

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

COMPLAINT No: CC006000000054698

Mr. Sunil Devnani

..... Complainant

Versus

1. M/s. Geopreneur Spire Realty

2. M/s. Aditya Enterprises

MahaRERA Registration No. P51800011901

..... Respondents

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

Adv. Nitin Chavhane appeared for the complainant.

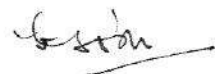
Mr. Avi Shah appeared for the Respondent No. 1.

Adv. Deepak Chitnis appeared for the respondent No. 2.

ORDER

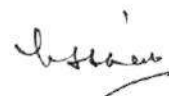
(2nd November, 2018)

1. The complainant has filed this complaint seeking directions from this Authority to the respondents to execute an agreement for sale with the complainant and also to pay interest @18% per annum on the amount paid by him to the respondents in respect of booking of a flat No. 1203, on 12th floor in A- wing of the building known as "Mayur Tower" bearing MahaRERA registration No. P51800011901 at Khernagar, Bandra (East), Mumbai- 400 051.
2. The matter was heard finally when the complainant and the respondent No. 2 appeared through their respective advocates and the respondent No. 1 appeared in person. In the present case, initially, Khernagar Mayur CHS Ltd., respondent No.2 and lessee of the plot of land, had undertaken the re-development work of the project and the same was subsequently



transferred to respondent No. 1 who has registered the project with MahaRERA. Thereafter, a sub development agreement dt. 22-7-2014 was executed, between the respondents No. 1 & 2 on area sharing basis.

3. The complainant has argued that he had booked the said flat in the project for a total consideration amount of Rs. 67,58,000/-. Accordingly, the respondent No. 2 issued an allotment letter dated 29-06-2010, wherein it was agreed to handover possession of the flat to the complainant on or before October, 2012. Till date the complainant has paid an amount of Rs.13,51,600/- to respondent No. 2. However, no agreement has been executed by the respondent No. 2 with the complainant. Hence, this complaint been filed. The respondent No.1 was not involved in the process of booking the flat at all.
4. The respondent No. 2 disputed the claim of the complainant and argued that there is no registered agreement for sale executed between the complainant and the respondent No. 2 and based on the allotment letter this frivolous complainant had been filed. The respondent further stated that he has already cancelled the allotment letter issued by him due to non- payment of consideration amount by the complainant as per the payment schedule annexed with the letter of allotment. The complainant is, therefore, not an allottee in the project as of now and the complaint is not valid at all. Even the complainant has suppressed this material facts from MahaRERA while filing this complainant that the respondent has issued termination notices dated 15-04-2018 and 7-05-2018. Moreover, the complainant was called upon to take refund of the amount paid by him. However, he did not come forward to collect the same.
5. With regard to the delay caused in the project, the respondents stated that the land under the said project is owned by MHADA and the same



was leased out to the Khernagar Mayur CHS Ltd., Therefore, the layout plan/building plan was to be first approved by the MHADA and due to the delay on the part of MHADA in sanctioning the layout plan/building plan of the said project, the MCGM which is competent authority, could not issue IOD and commencement certificate on time. However, now as per the permissions granted by the MCGM, the respondent has completed 12 floors out of total 15 floors. The respondent therefore requested for dismissal of this complaint.

6. From the rival submissions made by both the parties, the MahaRERA feels that by filing this complaint, the complainant is seeking relief under section 13 and 18 of the RERA Act, 2016. During the hearing, the complainant stated that in the year 2010, he booked a flat in the respondent's project for a total consideration amount of Rs. 67,58,000/-. Out of which, he has paid an amount of Rs. 13,51,600/- to the respondent. At the time of booking of the said flat, the respondent agreed to hand over possession of the said flat to the complainant by October, 2012. However, the respondent has neither executed registered agreement for sale with him nor handed over possession of the flat so far. Hence, the complaint has been filed under section-13 as well as section-18 of the Real Estate (Regulation & Development) Act, 2016 seeking interest, rent and compensation for the delayed possession. However, the respondent no. 2 stated that since there is no registered agreement for sale between the complainant and the respondent, the proposed date of completion of the project mentioned by the respondent in website of MahaRERA be treated as date of possession and interest may be granted from that date.
7. With regard to the jurisdiction issue of this Authority, raised by the respondent, this Authority is of the view that the respondent's project being

an ongoing project and 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 completed and obligations of the promoter regarding the project get fully discharged. This Authority, therefore, has jurisdiction to hear the complainant's grievances concerning the project.

8. In respect of relief sought under section-13 of the RERA Act, the MahaRERA feels that it is admitted fact that the complainant has booked a flat in the respondent's project and made more than 10% amount out of total consideration price of the said flat. However, till date no agreement has been executed with the complainant. The respondent No. 2 argued that he has cancelled the said allotment letter by issuing legal notices to the complainant. The said cancellation is not valid as per law, since the said cancellation was not accepted by the complainant and the amount paid was not refunded. Such unilateral termination of allotment is bad in law and MahaRERA cannot accept the contention of the respondent No. 2. Therefore, the complainant is entitled to seek relief under section 13 of the RERA Act, 2016.
9. With regard to reliefs under section-18 of the Real Estate (Regulation & Development) Act, 2016 claimed by the complainant, after going through the provisions of section-18 of the said Act, it is clear that the allottee is entitled for interest compensation if the promoter fails to discharge any other obligation imposed on him under this Act and Rules and Regulations made there under or in accordance with the terms and conditions of the agreement for sale or as the case may be. In the present case in the allotment letter dated 29-06-2010, the respondent No. 2 agreed to handover possession of the flat to the complainant on or before the October, 2012 and till date the possession is not given to the complainant.

It shows that the respondent No. 2 has breached the terms and conditions of the allotment letter and therefore, the complainant is entitled to seek relief under section -18 of the RERA Act, 2018.

10. According to Sec 18(1) of the Act, if the promoter fails to complete a project or unable to give possession of an apartment, plot or building, the allottee shall be paid interest for the period of delay till handing over of the possession at such rate as may be prescribed. The Act has provided interest for delay to the home buyer if he wants to continue in the project. This relief was not available under the MOFA.

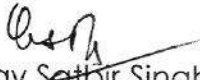
11. The fact of this case as discussed above show that the respondent No. 2 has failed to fulfil his obligation towards the complainant. The respondent argued that the delay by MHADA to accord sanction to the revised layout plan is the major reason for delay. Even if we consider this, and other constraints pointed out by him there was enough time to overcome these problems and complete the project before RERA Act, 2016 came into force. The payment of interest on the money invested by the home buyer 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 December 2017. The respondent is liable to pay interest for the remaining period of delay.

12. With regard to the payment of rent to the complainant, this Authority feels that there is no provision in Real Estate (Regulation & Development) Act, 2016, wherein such relief can be granted by this Authority. Hence the same is rejected.

13. In view of the facts discussed hereinabove the MahaRERA directs the respondent No. 2 :

- a) To execute registered agreement for sale with the complainant as provided under section 13 of the RERA Act, 2016 on payment of outstanding/statutory dues by the complainant within a period of 30 days from the date of this order.
- b) To pay interest to the complainant for the delayed possession at the prescribed rate under RERA Act, 2016 and the Rules made there under i.e. MCLR+2% on the amount paid by him, from May, 2017 till the actual date of possession.

14. With these directions, the complaint stands disposed of.


(Dr. Vijay Satbir Singh)
Member-1, MahaRERA