

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

COMPLAINT No: CC006000000044400

Mrs. Seema Deepak Mehta & Anr	Complainants
Versus		
M/s. S.B. Brothers Developers	Respondent

MahaRERA Registration No. P51900008501

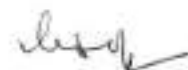
Coram: Hon'ble Dr. Vijay Satbir Singh, Member-1

Adv. Gaurangi Pathak appeared for the complainants.

Adv. Arun Panicker appeared for the respondent.

ORDER
(18th Sept. 2018)

1. The complainants have filed this complaint seeking directions from MahaRERA to the respondent to pay interest for the delayed possession under section-18 of the RERA Act, rent of Rs. 75,245/-, compensation and also directions to form a Cooperative Housing Society in respect of booking of a flat bearing flat No. 1201 on 12th floor adm. 685 sq. ft. carpet area in the Building known as 'Trevedia Veu Point' bearing MahaRERA Registration No. P51900008501 at Dadar (West), Mumbai.
2. During the hearings, the complainants have argued that in the year 2015, they booked the aforesaid flat in the respondent's project for a total consideration of amount of Rs.2,13,08,000/- and accordingly the registered agreement for sale was executed on 5th May, 2015. As per clause No. 36 of the said Agreement, the respondent was liable to hand over the possession of the said flat to the complainants on or before 31st March,



2017. Till date the complainants have paid substantial amount to the respondent by obtaining home loan of Rs.1,61,25,000/-. However, the respondent has not handed over possession of the said flat to the complainants so far and the latter are paying monthly EMI of Rs.1,74,763/- and also paying rent and residing in the rented house. The complainants are therefore seeking interest under section-18 of the RERA Act on the actual amount paid by them to the respondent till the actual date of possession.

3. In addition to this, they have further argued that the respondent has not adhered to the plans shown at the time of booking and he has changed the layout of kitchen. They are, therefore, seeking appropriate relief under the RERA Act. The complainants further argued that since the respondent failed to hand over the possession of their flat according to the Agreement, the complainants are constrained to stay in a rental house. They are, therefore, seeking rent of Rs.2,50,000/- from the period of 1st April, 2018 till the actual date of possession and also the License fee of Rs. 75,245/- from 1st April, 2018 till 30th June, 2018 @18% per month. Besides, they further argued that though more than 51% of the flats have been booked in the project, the respondent has not taken any steps to form a Co-operative Housing Society of the said project. In view of these facts, the complainants requested to allow their complaint.
4. The respondent disputed the claim of the complainants and argued that the present complaint filed by them is not maintainable before this Authority and the same should be decided by the Adjudicating Officer since the complainants are seeking compensation. He further argued that the complainants are the investors and not genuine buyers. The respondent further argued that the project got delayed due to the reasons which were beyond the control of the respondent. However, he is ready to refund the amount paid by the complainants alongwith 12% interest as per

clause No.36 of the said agreement for sale. He has further argued that the building had completed on site and he has applied for Occupancy Certificate to the concerned Planning Authority. With regard to the provision in kitchen as demanded by the complainant, the respondent stated that he is ready to change the kitchen layout as per the wish and will of the complainants.

5. After considering the arguments made by both the parties the MahaRERA feels that admittedly there is a registered agreement for sale executed between the complainants and the respondent and the possession of the flat is not handed over to the complainants according to the Agreement and therefore the complainants are seeking interest and compensation under section 18 of the RERA Act.
6. The claim of the complainants for compensation under section 18, can't be considered since the complainants want to continue in the project and as per provisions of section 18(1) of the RERA Act, they are entitled to seek interest under section 18 of the RERA Act and the rules made thereunder. MahaRERA feels that there is no provision under RERA Act for grant of rent and license fee as prayed for by the complainants. Hence, the said relief cannot be granted.
7. With regard to the delay in handing over possession of the flat to the complainants, the MahaRERA feels that the respondent appeared for hearing before MahaRERA and filed affidavit on record of MahaRERA raising the preliminary objection for deciding this complaint by the MahaRERA on the ground of jurisdiction of this Authority. The respondent argued that since the complainants are seeking compensation under section 18 of the RERA Act, this Authority has no jurisdiction to try and entertain this complaint under section 31 of the RERA Act. In this context, the relevant provisions of section 18 reads as under:

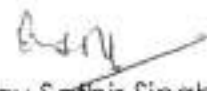
"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on 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".

8. In view of the aforesaid provisions of section 18 of the RERA Act, the allottee is entitled seek interest and compensation in case he wishes to withdraw from the project. However, in the present case the complainants do not want to withdraw from the project and they are entitled to seek interest for the delayed possession. Therefore, the preliminary objection raised by the respondent regarding jurisdiction for deciding the present complaint has no merits. Hence, it stands rejected.
9. It is very clear from the above discussion that the respondent could not provide valid reasons for the delay in completion of the project. Moreover, the payment of interest on the money invested by the home buyers is not a penalty, but, reasonable provision in the Act. This has been clarified by the Hon'ble High Court of Judicature at Bombay in the judgment dated 6th December, 2017 passed in W.P.No. 2737 of 2017. The respondent is liable to pay interest for the period of delay in accordance with the terms and

conditions of agreement and the provision of section-18 of the RERA Act, 2016.

10. In view of above facts and discussion, the respondent is directed to pay interest to the complainants from 1st May 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 on actual amount paid by the complainants.
11. Since more than 50% flats have been booked in the project and it is mandatory as per the provisions of section 11(e) of the RERA Act to form a Society of the allottee the respondent is directed to comply with the said provisions of law and to take steps to form a society as per the above provisions of the RERA Act.
12. With the above observations, the complaint stands disposed of.


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