

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

COMPLAINT NO: CC005000000022270

Mr Syed Javed Hussain.
Mrs Rizwana Hussain

... Complainants.

Versus

Mantri Dwellings.
(Mantri Vantage)

... Respondents.

MahaRERA Regn: P52100008390.

Coram: Shri B.D. Kapadnis,
Hon'ble Member II.

Appearance:

Complainant: Adv. Kalyanpur.


Respondents: Adv. Dixit.

Final Order

4th September 2019.

The complainants have booked flat no. A-207 in the respondents' registered project 'Mantri Vantage' situated at Village Kharadi, Taluka Haveli, District Pune. The respondents agreed to hand over the possession of the flat on or before December 2017 but they failed to do so. Therefore, the complainants claim interest on their investment for delayed possession under Section 18 of RERA.


2. The respondents have pleaded not guilty. They have filed their reply to contend that Clause 59 of the agreement for sale provides that if there is dispute between the parties, it be referred to Arbitrator. Therefore, they contend that the complaint is not maintainable. They



further contend that though there is mention in the agreement for sale that the possession would be handed over by December 2017, they have revised the date of completion as June 2020 and it has not been objected by the complainants. Therefore, the complaint is premature. On the issue of delayed possession, they contend that though they have commenced the construction work in the year 2015 they could not complete it for the reasons which were beyond their control. According to them, in year 2015, the main contractor appointed by the respondents abandoned the work. Then in November 2016, the Government of India declared Demonetization scheme and also implemented Goods and Services Tax Act which adversely affected the construction work. There is recession in the real estate industry / market and units are not sold. They contend that the complainants were kept informed about the reasons of the delay from time to time and also about the revised date of completion to which they have not taken any objection. The promoters are entitled for extension for the causes like force majeure mentioned in Clause 19 of the agreement for sale. Clause 18 thereof provides that if the promoter fails to complete the project in time, then the allottees are entitled to cancel their booking and get back their amount with 9% of interest which the complainants did not do. Therefore, they request to dismiss the complaint.

3. Following points arise for determination and my findings thereon as under

POINTS	FINDINGS
1. Whether the complaint is barred by Arbitration & Conciliation Act?	Negative.
2. Whether the respondents have failed to hand over the possession of the flat on agreed date?	Affirmative.



3. Whether the complainants are entitled to get interest on their investment for every month of delay? Affirmative.

REASONS

4. Respondents have taken the objection that there is clause in the agreement to refer the dispute to the arbitrator under Arbitration & Conciliation Act. I find that the crux of the matter is, whether the Real Estate Regulatory Authority established under Section 20 of RERA has special powers or not. Section 31 of the Act confers upon it the power to adjudicate the dispute between the aggrieved person on one hand and promoter, allottee, real estate agents on the other for any violation or contravention of the provisions of RERA, the Rules and Regulations made thereunder. Section 32 lays down the functions of the Authority for promotion of the real estate sector. Section 34 also prescribes the functions including that of registration of the project. Section 35 allows it to make investigation. Section 79 of RERA bars the jurisdiction of Civil Court from entertaining any matter which the Authority or Adjudicating Officer of Appellate Tribunal is empowered under the Act to determine.

Section 3 of RERA empowers the Authority to impose penalty for non-registration of the project requiring registration. Penalty can be imposed if false or incorrect information is uploaded by virtue of Section 4. Section 7 of the Act confers the power to revoke the registration of the project when the promoter makes default in doing any act required to be done under RERA or if the promoter violates the terms and conditions of the approval given by the Authority or the promoter involves any kind of unfair practice or irregularities or indulges in fraudulent practice. Section 8 thereof empowers the Authority to take over the control of the project and take it to the completion. It has the power to impose the



penalties on allottees, real estate agents and the promoters in case of violation of the provisions of the Act. It can issue suitable directions to make them to discharge their duties and obligations. Section 59 to 69 relate to the offences and penalty. Section 71 lays down that for adjudging compensation the Adjudicating Officer is to be appointed. The qualification of the Adjudicating Officer is; he should be judicial officer who has been District Judge. The complainant has claimed compensation also and therefore, these powers to adjudge compensation is specifically vested in the Adjudicating Officer by Section 71 which cannot be passed to the Arbitrator. The Act also creates special rights and obligations so far as allottees, promoters and real estate agents are concerned. Therefore, I hold that the jurisdiction of this Authority cannot be taken away by the arbitration clause of the agreement. Hence, the complaint is maintainable.

5. The complainants have relied upon the agreement for sale executed by the respondents in their favour. It shows that respondents agreed to hand over the possession of the flat on or before 31st December 2017. According to them, the complaint is premature because the revised date of completion is 30.06.2020 and it has not been crossed yet. Therefore, it is necessary to decide from which date the period of delay is to be reckoned. For this purpose, I rely upon the case of Neelkamal Realtors Suburban Pvt. Ltd. - v/s-Union of India 2018(1)AIR Bom R558. Hon'ble Bombay High Court has clearly mentioned that under the provisions of Section 18, while deciding the delay in handing over the possession, the date of possession mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA is material. RERA does not contemplate the rewriting of contract. Hence I find that the respondents were liable to hand over the

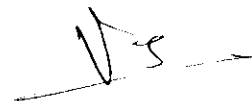


possession of the flat on or before 31st December 2017 which the respondents have not done. Therefore, I find that the respondents have failed to hand over the possession of the flat on agreed date.

6. The agreement for sale has been executed as per the provisions of The Maharashtra Ownership Flats Act 1963. Its Section 8(b) provides that if the promoter fails to complete the project for the reasons beyond his control, the period of completion can be extended for three months and if those reasons still exist then it can be extended for next three months. Thus, the period of completion/possession cannot be extended beyond six months. In this case the delay is beyond six months. Therefore, even it is taken for granted that the reasons assigned by the respondents which caused the delay were really beyond their control and they were genuine, they do not absolve the respondents from paying interest on complainants' investment under Section 18 of RERA.

7. Section 18 of RERA provides that on promoter's failure to hand over the possession on the date specified for it in the agreement and if the allottee continues in the project, then the allottee is entitled to get interest on his investment at prescribed rate from the date of default till getting the possession of the flat. Hence, I find that the complainants are entitled to get interest on their investment from 01.01.2018 till receiving the possession. The prescribed rate of interest is 2 % above SBI's highest MCLR which is currently 8.4%.

8. The complainants have paid Rs. 56,01,690/- before the agreed date of possession and the receipt thereof has not been disputed by the respondents.



9. The complainants are also entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the order.

ORDER

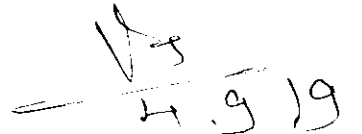
The respondents shall pay the simple interest of 10.4% to the complainants on their investment of Rs. 56,01,690/- from 01.01.2018 till delivering physical possession of the flat with occupation certificate.

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

The parties are permitted to adjust their respective claims and pay the arrears if any.

Mumbai.

Date: 04.09.2019.


(B. D. Kapadnis)
Member II, MahaRERA,
Mumbai.