Act.

3. The respondent further clarified that the project of the respondent was a part of Rental Housing Scheme of MMRDA having total 25 buildings within the jurisdiction of Mira Bhayander Municipal Corporation at Thane District. The construction work of the said project started after commencement certificate issued 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 2016. The said clause also mentioned that the respondent was entitled for extension 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. However, they could not handover the possession of the said flat to the complainant due to following reasons which were beyond their control and covered by clause 29 of the agreement of sale.

- a) Due to economic downturn /crises the flats could not be sold in the market and hence they could not generate the 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 Feb 2014 by the order of National Green Tribunal.

- c) Further, 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) Besides, 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. Further, since the project got delayed, the respondent is ready and willing to refund an amount of Rs 47,97,676/- paid by the complainant till date with interest aggregating to Rs 14,11,973 calculated till 30-11-2017. He also agreed to refund the service Tax or VAT paid by the complainant. Hence the respondent requested to dismiss the present complaint on the ground of maintainability.

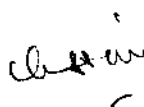
4. The above issue as contended by the respondent in response to the complaint are discussed as under;

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 promotor regarding the project get fully discharged. This Authority, therefore, has jurisdiction to hear the complainant's grievances concerning the project.

ii) **Economic downturn--**

The respondent's arguments that the project got delayed due to economic downturn does 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 consistence growth over a last so many years without any major incidents of recession or inflation.

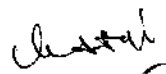
iii) **Ban on sand mining and quarrying of stones –**

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 allottee 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 mentioned in MahaRERA registration is 31-12-2019 should be considered as date of possession and no relief could be granted to the complainant. This cannot be accepted as the date of completion of the project as mentioned in the registration with MahaRERA is independent of the date of possession mentioned in the agreement for sale executed between the complainant and the respondent. The date of possession mentioned in MahaRERA registration can not re-write the date in the contract signed by both the parties. The said issue has been clarified by the Hon'ble High Court of Judicature at Bombay in its judgment and order dated 6<sup>th</sup> December 2017 passed in W.P.No.2737 of 2017 along with other 6 connected matters.

5. 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



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 6<sup>th</sup> December 2017. The respondent 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 respondent is directed to pay interest to the complainant from 1<sup>st</sup> July 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**