

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

COMPLAINT No: CC006000000000826

Mr. Ravikumar Nair and Mr. Emmanuel Pattern on behalf of Allottees of Avaj  
Residency

..... Complainants

Versus

M/s. Avaj Builders and Developers Pvt Ltd

MahaRERA Registration No. P52000012402

..... Respondent

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

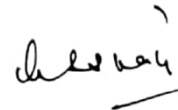
The complainants appeared in person.

Adv. Mayur Shikhare appeared for the respondent.

**Order**

(19<sup>th</sup> March 2018 )

1. In all, there are 64 allottees in the aforesaid complainants, have filed this complaint through the aforesaid complainants in the MahaRERA registered project bearing No. P52000012402 known as "Avaj Residency" at Panvel under section 18 of the Maharashtra Real Estate (Regulation and Development) Act, 2016 seeking directions from this Authority to the respondents to pay interest for the delayed period of possession in respect of booking of their flats in the said project of the respondents.
2. Initially, the aforesaid two complainants have appeared before this Authority during the hearing. Thereafter, they filed written submissions on behalf of other 64 complainants. During the hearings, the complainants appeared in person and Adv. Mayur Shikhare appeared for the respondent. Both the parties expressed their willingness to settle the matter



amicably. However, despite having some meetings they could not reach a mutually acceptable solution and therefore, the matter was heard on merits of the case.

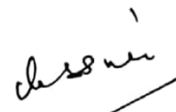
3. The complainants have argued before this Authority that most of them had made payment of almost 90% of the total consideration of their respective flats as demanded by the respondent. According to the agreement for sale, the date of possession was December 2014. The respondent has not been able to hand over the possession of the flats to the complainants so far even after a gap of more than 3 years. Hence, they have demanded interest for the delayed possession under section 18 of the Real Estate (Regulation and Development), Act, 2016.
4. The respondent on the other hand argued that the project got delayed due to reasons like change in planning authority, restrictions on extraction of sand and demonetization resulted in poor sale of flats. He further argued that the permissions for the project were given by the Collector Raigad in the year 2011, the planning authority, Navi Mumbai Airport Influence Notified Area (NAINA) under CIDCO came into existence in January 2013 and thereafter, the permissions for the project in the notified area were assigned to the planning authority. According to the respondent, this delayed the project and he will require necessary permissions including occupancy certificate from the new planning authority. In addition to the above, the respondent further argued that most of the complainants have made default in payment of outstanding dues and some of the complainants have already got the possession of their flats, still they have filed this complaint.
5. The arguments given by the respondent were examined and it was found out that the village where the project is situated was included in the list of new planning authority, NAINA. It is true that the planning authority changed and further permissions were required from the new planning

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authority. However, the respondent could not explain which particular permission delayed the project by more than 3 years. In fact, he continued taking permissions from the previous planning authority and he produced completion certificate issued by the Gram Panchayat which appears to be irrelevant. The Authority feels that he had sufficient time to apply and take permissions as required from the new planning authority and there was no reason to delay the project for such a long period. The other reasons pointed out by the respondent i.e. restriction on sand extraction and demonetization etc. also do not provide reasonable ground to delay of the project.

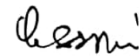
6. However, considering all the difficulties pointed out by the respondent, the Authority feels it reasonable to give one year of extension in the date of possession to complete the project. Accordingly in the agreement for sale, the date of possession can be given extension by a period of one year in terms of clause No. 7 of the agreement to consider his contractual liability to compensate the allottees under section 18 of the RERA Act 2016. As far as delay in making payment by the complainants is concerned, there are provisions under the registered agreement for sale for payment of interest or even termination of the agreement in case of default. The same can not be considered as a valid reason for the delay in the project and not taking action under the provisions of the RERA Act, 2016. Moreover, the complainants who have already taken possession of the flats can not seek any relief under section 18 of the RERA Act, 2016.

7. It is very clear from the above discussion that the reasons cited by the respondent for the delay in completion of the project, do not give any satisfactory explanation. Moreover, the payment of interest on the money invested by the home buyers 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 above cited judgment dated 6<sup>th</sup> December



2017. The respondent is liable to pay interest for the remaining period of delay.

8. Accordingly, the respondent is directed to pay interest to the complainants for the delayed possession at the prescribed rate under RERA Act, 2016 and the Rules made there under after extending the date of possession mentioned in the agreements for sale by one year. The respondent is also entitled to recover his outstanding dues from the defaulters at the same rate of interest.
9. With these directions, the complaint stands disposed of.



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