

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

1. COMPLAINT NO: CC006000000054615
Mahesh Chendavankar and Kanchan Chendavankar
2. COMPLAINT NO: CC006000000055480
Pravin P. Shelke and Madhuri P. Shelke
3. COMPLAINT NO: CC006000000055484
Umesh Joshi and Veena Joshi
4. COMPLAINT NO: CC006000000055867
Govind Arjun Dhavan and Renuka G Dhavan
5. COMPLAINT NO: CC006000000055976
Indu Shreerang Shedge and Vaishali S. Shedge
6. COMPLAINT NO: CC006000000056320
Manoj Rajendra Nile
7. COMPLAINT NO: CC006000000057674
Sharmishtha Hemant Masurekar
8. COMPLAINT NO: CC006000000057033
Bhupendra Yadav

... Complainants

Versus

Sheth Infracore Private Limited
MahaRERA Regn. No. P51800000882

... Respondent

Coram

Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainants nos. 1 - 7 were themselves present a/w Mr. Satish G. Dedhia, Adv.

Complainant no. 8 was represented by Mr. Aditya Parab, Adv.

Respondent was represented by Ms. Pragathi Malle, Adv. a/w Mr. Nilesh Vedpathak, Authorised representative.

Order

February 11, 2019



1. The Complainants have purchased apartments in the Respondent's project 'SHETH MIDORI' (hereinafter referred to as the *said Project*) situated at Borivali, Mumbai via registered agreements for sale (hereinafter referred to as the *said agreements*).

The Complainants alleged that the date of handing over possession pursuant to the said agreements is long over but the Respondent has failed to handover possession. Therefore, they prayed the Respondent be directed to hand over possession of the apartments at the earliest, and pay them interest for the delay under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the *Said Act*). Further, they alleged that the Respondent is now demanding additional amounts for an alleged increase in the carpet area of the apartments; however, no details of the same are being provided. Therefore, they prayed the Respondent may be directed to not demand any additional amounts as there has been no change in the carpet area of the apartments.

2. The said project is registered with a total of three buildings, Buildings A, B and C.
3. The learned Counsel for the Respondent submitted that the construction work of the project is delayed because of reasons which were beyond the Respondent's control and well stipulated for in the said agreement. She then explained that the primary reasons for delay in construction and handing over of possession of the said apartment are stop work notice for the period May 2015 to February 2016, sand shortage, labour shortage, demonetisation and heavy rainfall. Further, she submitted that the Respondent will handover possession of the apartments in accordance with the plan of the respective apartments as mentioned in the agreements for sale and that no further charges towards the carpet area will be demanded. Further, she submitted the Complainants have also defaulted in making payments on time.
4. During the hearing held on January 28, 2019, the learned counsel for some of the Complainants raised the issue of lack of jurisdiction of the Authority to hear and decide the present complaints. He stated that only the Adjudication Officer of MahaRERA has the sole jurisdiction to hear and decide matters under sections 12, 14, 18 and 19 of the said Act. He therefore, prayed that the matters should not be heard by the Authority and the same should be transferred to the Adjudicating Officer.
5. Referring to Section 71 of the said Act which deals with power to adjudicate, it was pointed out that the appointment of the Adjudicating Officer is for the purpose of adjudging compensation under sections 12, 14, 18 and 19. Hence, it was explained that only those part of the above-

mentioned sections which deal with adjudging and awarding compensation, will fall under the jurisdiction of Adjudicating Officers.

As far as other parts of the above-mentioned sections that do not deal with compensation is concerned, the jurisdiction shall lie with the Authority.

6. The present complaints have not been filed under that part of Section 18(1) of the said Act wherein the Complainants would intend to withdraw from the project. If their prayer was relating to withdrawal from the project, they could have demanded return of their amount with interest and compensation and the said matter then would be in the jurisdiction of Adjudicating Officer to adjudge the quantum of compensation.
7. The present complaints have been filed wherein the Complainants do not intend to withdraw from the project and their prayer is seeking interest on delay. For such allottees who intend to continue in the registered project, there is no provision under section 18(1) of adjudging and awarding compensation. Hence, the present complaint solely falls within the jurisdiction of the Authority.
8. On being explained the matter as detailed in para 4 to para 7 above, the learned counsel for the Complainants agreed to give in writing that he is satisfied that this Authority only has jurisdiction in the instant complaints and thereafter requested that the matter be heard on merits.
9. The learned counsel for the Complainants in some matters in his written submissions has submitted *inter alia* that the date of handing over possession as decided by MahaRERA in the previous complaints filed against the said project cannot be made applicable as the present Complainants were not party to the prior complaints.

