

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

**Complaint No. CC00600000044454**

Milind Padmakar Vaidya

**Versus**

Dgains Bhoomi Nirman

MahaRERA Registration No. P52000009434

..... Complainant

..... Respondent

**Coram:** Dr. Vijay Satbir Singh, Member I, MahaRERA.

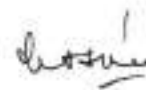
The complainant appeared in person.

Adv. S.P. Shetty appeared for the respondent.

**Order**

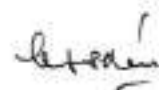
(18<sup>th</sup> September, 2018)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to pay interest for the delayed possession under Section-18 of the RERA Act, 2016 in respect of booking of a Row House No. 39A in the project known as 'Elegant' bearing MahaRERA Registration No. P52000009434 at Jambrung at Karjat.
2. This matter was heard finally. During the hearings, the complainant has argued that he had booked the said Row House in the respondent's project in the year 2013 for a total consideration amount of Rs.17.50 lakhs inclusive of all taxes. The agreement for sale was also registered on 11<sup>th</sup> September, 2015. He has paid an amount of Rs 16,01,000/- so far. As per the terms of the agreement, the respondent was liable to hand over possession of the said row house to the complainant by 31<sup>st</sup> October, 2015. However, till date the respondent has not handed over possession of the same to the complainant. Hence the present complaint.
3. The respondent has disputed the claim of the complainant and argued before MahaRERA that there is no proper complaint filed by the complainant before MahaRERA and even no grievance has been made



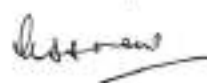
through online and no hard copy was submitted to MahaRERA. The respondent further argued that the complainant has served him only the correspondence attached with the online complaint such as agreement for sale etc., He further argued that there must be a complaint with written pleadings by the complainant without which the MahaRERA cannot take any decision or pass any order. He therefore requested to dismiss this complaint on the ground of maintainability.

4. In addition to this, the respondent further argued that the complainant is an investor and in order to escape from capital gain tax, he invested the amount on the said row house and therefore, he is not entitled to seek any relief under the provisions of RERA Act. The complainant has filed baseless and flagrant abuse of the process of law to harass and extract money from the respondent for which he has approached MahaRERA. The respondent further argued that he has completed the construction of the said row house till brick and plaster level by August, 2017. The concerned architect has also issued certificate till 12/08/2017 pertaining to the completion of the brick and plaster work. Accordingly, he sent a letter dated 12/08/2017 to the complainant stating the progress of the work in respect of the said row house. The complainant on the other hand sent demand e-mail dated 4<sup>th</sup> August, 2018 stating that since the cost of the said row house has appreciated, he wants an amount of Rs.32,02,218/- from the respondent which shows the intention of the complainant to extract money from the respondent being an investor.
5. With regard to the delay, the respondent has argued that the said project got delayed due to unavoidable circumstances such as global real estate turmoil which took place in the year 2015, demonetization in the year 2016 and the RERA Act which came into effect in the year 2017 and the implications of which were severe and which affected sale in the said project. Further, due to the financial problem, the construction activity at site was also severely affected and hence the project got delayed. He



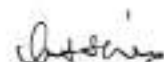
further argued that between the year 2015 & May 2018, the complainant did not make any attempt with any Authority for possession since he is aware of the position of the respondent and the delay happened ~~and~~ in view of these facts only. Therefore, the respondent requested for dismissal of the present complaint.

6. In the present case, both the parties had sought time to settle the matter amicably. However, in spite of several meetings, the parties could not reach an amicable settlement. Hence, this matter was heard on merits today.
7. MahaRERA has examined the arguments of both the parties as well as the records. In the present case, on perusal of online complaint filed by the complainant on 09.06.2018, it appears that the complainant has neither pleaded his case by putting facts nor has sought any specific relief. However, the complainant has annexed a copy of the agreement of sale executed by and between the parties. During the hearing, the complainant appeared before MahaRERA and argued that he being a layman, was not aware of the procedures of filing the online complaint and therefore, he could not file proper complaint before the MahaRERA. However, he clarified MahaRERA that by filing this complaint he is seeking interest for the delayed possession U/Section 18 of the RERA Act from the respondents.
8. During the course of hearing, MahaRERA directed the complainant to submit a proper complaint, which he refused and instead requested MahaRERA to consider his oral submissions as his complaint U/s 31 of the RERA Act. However, subsequently he filed his written complaint in the dispatch of MahaRERA which is taken on record.
9. In the present case, admittedly, the complainant has not submitted proper complaint as required in the prescribed procedure. However, complainant has clarified MahaRERA that he is seeking reliefs U/s 18 of RERA Act. The



said complaint has been accepted by MahaRERA in compliance of principles of natural justice and considered his case on merits.


10. Further, there is a registered agreement for sale dated 11.09.2018 executed by and between the complainant and respondents whereby the respondent has agreed to hand over the possession of the row house to the complainant on or before 31.10.2015. Admittedly, till today, the complainant has not been given possession of the row house to the complainant and therefore, the complainant is seeking interest for the delayed possession u/s 18 of the RERA Act, 2016.
11. The respondents have disputed the claim of the complainant on technical grounds stating that the complainant has not filed the complaint in proper procedure and hence, is liable to be dismissed.
12. With regard to the delay in handing over the possession, the respondents have argued that due to demonetization of currency as well as implementation of RERA Act the respondents project got delayed. The said explanation given by the respondents is unacceptable in view of the fact that the same does not fall under the "force majeure" conditions. Therefore, the MahaRERA feels that cannot accept the explanation given by the respondents for the delay in handing over the possession.
13. 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 plausible explanation. Moreover, the payment of interest on the money invested by the home buyer 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 6<sup>th</sup> December, 2017. The respondent is liable to pay interest for the period of delay in accordance with the terms and conditions of agreement.
14. Even if this Authority takes into consideration all the factors pointed out by the respondent, due to which the project got delayed, there was enough



time for the respondent to complete the project before the relevant provisions of Real Estate (Regulation & Development) Act, 2016 came into force on 1<sup>st</sup> May, 2017. Thus, the respondent is liable to pay interest to the complainant, from 1<sup>st</sup> May, 2017, in accordance with the provision of section-18 of the RERA Act, 2016.

15. In view of above facts and discussion, the respondent is directed to pay interest to the complainants from 1<sup>st</sup> May 2017 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 the Real Estate (Regulation and Development) Act, 2016 and the Rules made there under.

16. Accordingly, the complaint stands disposed of.

  
(Dr. Vijay Satbir Singh)  
**Member 1, MahaRERA**