

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

1. Complaint No. CC006000000056060

Mr. Santosh N Singh

.... Complainant

Versus

M/s. Venus Enterprises

.... Respondent

Project Registration No. **P51800003608**

Along With

2. Complaint No. CC006000000056061

Mr. Shaikh Mohd. Salim Moosa

.... Complainant

Versus

M/s. Venus Enterprises

.... Respondent

Project Registration No. **P51800003608**

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

Adv. Nifin Parkhe appeared for the complainants.

Adv. Vijay Gawde appeared for the respondent.

ORDER

(17th December, 2019)

1. The complainants above named have filed these 2 complaints seeking directions from the MahaRERA to the respondent promoter to procure occupancy certificate from the competent authority, and form society under the provisions of Section 11(4)(e) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA) in respect of booking of their respective flats in the respondent's project known as "**Venus Towers**" bearing MahaRERA registration no. P51800003608 at Kurla. The complainants sought direction to respondent to pay water and property taxes and to complete all incomplete work such as lift etc. and not to sell open car parking to third party.
2. These complaints were clubbed together since the same were pertaining to the same project and heard on several occasions and heard finally

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today. During the hearings, both the parties sought time to make their respective submissions and in compliance of principles of natural justice adequate time was granted to the parties to submit their submissions in support of their claim.

3. It is the case of the complainant at sr. no. 1 that, he has booked his unit in the respondent's project in the year 2005. The respondent has delayed the project for about 12 years. Without obtaining occupancy certificate, the respondent has handed over the possession of the unit to the complainant in the year 2017 and till date, he has not obtained occupancy certificate. The complainant in sr. no. 2 has contended that, though he has paid entire amount and the agreed date of possession of the said unit was 31/12/2012, till date the respondent has not handed over the possession of the said unit to the complainant. The complainant therefore prayed for interest for delayed possession. The complainants have further stated that, the project is still incomplete and the lift etc. has not been installed and therefore the allottees residing in the said building are suffering from hardships. Moreover, the open space which comes under the common amenities, the respondent is selling car parking which is illegal as per the Hon'ble supreme court judgement given in Panchali Developer's case. The complainants therefore prayed for their complaints to be allowed.

4. The respondent resisted the claim of the complainants by filing reply on record of MahaRERA. The respondent has stated that, the complainant at sr. no. 2 has executed agreement for sale on 19/09/2011. However, still there is a balance amount of Rs. 71,525 towards the final consideration of his unit. Therefore, during the hearing, MahaRERA has directed both the parties to settle the account between themselves. Accordingly, he called the complainants to amicably discuss and to hand over the requisite financial documents. However, the complainants have not responded to the same. The respondent further stated that, he has started the process of

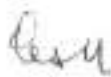
formation of society vide a letter dated 22/02/2019 addressed to the SRA and has also opened a bank account in Mumbai District Central Co-Op Bank, Kurla to deposit the share money into the society's account. He has also applied for occupancy certificate on 22/06/2018 and he is regularly following up with the competent authority for the same. The respondent stated that, the occupancy certificate could not be obtained since there is a municipal toilet which was required to be demolished by the MCGM and thereafter the respondent was liable to complete the construction of compound wall to divert the nullah which flows through the said plot of land. However, in spite of several reminders to the MCGM for grant of permission to demolish the said toilet, it has not granted to same till date. With regards to the incomplete work, the respondent stated that, there are no shortcomings or deficiency in the project as alleged by the complainants. The respondent, therefore, requested for dismissal of these complaints.

5. The MahaRERA has examined the arguments of both the parties as well as the record. In the present case, prima facie, it appears that, the complainants have booked their respective units in the year 2005. However, the project is still incomplete and the occupancy certificate is not yet obtained. The complainants are therefore seeking directions from the MahaRERA to the respondent to obtain occupancy certificate. The respondent in his reply has not stated any valid ground for delay in obtaining the occupancy certificate. Though the project has been started in the year 2005, after a lapse of 14 years, is still incomplete, and now, in the MahaRERA, the respondent has mentioned the completion date of the project as 31/12/2020. The MahaRERA has also observed that, more than 51% of allottees have booked the units. Hence, the respondent was liable to form the society or association of allottees and the respondent has already taken steps for the same.

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6. In these complaints, since, the complainants have raised dispute with regard to the occupancy certificate, the MahaRERA, therefore, directs the respondent to obtain occupancy certificate within a period of 2 months from the date of this order. The respondent is further directed to complete the incomplete work as prayed by the complainants before obtaining the occupancy certificate.
7. With regard to the claim of interest by the complainant in sr. no. 2, admittedly, the date of possession in the agreement for sale has lapsed and therefore the respondent has violated the provisions of section 18 of RERA. The respondent has also not stated any plausible explanation for the alleged delay. Moreover, the MahaRERA is of the view that, there was sufficient time for the respondent to complete the project before the provisions of RERA came into effect on 01/05/2017. The respondent is, therefore, liable to pay interest for the delayed possession to the complainant at sr. no. 2 from 01/05/2017 at the rate as prescribed by MahaRERA i.e. Marginal Cost Lending Rate (MCLR) of State Bank of India (SBI) + 2%, till the actual date of handing of the possession to the said complainant, along with the occupancy certificate.
8. With the above directions, both the complaints stand disposed of.

महा-रेरा


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