

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000000889

Neha Agrawal

... Complainant

Versus

Sheth Infraworld Pvt Ltd
MahaRERA Regn.No. P51800000882

... Respondent

Corum:

Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant was herself present.

Respondent was represented by Ms. Pragati Malle, Adv.

Order

January 30, 2018

1. The complainant has purchased an apartment bearing No. 904-B in the Respondent's project 'Sheth Midori' situated at Borivali, Mumbai through an agreement for sale dated January 5, 2016 and in accordance with that agreement, the Respondent was required to handover possession of the said apartment by October 2016.
2. The Complainant alleged that the respondent has failed to hand over possession of the said apartment within the stipulated period and therefore they be directed to pay interest to her as per the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the said Act*).
3. Advocate for the Respondent argued that the timelines for handing over possession of the said apartment will have to be read along with the provisions as stipulated under Clause 31 of the said agreement. The relevant portion of Clause 31 of the said agreement reads thus:



... "It is expressly agreed between the Parties, that save and except if the Owner is prevented by any of the reasons mentioned hereinafter, the possession of the said Flat will be handed over by the Owner to the Purchasers on Oct. 2016 provided that the owner has received the full purchase price of the said Flat/s and all other amounts, taxes, deposit of TDS with Income Tax and furnish correct amount of TDS certificate to the credit of the Owner, etc. payable by the Purchaser/s to the Owner under these presents. The Purchaser hereby agrees, acknowledges, confirms and accepts that the Owner may not be able to handover possession to the Purchaser as mentioned above and the possession might get delayed due to the following events:

- i. Reasons beyond the control of the Owner as provided under Section 8 of the Maharashtra Ownership Flats Act 1963, by the aforesaid date/s; or
- ii. Non-availability of steel and/or cement or any such building material or by reason of war, civil commotion or any act of God or force majeure of any prohibitory order of any court against development of property; or
- iii. Any notice, order, rules, notification of the Government and/or other public or competent authority; or
- iv. Changes in any rules, regulation bye-laws of various statutory bodies and authorities affecting the development of the project; or
- v. Delay in grant of any NOC/permission/license connection for installation of any services, such as lifts, electricity and water connections and meters to the project/Flat road or completion certificate from appropriate authority; or delay or default in payment of dues by the Purchaser under these Agreement (without prejudice to the right of the Owner to terminate the agreement under clauses 21,22 and 23 mentioned hereinabove. "...

4. Further, she argued 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. When asked for the specific mitigating circumstances, she 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, Complainant's default in making timely payments, sand shortage, labour shortage, demonetisation and heavy rainfall.



5. The advocate for the Respondent specifically argued that the Complainant has defaulted in making timely payments to the Respondent as per the agreed payment schedule as stated in the said agreement for sale which also entitles them to a reasonable extension of the delivery timeline.
6. The reasons given by the advocate for the Respondent for the delay in handing over possession of the said apartments, are general in nature. On the basis of the arguments made by her, a period of two months' delay may be allowed to be condoned for the stop work (January and February 2016) and some delay may be condoned for the delay made by the Complainant in making timely payments of the consideration amounts due to the Respondent. It is also clear that even though the Complainant may have defaulted in making timely payments as alleged by the Respondent, an amount of up to 95% of the consideration amount for the said apartment has been collected by the Respondent, in November 2016, from the Complainant. Respondent should not have taken more than 9-10 months to complete the remaining work of the said project and therefore, the delay thereafter is not justifiable.
7. Section 18 (1) of the Real Estate (Regulation and Development) Act 2016 reads as:


" 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;

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. "

Accordingly, since the complainant has established that the promoter has failed to complete or is unable to give possession of the said apartment in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, provisions of section 18 of the said Act does apply to the present case.



8. Various opportunities were given to the parties to settle the matter amicably, however, they failed to resolve their dispute. The Respondent's offer to carry out some extra amenities in the Complainant's apartment (modular kitchen) was not acceptable to the Complainant.
9. It was suggested by MahaRERA that since the Complainant has already made payments upto 95% in November 2016, the Respondent should set off the remaining 5% payment in lieu of the interest payable by the Respondent for delay in handing over possession of the said apartment. Complainant agreed for the same, however, the Respondent stated that it may not be financially possible for the Respondent to set off the said amount as according to them they are not liable for paying interest for delay. Further, she stated that as agreed in a previous complaint filed with MahaRERA against the said project, the Respondent is committing to handing over possession of the said apartment before the period of March 31, 2018.
10. After hearing the arguments of both the parties and in view of the above facts, it is hereby directed that the Respondent shall handover the possession of the said apartment, with Occupancy Certificate, to the Complainant before the period of March 31, 2018, failing which the respondent shall be liable to pay interest to the complainant from April 1, 2018 till the actual date of possession, on the entire amount paid by the complainant to the respondent. The said interest shall be at the rate as prescribed under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules, 2017. Further, in lieu of the interest on delay, payable by the Respondent as per the provisions of section 18 of the said Act and as agreed by the Complainant, the Respondent shall not demand any further payments for due consideration of the said apartment and treat the 95% payment received from the Complainant till November 2016 as the full and final consideration for the said apartment.
11. Consequently, the matter is hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA