

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

Complaint No.CC006000000057701

Mrs. Shazia Sadiq Gite

Mr. Sadiq Mohd Hussain Gite

.... Complainants

Versus

M/s. Maredian Realtors Pvt Ltd.

..... Respondent

Project Registration No. P51800009430

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

Mr. Parth Sarathy a/w Adv. Miti Mehta appeared for the complainants.

Adv. Shirin Shaikh appeared for the respondent.

ORDER

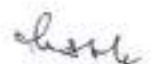
(7th November, 2019)

1. The complainants have filed this complaint seeking directions from MahaRERA to the respondent to pay interest for the delayed possession as provided under section-18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA") in respect of booking of a flat No. 501, on 5th floor, in the respondent's project known as "**Maredian Heights**" bearing MahaRERA registration No. P51800009430 at Jogeshwari (West), Mumbai.
2. The matter was heard on several occasions and the same was heard finally on 23-10-2019. During the hearings, both the parties appeared through their respective advocates and made their oral submissions. However, after hearing the arguments of both the parties, the respondent was directed to file written submission within a period of two weeks. Accordingly, the respondent has filed written submission-cum-undertaking affirmed on 29-10-2019 on record of MahaRERA. The same is taken on record.

3. It is the case of the complainants that they have booked the said flat admeasuring 655 sq.ft. carpet area for a total consideration amount of Rs. 34,75,000/- and registered agreement for sale was executed on 28-06-2017. According to the said agreement, the respondent was liable to handover possession of the said flat to the complainant on or before 31-12-2018 . Though the complainants have paid the entire consideration amount to the respondent, the latter has failed and neglected to handover possession of the said flat to the complainants. Hence, the present complaint has been filed under section-18 of the RERA, thereby seeking interest for the delayed possession.
4. The respondent has filed reply on record and disputed the claim of the complainant. The respondent has stated that the complainants have been paid an amount of Rs. 7,35,000/- towards the interest for the delayed possession on humanitarian ground. However, the complainants have suppressed this fact from MahaRERA and nowhere in their complaint, they have made any averment to that effect. The respondent further stated that the project got delayed due to the delay in granting the necessary permission by the concerned authorities such as, environment clearance from MoEF and NOC from Airport Authority of India. The Airport Authority of India has initially approved the building height upto 70.56 sq. m., which was subsequently reduced to 65.081 by the GVK-MIAL on 11-05-2015 and thereafter, revised NOC for height admeasuring 83.82 m. has been granted by the Airport Authority of India on 13-02-2019.
5. The respondent was, therefore, constrained to change the plans of the said building as per the revised NOC issued by the concerned authority. Hence, the project got delayed. The said reasons were beyond the control of the

respondent. It further stated it has given revised completion date to MahaRERA for completion of this project as 31-12-2023 and it is ready and willing to handover possession of the said flat to the complainants on the said date of possession. The respondent further stated that if the complainants are not ready to wait till that period, it is ready to refund the amount paid by the complainants along with applicable interest. The respondent, therefore, prayed for dismissal of this complaint.

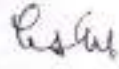
6. The MahaRERA has examined the rival submissions made by the both the parties as well as the record. In the present case, the complainants have filed this complaint seeking interest for the delayed possession under section-18 of the RERA. According to the agreement for sale, the respondent was liable to handover possession of the said flat to the complainants on or before 31-12-2018. However, the possession is not given. The respondent has stated that there is no intentional delay on their part and the project got delayed due to delay in getting NOC /permission from MoEF /Airport Authority of India. Considering this, the respondent was constrained to change the plans of the said building due to the revised height approved by the Airport Authority of India. The reasons cited by the respondent for the delay are not justifiable, since all project was started in the year 2010, when the complainants have booked their flat and being a promoter of the said project, the respondent was aware of the fact that NOCs are required to be obtained from various government authorities and should have taken effective steps at initial stage when the project was launched. The complainants/allottees, who have paid substantial amount to the respondent and waiting for home since last many years should not suffer due to such inaction on the part of the respondent.



7. In this regard, the MahaRERA feels that section 18(1) of the RERA, provides that on promoters' failure to give possession on the date specified in the agreement for sale, if the allottee is willing to continue in the project, the allottee is entitled to seek interest at prescribed rate under section 18 (1) of the RERA on the actual amount paid by the allottee for every month of delay till the date of possession. In the present case, admittedly, the respondents have failed to handover possession of the said flat to the complainants on the agreed date of possession. Hence, the MahaRERA is of the view that the complainants are entitled to get interest for the delayed possession under section-18 of the RERA.
8. Prima facie, it appears that the reasons cited by the respondent for the delay in completion of the project, do not give any plausible explanation and therefore, the same can not be accepted by MahaRERA. Further, the MahaRERA also feels that 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 the judgment dated 6th December, 2017 passed in W.P.No. 2737 of 2017. The respondent is liable to pay interest for the period of delay in accordance with the terms and conditions of agreement.
9. Even all the factors pointed out by the respondent, due to which the project got delayed, are taken into consideration, there was enough time for the respondent to complete the project before the relevant provisions of RERA came into force on 1st May, 2017. The respondent is, therefore, liable to pay interest to the complainants for delay in accordance with the provision of section -18 of the RERA.

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10. In the light of these facts, the MahaRERA directs the respondent to pay interest to the complainants from 1st January, 2019 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 RERA. Since the respondent has already paid an amount of Rs. 7,35,000/- to the complainants towards compensation for the said delay, the said amount should be deducted from the total outstanding amount payable to the complainants towards interest under section-18 of the RERA and the remaining amount shall be paid to the complainants at the time of possession with occupancy certificate.
11. With the above direction, the complaint stands disposed of.


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