

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI
COMPLAINT NO: CC006000000001802

Mr. Mahesh Khanolkar

.... Complainant

Versus

M/s. Srushti Sangam Developers Pvt Ltd

MahaRERA Registration No - P51800012986

..... Respondents

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

Adv. Sanjay Chaturvedi appeared for the complainant.

Adv. Rajani Divkar appeared for the respondent.

Order

(22nd May, 2018)

1. The complainant is a tenant and also an allottee in the MahaRERA registered project bearing No. P5180001298 known as "Maulick Enclaves" at Chembur, Mumbai. He has filed this complaint seeking following directions to the respondent from this Authority.

- a) Not to create third party rights in respect of the complainant's flat No. 201 on second floor of the said building.
- b) To pay rent @ Rs. 20,000/- per month from 3-12-2007.
- c) To pay interest @26% on the amount paid by him.
- d) To form a society of the new allottees.
- e) To prepone the date of possession with occupancy certificate.

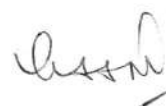
D. S. Singh

2. This matter was heard on given dates. Both the parties appeared through their respective advocates and also filed their written submissions on record.
3. The complainant has argued that he is a tenant of the re-development project implemented by the respondent promoter in which he being the original member of the society was entitled to get a flat admeasuring about 383 sq.ft. carpet area free of cost. In addition to this, he purchased additional area of about 349 sq.ft. from the respondent vide registered agreement for sale dated 3-12-2005 for a total consideration amount of Rs. 3,14,000/-. He paid full consideration amount by 7th June 2007. As per the terms and conditions of the said agreement, the respondent was liable to handover the flat to the complainant within a period of 24 months. However, he could not get his flat so far. Hence, the complainant has filed this case against the respondent /promoter seeking aforesaid reliefs from this Authority.
4. The respondent has further argued that the present project is a re-development project, which got delayed due to the heritage notification issued by the State Government. According to him, the delay is due to following reasons.
 - i) Due to litigation between the land owner and the Collector, the respondent could not carry out the development work on site. A suit was filed by the tenant in small causes court at Mumbai, due to which considerable time and money was lost in vacating the tenant and hence, the respondent could not carry out construction work on site.
 - ii) The competent authority delayed granting the permission such as, IOD. Hence, the respondent could not start the construction work on site. As per clause No. 8 of the development agreement, the respondent was not entitled to start the work till the IOD is obtained. The IOD was issued



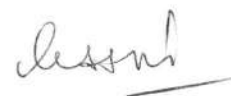
by the competent authority on 24-03-2006 and commencement certificate was issued on 27-02-2007.

- iii) In the year 2008, the dispute between the owners and the respondent was referred to arbitration and a stop work order was passed by the Arbitrator in the said proceeding. In the said proceeding, the consent award was passed on 9-03-2012. Hence, the respondent could not proceed with the construction during that period.
 - iv) The property under the project was listed in the Heritage list notified on 31-07-2012 and the construction activities were stopped till the property remained included in the said list.
 - v) Due to the delay caused by the competent authority in finalization of the Development Plan, the permission in respect of the 10th and 11th floor got delayed.
5. The arguments given by the parties were examined, and it was found out that, there is a delay in handing over the possession of the flat to the complainant as per the agreement executed between both the parties. It is admitted fact that the complainant is the original tenant in the redevelopment project and has purchased the additional area from the respondent by paying consideration amount in the sale component of the said project. The respondent has duly accepted the entire consideration amount from the complainant towards the cost of the additional area. Therefore, the complainant is entitled for the flat as promised by the respondent and the respondent can not create third party rights in respect of the said flat.
6. So far as the claim of the complainant for rent is concerned, this Authority feels that there is no provision under Real Estate (Regulation & Development) Act, 2016 and Rules and Regulations made there under for payment of rent. The complainant, therefore, can not seek directions from under RERA for rent. With regard to the formation of society by the respondent, there is provision in section 11(4)(e) of the RERA Act and the relevant Rules made there under. It is statutory duty of the respondent to



form a society if more than 51% allottees have booked the flats in the project.

7. In respect of the payment of interest to the complainant for delayed possession, this Authority has examined the arguments of both the parties. This Authority feels that though the complainant is a tenant of re-development project, he has purchased an additional area of 349 sq.ft in the sale component from the respondent by paying consideration amount and also executed registered agreement to that effect. Since the respondent promoter has agreed to allot an apartment to the complainant, he is covered under the definition of "allottee" under section 2(d) of the Real Estate (Regulation and Development) Act, 2016. Therefore, the complainant is entitled to seek relief under section 18 of the said Act.
8. It appears from the record particularly from the registered agreement for sale dated 3rd December 2005 executed between the complainant as tenant, respondent and the owners of the land, that the complainant has purchased the additional area from the respondent in sale component and the respondent agreed to hand over possession of the new flat to him within a period of 24 months from the date of tenant handing over possession of the rented premises to the respondent and from the date of demolition of the same for development. The IOA and commencement certificate for the said building was issued on 24th March 2006. The respondent has argued that the project got delayed due to various litigations filed by the tenant and the owner of the land. However, the respondent failed to clarify why he still require 4-5 years to complete the project.
9. Even all the constraints pointed out by the respondent are taken into consideration, there was adequate time to complete the project and handover the possession of the said flat well before the RERA Act, 2016 came into effect on 1st May, 2017. 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. The complainant is, therefore, entitled to claim interest on the amount paid by him.

10. It is 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 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 passed in W.P.No. 2737 of 2017. The respondent is liable to compensate the buyers accordingly.
11. Accordingly, the respondent is directed 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 1st May, 2017.
12. With regard to the revised date of completion of the project mentioned by the respondent, this Authority had directed the Technical Consultant, MahaRERA to visit the site and submit a report about the present status of the project under reference. Accordingly, the concerned officer visited the site and submitted his report dated 2-04-2018 on record of this Authority. The same is taken on record. As per the said report 90% project work is already completed. Hence it appears that for remaining 10% of the work, the respondent has given unreasonable time for completion, which is not acceptable. This Authority feels that the revised date of possession should commensurate with the actual work already completed on site. The



respondent is, therefore, directed to pre-pone the revised date of completion of the project from 1-09-2022 to 1-11-2019.

13. With the above directions, the complaint stands disposed of.


(Dr. Vijay Satbir Singh)
Member 1, MahaRERA