

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

COMPLAINT No: CC006000000012618

Mr Pradeep Sharma & Mrs. Sangeeta Sharma Complainants

Versus

M/s. Spenta Builders Pvt Ltd Respondent

MahaRERA Registration No. P51800002414

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

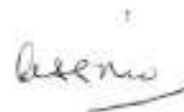
The complainants appeared in person.

Adv. Sonam Mhatre a/w Adv Ankad appeared for respondent

Order

(16th March 2018)

1. The complainants are the allottees in the MahaRERA registered project bearing No. P51800002414 belonging to the respondent/promoter. They purchased a flat bearing No. 902 in Wing "C" admeasuring an area about 730 sq.ft. carpet in the building known as "Palazzio" at Kurla (West), Mumbai for a total consideration of Rs. 58,62,000/- on 24-06-2016 in resale by executing tri-partite agreement. As per the said agreement and the agreement entered between the 1st owner and the respondent, the date of possession was 31-12-2016 with grace period of 6 months. On failure of the respondent to handover the possession of the said flat, the present complaint has been filed, claiming interest under section 18 of the Real Estate (Regulation & Development) Act, 2016.
2. During the hearings, the complainants have claimed that despite their making payment as required, the respondent promoter has failed to handover the possession of their flat according to the registered agreement for sale.



3. The respondent on the other hand has claimed that there were definite reasons for the delay in handing over of the possession of the flat. He has pointed out that the complainants also delayed in making the payments by 190 days. Hence, their claim of interest should be rejected. Furthermore, after completion of the project in May 2017, he applied for occupancy certificate to MCGM, which has still not been given. He has also brought to the notice of this Authority, the fact that the MCGM had directed the Airport Authority of India including the GVK to verify the heights of the buildings under the project as directed by the Hon'ble High Court of Judicature at Bombay vide order dated 1-09-2016 in PIL No. 86 of 2014. However, the Airport Authority of India had not submitted the report so far.
4. After hearing the arguments of both the sides, and the documents submitted by them, it became necessary to find out the reason why the occupancy certificate could not be issued by the competent authority i.e. the MCGM after completion of the buildings. Therefore, the officers from MCGM and GVK were summoned to ascertain their views. Accordingly, they appeared before this Authority and pointed out that the respondent / promoter had failed to follow the directives issued by the Airport Authority of India imposing restrictions on the heights of the buildings. The Airport Authority of India had issued NOC vide letter dated 12-05-2011, in which it was clearly mentioned that the heights of the buildings could not go beyond 45.24 sq.m. AMSL. However, the respondent violated the said directives and increased the heights of the building beyond the permissible limit. Therefore, the competent authority i.e. MCGM did not give occupancy certificate. The GVK has also submitted the report vide letter dated 5-3-2018 before this Authority. The relevant paras of the said letter are reproduced as below;

"1. MCGM vide letter dated 1-06-2017 had requested Mumbai International Airport Pvt Ltd to verify the height of the residential building situated on plot bearing CTS No. 832B of Village Mohili, Sakinaka, Kurla (West), Mumbai to

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check their compliance to AAI NOC dated 12-05-2011 at 45.24 mtrs AMSL prior to processing developers request for issuances of occupation certificate.

2. After physical verification by Mumbai International Airport Pvt Ltd, it was observed that the developer has violated the height NOC of AAI. Details w.r.t the top elevation of the buildings were sent to MCGM vide Mumbai International Airport Pvt Ltd letter No. MIAL/AO-AOS/REC/47/2972 dated 11-08-2017.

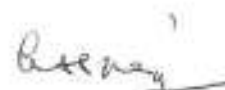
3. The developer vide letter dated 7-11-2017 without mention about the violation of AAI NOC had requested the Municipal Commissioner, MCGM to review their case and grant OC to them, copy of which was marked to MIAL. MIAL vide letter No. MIAL/AO-AOS/REC/473372 dated 13-11-2017 informed the Municipal Commissioner about the violation of the AAI NOC and requested the Municipal Commissioner to keep OC on hold till the developer complies with the height norms of AAI NOC and removes the obstacles portion of the buildings.

4. Since the buildings on the plot have violated the height of 45.24 Mtrs AMSL and hence obstructions for safe Air craft operations, the developer's contentions that the delay in getting the OC is because of GVK - MIAL not granting NOC is incorrect and not justified.

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6. These buildings constitute obstructions and are hazards for safe Aircraft Operations at Chhatrapati Shivaji International Airport, Mumbai. MIAL has already informed MCGM to ensure that the developer complies with height restrictions of AAI NOC and also we are in process of initiating action under the Air Craft (Demolition of Obstructions Caused by the Buildings and Trees Etc) Rules , 1994, through the Director General of Civil Aviation (DGCA").

The contents of the said letter make it clear that the respondent promoter has violated the height restriction imposed by the Airport Authority of India.



Hence, he could not get occupancy certificate for his project. He, therefore, cannot blame anybody, but himself only for the delay which has taken place in completion of the project.

5. As far as delay in making payment by the complainants is concerned, there are provisions under the registered agreement for sale for payment of interest or even termination of the agreement in case of default. The same can not be considered as valid reasons for the delay in the project and not taking action under the provisions of the RERA Act, 2016.

6. 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 6th December 2017. The respondent is liable to pay interest for the period of delay. 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, 2016 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 1st 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