Next, he submitted that the Respondent has wilfully delayed the completion of the said project with the intention of maximising profits. He submitted that the Respondent wilfully delayed obtaining the requisite approvals, and the said stop work notice referred to by the Respondent was issued due to certain unauthorised construction carried on by the Respondent.

He submitted that the Respondent's contention that the Complainants have also delayed in making payments as per the payment schedule is an after-thought and should not be considered as the Respondent has never raised the issue with the Complainants before. Further,



he submitted that the interest on delayed possession is payable on demand and not on possession. He also submitted that the Respondent is wilfully delaying the process of society formation to secure undue benefit of an increase in FSI.

10. The said project was registered with a revised completion date of May 31, 2019. The original proposed date of completion, December 31, 2016 was also disclosed by the promoter/Respondent (Sheth Infraworld Private Limited) at the time of MahaRERA registration.
11. When the said Act came into being on May 1, 2017, the project was still incomplete and in accordance with Section 3 of the said Act, it was required to be registered with MahaRERA, within 3 months, as an on-going project with a revised completion date. While registering the project the Respondent has estimated the revised completion date as May 31, 2019 for all the three buildings.
12. All the complainants are seeking completion of the MahaRERA registered project, possession of their apartments and interest on delay. None of the allottees are seeking withdrawal from the project with interest and compensation.
13. Though the learned Counsel for the Respondent has explained that the construction work of the project could not be completed because of reasons which were beyond the Respondent's control, the fact remains that the allottees cannot be made to suffer for the delay in getting possession of their completed apartments, even after a reasonable time is given to the Respondent in accordance with Section 4 (2) (I) (C) of the Act read with Rule 4(2) of the Maharashtra Real Estate (Regulation & Development) (Registration of real estate projects, Registration of real estate agents, rates of interest and disclosures on website) Rules, 2017 (hereinafter referred to as the *said Rules*).
14. It is clear that the dates for completion as mentioned in the agreements for sale were long over, even before the said Act came into effect; however, the allottees did not want to use the provisions of Section 8 of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as *MOFA*) to withdraw from the project with refund of their principal amount along with interest but wanted to continue in the project as they were interested in possession of their completed apartments. Section 8 of MOFA allows refund of entire amount paid with interest for failure to give possession within specified time or further time allowed.



15. Section 18 of the said Act reads as thus:

18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, –
(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,
he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

...

Section 18 of the said Act, though is titled *Return of amount and compensation*, deals with two options available to an allottee where a promoter is unable to complete or is unable to give possession:

- a) For allottees seeking withdrawal from the project: this option is a continuation of the provisions of Section 8 of MOFA. Section 18 of the said Act, additionally allows compensation, along with interest, to an allottee who wishes to withdraw from the delayed project.

In other words, the liability under Section 18(1) is not created for the first time by the said Act. The Hon'ble Bombay HC in para 261 of the judgement in *Neel Kamal Realtors Suburban Pvt. Ltd. and anr. Vs. Union of India and others* (hereinafter referred to as the *Neel Kamal judgement*), has also observed that even under Section 8 of MOFA, on failure of the promoter in giving possession in accordance with the terms of the agreement for sale, he is liable to refund the amount already received by him together with simple

interest @ 9% per annum from the date he received the sum till the date the amount and interest thereon is refunded. Therefore, though Section 4(2)(1)(C) enables the promoter to revise the date of completion of project and hand over possession, this provision of Section 18(1) of the said Act, entitling an allottee to withdraw from a delayed project, does not rewrite the clause of completion or handing over possession in agreement for sale.

- b) for allottee who does not intend to withdraw from the delayed project: the proviso to section 18(1) of the said Act, entitling him to interest for every month of delay, is a new provision introduced for the first time by the said Act.

