

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

COMPLAINT No. CC005000000011626

Mr. Anand Bhatt

....Complainant

Versus

M/s. Pentagon Shreemenagal Vishram Venture

.... Respondent

MahaRERA Registration No.P52100006289

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

Adv. Vijay Muttha appeared for the complainant.

Mr. Nicky Milani appeared for the respondent.

Order


(20th August, 2018)

1. The complainant has filed this complaint seeking directions of MahaRERA to the respondent to refund the amount paid by him along with interest under section-18 of the Real Estate (Regulation & Development) Act, 2016, in respect of booking of a Flat No. D- 1210, on in the Building known as "Daffodils Avenue Phase 1", bearing MahaRERA Registration No. P52100006289 at Pune.
2. During the hearings, the complainant has argued that he booked the flat in the project in 2012 and a registered agreement was also executed on 28.09.2012. As per the agreement, the respondent was liable to hand over possession of the said flat to the complainant within a period of 36 months from the date of execution of the Agreement. However, till date possession of the flat has not been given to the complainant. Hence, the complainant is seeking refund under Sec. 18 of the RERA Act, 2016.

3. The respondent disputed the claim and argued that the present complaint filed by the complainant is not maintainable since the project under reference in which the complainant has booked a flat has already got Occupancy Certificate on 05.04.2018. Further, the complaint has been filed by the complainant on 11-6-2018 seeking refund after obtaining the occupancy certificate. Hence, the provision of Section-18 of the RERA Act is not applicable and the present complaint become in fructuous. The respondent further argued that the complainant has made default in payment towards the consideration amount of the said flat and as on date an amount of Rs.7,22,108/- is due from the complainant.
4. Besides the above, the project was getting delayed due to change in Planning Authority and therefore, in the month of February, 2017, the respondent paid an amount of Rs.72,000/- towards the rent for 12 months. The complainant has also accepted the payment of rent paid by the respondent. Therefore, now the complainant, after accepting the rent cannot seek relief under Section-18 of the RERA Act. The respondent, therefore, requested that since the flat of the complainant is ready with the occupation certificate, appropriate directives may be given to the complainant to pay the outstanding dues and take possession of the said flat at the earliest.
5. After considering the submissions made by both the parties, the MahaRERA feels that the complainant is seeking refund with interest under the provisions of Section-18 of the RERA Act and admittedly the Occupancy Certificate for the said building has been obtained by the respondent on 5th April, 2018. The present complaint has been filed by the complainant on 11th June, 2018 i.e. after obtaining Occupancy

Certificate by the respondent. It is crystal clear from the record that on the date of filing of this complainant, the project was completed and the occupancy certificate from the concerned Planning Authority was also received. Therefore, the provisions of Section-18 has no role to play and the said provisions of Section-18 ceases in the particular complaint.

6. Considering the facts in this case, and the flat of the complainant is ready for occupation with Occupancy Certificate, this Authority directs the respondent to hand over the possession of the said flat to the complainant immediately subject to payment of dues by the complainant.
7. With the above directives, the complaint stands disposed of.


(Dr. Vijay Satbir Singh)
Member-I, MahaRERA