

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

Complaint No. CC006000000089552

Maryam Musaddik Peshimam Nee &
Maryam Abdul Jalil Khatib

.... Complainant

Versus

M/s. Sarthak Developers
MahaRERA Registration No. P51800007127

.... Respondent

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

Adv. Pooja Gaikwad i/b Adv. Sanjay Chaturvedi appeared for the complainants.

Adv. Mahesh Karule appeared for the respondent.

ORDER

(3rd December, 2019)

1. The above complaint has been filed by the allottees in the project registered with MahaRERA bearing No. P51800007127 known as "**Sarthak Heights**" at Varsova, Andheri (West), Mumbai, under Section-18 of the Maharashtra Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA"). They are seeking directions from this Authority to pay interest/compensation for the delayed period of possession in respect of booking of their flat in the said project of the respondent and also possession of their respective flat with Occupancy certificate and other amenities. As per the registered agreement for sale executed between them, the respondent was liable to handover possession of the flat to the complainants on 24/2/2013. However, the respondent has failed to handover the possession of the flat to the complainants so far.
2. This complaint was heard on several occasions and the same was heard finally today. During the hearings, both the parties sought time to file their



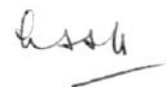
respective written submissions on record and in compliance of principles of natural justice, sufficient time has been granted to both the parties to file the same in support of their claim.

3. It is the case of the complainants that they had booked the said flat in the respondent's project for a total consideration amount of Rs. 80,00,000/-. The registered agreement for sale was executed on 10/11/2011. According to the said agreement for sale, the respondent was liable to hand over possession of the said flat to the complainants within 36 months from the date of commencement certificate i.e. on or before 24-02-2013. However, the respondent has not handed over the possession of the said flat to the complainants till now. Hence, the complainants requested to grant relief under section-18 of the RERA directing the respondent to pay interest for the delayed possession etc., The complainants have stated that in this particular project, MahaRERA has already passed an order on 19th July, 2019, in Complaint No. CC006000000057045 along with other three complaints and granted interest in favour of those complainants' allottees from 1st May, 2017 and March, 2018. The complainants also sought similar reliefs in this complaint.
4. The respondent resisted the complaint by raising various defenses in the reply filed on record of MahaRERA and argued that the few purchasers of this project have filed Commercial Suit (L) No. 999 of 2019 before the Hon'ble High Court of Judicature at Bombay. In the said Suit, a Court Receiver has been appointed, who in turn has taken symbolic possession of this project. Even one more Suit bearing No. 673 of 2019 has been filed against the respondent and same are sub-judice before the Hon'ble High Court at Bombay. Due to this reason, they could not apply for extension of project



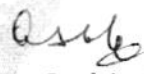
validity period from MahaRERA. With regard to the alleged delay in completion of this project, the respondent has stated that the project got delayed mainly due to the change in DCR-1991, whereby the concept of fungible FSI was introduced, due to which they were constrained to change the plan of the said building. Further, due to health issue of one of the Directors of their company, fund was severely affected and ultimately caused delay in the project. The respondent stated that since the matter is pending before the Hon'ble High Court as stated hereinabove, the MahaRERA can not proceed with passing of any order without any leave of Hon'ble Court Receiver and therefore, prayed for dismissal of this complaint.

5. The MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case, admittedly, there is a registered agreement for sale executed between the complainants / allottees and the respondent / promoter in which the date of possession was mentioned as February, 2016 and till date the possession is not given to the complainants, though full consideration amount has been paid by them. It shows that the respondent has violated the provisions of section-18 of the RERA. However, in this case, as pointed out by the respondent that the similar issue is pending before the Hon'ble High Court at Bombay, in Commercial Suit (L) No. 999 of 2019 filed by the other allottees of this project, a Court Receiver has been appointed by the Hon'ble High Court and symbolic possession has already been taken by the Court Receiver and hence the MahaRERA can not issue any direction to the respondent at this stage, when the possession of the project is not with them.
6. Moreover, the MahaRERA has also observed that the project validity period mentioned by the respondent on MahaRERA website has already lapsed and



the respondent could not obtain extension from MahaRERA under section-7 of the RERA. At this stage, it is not clear as to who shall complete the project. Hence, any direction passed by the MahaRERA would lead to further litigations.

7. In view of the aforesaid facts, and to avoid any contradictory orders, MahaRERA can not grant any relief in favour of the complainants at this stage. However, the claim of the complainants would be dealt with only after final disposal of pending litigation before the Hon'ble High Court at Bombay.
8. With regard to the identical reliefs sought by the complainants as granted in earlier complaints filed before MahaRERA pertaining to this project, the MahaRERA is of the view that the said request of the complainants cannot be granted in view of these new facts brought to the notice of MahaRERA.
9. With the above observations, the complaint stands disposed of.


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