The proviso to section 18 introduced from May 1, 2017 will not only have to be applied prospectively but also have to be construed harmoniously along with sections 4(2)(1)(C), 4(2)(1)(D), 6, 7 and 8 of the said Act.

The Hon'ble Bombay HC in the Neel Kamal judgement has observed that:

"To ascertain the meaning of a clause in a statute the court must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself.

An isolated consideration of a provision leads to some other interrelated provision becoming otiose or devoid of meaning."

Though the Hon'ble HC has stated that by giving opportunity to the promoter to prescribe fresh time line under Section 4(2)(1)(C) he is not absolved of the liability under the agreement for sale, in reply to the plea raised as to why a promoter shall pay interest for the past contractual rights, in case of failure to complete the project after registration under RERA, till the possession is handed over, the HC in para 126 further observes that:

"under the scheme of the RERA it is clear by now that a promoter has to Self-assess and declare time period during which he would complete the project. But in case, in spite of making genuine efforts, a promoter fails to complete the project, then the concerned authorities, adjudicators, forums, tribunals would certainly look into the genuine cases and mould their reliefs accordingly"

Therefore, for an allottee, who does not intend to withdraw from a delayed project which is registered under the said Act, the period of delay for which the allottee will be

entitled to interest, has to be arrived after all relevant provisions of the said Act have been construed harmoniously.

16. Since the said project was incomplete when the said Act came into effect, it was registered with MahaRERA with a revised completion date of May 31, 2019, as self-assessed by the promoter. It is also clear that the Complainants had already paid substantial amount of their consideration price by then and the project work that had already been completed before the project was registered with MahaRERA was also commensurate with the percentage of consideration amount collected.

Section 4 (2) (l) (C) of the said Act reads as:

...

4 (2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:

(l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be;

...

Rule 4 of the said Rules reads as thus:

4. Disclosure by promoter of ongoing real estate projects -

(2) The Promoter shall disclose all details of ongoing real estate project as required under Sub-section (1) and (2) of section 4 and Rule 3 including the extent of development carried out till the date of application for registration under sub-rule (1), as per the last approved sanctioned plan of the project and the extent of development of common areas, amenities etc. completed in respect of buildings along with expected period of completion of the ongoing real estate project. 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.

...

Therefore, in accordance with Section 4 (2) (l) (C) of the said Act read with Rule 4(2) of the said Rules, a reasonable time period for completion of this MahaRERA registered project, commensurate to the balance development work should have been only eight months for building B i.e. by March, 2018, ten months for building C i.e. May, 2018 and seventeen months



from the date of application of registration for building A, i.e. December 31, 2018. In previous complaints filed against the said project, MahaRERA has already directed the Respondent to handover possession of the apartments with Occupation Certificate by December, 2018 for building A, by March, 2018 for building B and by May, 2018 for building C, considering the mitigating circumstances that existed in the said project and the extent of work completed in those buildings.

17. In view of the above, the Respondent is held liable to pay interest on delay from January 1, 2019 onwards for Complainants in A wing, from April 1, 2018 for Complainants in B wing and from June 1, 2018 onwards for Complainants in C wing, till he offers possession of the apartments, with OC, to the Complainants. The said interest shall be at the rate as prescribed under Rule 18 of the said Rules.
18. If the Respondent fails to complete the project even by May 2019, steps should be taken by the Association of Allottees for revocation of registration as per the provisions of Section 7 of the said Act and further completion of the balance work as per the provisions of Section 8 of the said Act.
19. Since the Respondent did not raise any demands for interest on the delayed payments made by the Complainants in their last demand letter, the Respondent's claim that the Complainants have also defaulted in making payments does not sustain.
20. Further, the Respondent shall not demand any further amounts towards the change in carpet area of the apartments if the plan of the apartments remain the same as stated in the agreements for sale. The Complainants shall be required to make the balance consideration amount payments to the Respondent only at the time of delivery of possession of the apartments, after adjusting the receivable interest, on delay, as enumerated above in para 17.
21. The Respondent shall initiate the process of society formation within 30 days from the date of this Order.
22. Consequently, the matters are hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA