

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

COMPLAINT No: CC006000000054682

Mr. Jitendra Kumar R. Soni

..... Complainant

Versus

M/s. Sai Developers & 3 Ors

..... Respondents

MahaRERA Registration No - P51700013647

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

Adv. Tanmay Ketkar appeared for the complainant.

Adv. Zamir Shaikh appeared for the respondents.

ORDER

(20th August, 2018)

1. The above complaint has been filed by the complainant in the project registered with MahaRERA bearing No. P51700013647 known as "Sai Regency" at Kalyan, Dist - Thane, under Section-18 of the Maharashtra Real Estate (Regulation and Development) Act, 2016. He is seeking directions from this Authority to the respondents to pay interest for the delayed period of possession in respect of booking of his shop bearing No. 1 on ground floor of Wing-A in the said project.
2. As per the registered agreement for sale executed between them, the respondents were liable to handover possession of the premises to the complainant on 31-03-2013. However, the respondents have not handed over the possession of the shop to the complainant so far. During the hearings, the parties were allowed to file their submissions in writing.
3. The respondents raised the issue of jurisdiction and argued that the present complaint has been filed just to grab money from the

respondents. The respondents further argued that the complainant purchased the said shop by executing registered agreement for sale. The complainant was to make payment as per the payment schedule mentioned in the said agreement. However, till date he has not made payment towards the consideration amount. The respondents stated that there is no clause in the agreement for sale to pay interest if the project is delayed for possession and therefore, the complainant's demand for interest is illegal. Further, they have given the following justification for delay in completion of the project.

- (a) During the period from 2013 to 2016, there was shortage of sand and building materials due to the prohibition order from the State Government and therefore, the construction work slowed down.
- (b) Due to the order dated 13-04-2015 passed by the Hon'ble High Court in PIL No.182 of 2009, the construction activities within the limit of the KDMC was stopped and the said stay was vacated by the Hon'ble High Court vide order dated 25-04-2016. Therefore, the respondents could not revise the plan for the said building.
- (c) During demonetization in the year November 2016, the respondent could not pay the consideration amount to the owner for purchase of TDR and therefore, the owner filed Suit No. 88 of 2016, before Civil Court at Kalyan against the respondents claiming balance consideration amount.
- (d) Further, the booking of the flats/shops was slowed down due to demonetization ~~as the project is situated at the end of Kalyan city.~~

(e) With the introduction of GST from July 2017, the process of new tax system has added for delaying the entire planning of the project.

4. The respondents further argued that since the complainant earlier booked Shop No. 1 in the said project, he was aware of the such delay. Moreover, now the price of the complainant's shop is appreciated and the construction work is going on in full swing, ^{he would} ~~it is now expected to~~ handover the possession of the shop to the complainant by December 2018, which is the revised date of completion mentioned in MahaRERA registration. Therefore, the present complaint is premature at this stage.
5. The above issues as contended by the respondents in response to the complaint are discussed as under.

i) **Jurisdiction.**

The complainant is an allottee in the ongoing project which is registered with MahaRERA under Section-3 of the RERA Act, 2016. The jurisdiction of this Authority on such project continues till the project gets completed fully and obligation of the promoter regarding the project get fully discharged. This Authority therefore, has the jurisdiction to hear the complainant's grievances concerning the project.

ii) **Ban on sand.**

Another factor which the respondents have pointed out is that, the project got delayed because of ban on sand and stone mining. However, the said ban was placed in the year 2013 and lifted in the year 2016. In this case, the agreement was executed between the respondents and the allottee in 2011 and the respondents would have informed the complainant in advance about such delay due to sand ban.

iii) **Date of completion mentioned in the registration with MahaRERA.**

The respondents further stated that the revised date of completion as mentioned in MahaRERA registration of 31-12-2018 should be considered as date of possession and no relief should be granted to the complainant. This cannot be accepted as the date of completion of the project. The date of possession mentioned in MahaRERA registration cannot re-write under any circumstances as the due date in the agreement for sale already signed by both the parties.

iv) **Demonetization –**

This can not be considered as valid ground for the alleged delay caused to the said project. If the respondents could have completed the project within the specified time mentioned in the agreement for sale, they would not have faced the said problem.

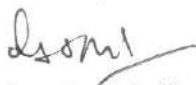
6. It is very clear from the above discussion that the reasons cited by the respondents for delay in completion of the project, do not give any plausible explanation. Moreover, the payment of interest on the money invested by the home buyer is not the penalty, but, a type of compensation for delay as has been clarified by the Hon'ble High Court of Judicature at Bombay in the judgment dated 6th December, 2017 passed in W.P.No. 2737 of 2017. The respondents are liable to pay interest for the period of delay in accordance with the terms and conditions of agreement.

7. Even all the factors pointed out by the respondents due to which the project got delayed are taken into consideration, there was enough time for the respondents to complete the project before the relevant provisions of Real Estate (Regulation & Development) Act, 2016 came into

force on 1st May, 2017. The respondents are, therefore, liable to pay interest to the complainant for delay in accordance with the provision of section 18 of the RERA Act, 2016.

8. In view of above facts and discussion, the respondents are directed to pay interest to the complainant 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.

9. Accordingly, the complaint stands disposed of.


(Dr. Vijay Satbir Singh)
Member 1, MahaRERA