BEFORE THE

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

MUMBAI

COMPLAINT NO: **CC006000000001611**

Mohd Haneef ... Complainant.

Versus

Supreme Construction
(Supreme Emperor) ... Respondents.

MahaRERA Regn: **P51700006847**

Coram: Shri B.D. Kapadnis, Hon'ble Member & Adjudicating Officer.

Complainant: In person
Respondent: Ms. Nidhi Agarwal.

Final Order

29th January 2018.

Pleadings of parties.

The complainant has filed this complaint under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (RERA) to contend that he entered into an agreement for sale to purchase the flat No. 104, Building No. H-1-81 in respondents' registered project Supreme Emperor situated in village Juchandra, Tal. Vasai, Dist. Thane, on 12th February 2015. The respondents agreed to deliver the possession of the flat in December 2015 but failed to deliver it on the specified date. Hence, the complainant is claiming his amount with interest and/or compensation as he wants to withdraw from the project.

2. The respondents have pleaded not guilty and they have filed their explanation wherein they contend that the land owner Mr. Anthony Pareira gave a proposal to CIDCO in the year 1993 that he shall construct a bridge over the nalla (stream) having width of 12 meters at his own cost and the construction cost of the bridge be adjusted against the development charges of

his land. This proposal was accepted by CIDCO and bridge was constructed. The respondents received notice from Virar-Vasai Municipal Corporation dated 31.01.2015 asking them to stop the work for non-payment of development charges and the matter was taken to Mantralaya and thereafter to the Civil Court by filing Regular Civil Suit No. 103 of 2016. The Civil Court, Vasai restrained the Corporation from acting upon stop-work notice. In that context, Writ Petition No. 896 of 2016 came to be filed before the Hon'ble Bombay High Court which passed an order on 13/04/2016 and directed the respondents herein to deposit Rs. 1,10,00,000/- and also directed the Corporation to take appropriate action if the illegal construction is found. Therefore, the respondents contend that the project could not be completed within time. They further contend that the construction work is in progress and hence they request to dismiss the complaint.

Point for determination.

3. Whether the complainant is entitled to get refund of his amount with interest on the respondents' failure to deliver the possession of the flat on the agreed date, is the point which needs to be answered. I answer it in affirmative for the following reasons.

REASONS

Delayed project:

4. The respondents have admitted that the complainant has booked the flat no. 104, Building No. H-1-81 and they agreed to deliver its possession by December 2015. It is also fact that they have not delivered the possession of the flat till the date of complaint. The respondents have referred to the facts which have taken in the year 1993 onwards. But to my mind the facts disclosing the grounds of delay which occurred prior to agreement for sale dated 12th February 2015 have no relevance. Those facts were within the knowledge of the Respondents on 12.02.2015 when they executed the agreement for sale. Despite

that, they promised the complainant to deliver the possession of the flat by December 2015. Hence, the respondents cannot bank upon those facts which are taken earlier.

5. The respondents have referred to the stop-work notice dated 31st January 2015. This was also before the execution of the agreement for sale. Not only that. the order passed by the learned Civil Judge in Regular Civil Suit No. 103 of 2016 shows that the Municipal Corporation was restrained from acting upon its notice dated 30.01.2015. The order passed by the Hon'ble High Court in Writ Petition No.896 of 2016 is in favour of respondents. Therefore, I am not convinced with the grounds mentioned by the respondents which prevented them from making the construction within the agreed period. In this context, one more aspect of law will have to be taken into consideration is, section 8 of Maharashtra Ownership Flats Act, 1963 provides that if the promoter for the reasons beyond his control is unable to give possession of the flat by the date specified and the period of three months thereafter or the further period of three months if those reasons still exist, then the promoter shall be liable on demand by the allottee to refund the amount already received by him. Obviously, the maximum period of six months has lapsed in this case and therefore, on this count also the respondents cannot seek any relief on the ground that the reasons delaying project were beyond their control. Hence, I hold that the complainant has proved that the respondents have failed to deliver the possession of the flat on the agreed date.

Legal provision.

6. The Section 18 of RERA provides that the complainant can claim refund of his amount with interest and/or compensation if the promoter fails to deliver the possession of the apartment on the date specified in the agreement. It gives the option to allottee to withdraw from the project. In view of this provision,

the complainant has exercised his right to withdraw from the project and claims refund of his amount with interest.

Entitlement of complainant.

7. The respondents have not denied the receipt of the amount mentioned in the statement of payment submitted by the complainant which is marked at Exhibit 'A' for identification. It shows that he paid Rs. 3,00,000/- at the time of booking and Rs. 5,000/- towards the brokerage on 05.02.2015. He paid Rs. 38,942/- on 22.08.2016. The respondents collected Rs. 10,58,676/- on 24.02.2015 from the complainant's loan account. In addition to these, the complainant had to pay Rs. 7,189/- towards the processing fee, Rs. 562/- CERFAI fees and Rs. 2600/- towards mortgage charges on 21.02.2015. He paid service tax amounting to Rs. 50,518/- on 06.04.2015. He paid Rs. 18,840/ towards registration charges of agreement on 12.02.2015. The complainant is entitled to get reimbursement of these amount. Complainant spent Rs. 92,700/- on stamp duty but he is entitled to get its refund on cancellation of the agreement for sale. Hence he is not entitled to get its reimbursement.

8. Section 18 of RERA allows the allottee to collect his amount with interest at prescribed rate which is MCLR of SBI + 2%. The current rate of MCLR of SBI is 8.05% at present. Thus, the complainant is entitled to get simple interest at the rate of 10.05% together with Rs. 20,000/- towards the cost of the complaint. Hence, the following order.

ORDER

1. The respondents shall refund the amount mentioned in Para 7 of this order with interest at the rate of 10.05% to the complainant from the date of receipt thereof till they are repaid.

2. The respondents shall pay complainant Rs. 20,000/- towards the cost of complaint.

3. Complainant shall execute deed of cancellation of agreement for sale, at respondents' cost, on satisfaction of his claim.

4. The charge of amount payable to complainant is kept on his booked flat until his claim is satisfied.

29.1.18

(B.D. Kapadnis)
Member & Adjudicating Officer
MahaRERA, Mumbai.

Mumbai.
Date: 29.01.2018

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MUMBAI.

Complaint No. CC006000000001611

Project No. P51700006847

Mohd Haneef ---Complainant.

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(Supreme Emperor) ---Respondents.

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Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

ORDER ON THE APPLICANT'S APPLICATION UNDER SECTION 63 OF RERA.

The complainant complains that the respondents have not complied with the order passed in his complaint on 29th Jaunary 2018. Therefore, the notice under Section 63 of the Act has been issued to the Respondents. The Advocate, Mr. Rohit Sawant for the respondents submits that the respondents have preferred an appeal against the order passed by this Authority. The Appeal No. is AT 006/197. Since the order is under challenged, the judicial propriety requires that the Authority should defer from taking action in this matter and wait for the reasonable time. Hence, the action is deferred.

(B.D. KAPADNIS)
Member &Adjudicating Officer,
MahaRERA, Mumbai.

Mumbai
Date: 03.05.2018.