

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

COMPLAINT NO: CC006000000000919

Mr. Umesh Vyas

.... Complainant

**Versus**

1. M/s. Prima Terra Buildtech Private Limited

2. Satasang Bharti CHS Ltd

MahaRERA Registration No - P51800006231

..... Respondents

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

Adv. S.A. Mishra appeared for the complainant.

Adv. A.K. Singh appeared for the respondent No. 1.

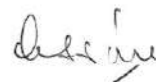
**Order**

(23<sup>rd</sup> May, 2018)

1. The complainant is an allottee in the MahaRERA registered project, belonging to respondents bearing project registration No. P51800006231 known as "Upper East 97" at Malad (East), Mumbai. The complainant had purchased a flat No. 402 on 4<sup>th</sup> floor of the building, having carpet area of 693 sq. ft. in the said project, vide registered agreement for sale dated 18-08-2011 for a total consideration amount of Rs. 50,96,000/-. The date of possession was mentioned as 31-12-2013. He could not get possession of the flat as agreed upon by the respondent in the registered agreement for sale. Hence, he has filed this case against the respondent No. 1/promoter seeking interest for delayed possession under Section-18 of the Real Estate (Regulation and Development) Act, 2016, and for an early possession of the flat.



2. The complainant and the respondent No. 1 were given several dates on their request to settle the matter amicably. However, they could not arrive at any mutually acceptable solution. Hence, the matter was argued on the facts and merits of the case.
3. The respondent has raised the issue of maintainability of this complaint, on the ground that since the agreement had been registered under the provisions of MOFA (still in force), this complaint is not maintainable before this Authority under the RERA Act, and the Authority has no power to grant any compensation under the MoFA. Therefore, the complainant is required to approach civil court. The respondent further stated that the present project is a re-development project of the respondent No. 2 Society having 5 wings of which A, B and C wings are meant for the rehabilitation of members of respondent No. 2 Society, and wing D and E are for the free sale. The delay was not intentional, and it falls within the ambit of the exemptions covered in the agreement for sale dated 18-8-2011. However, they could not handover the possession of the said flat to the complainant due to following reasons which were beyond their control and covered by the relevant clauses of the registered agreement of sale.
  - a) Due to the change in the sanctioned plan pursuant to the new policy of fungible FSI by the MCGM, the plan sanctioned earlier got revised.
  - b) The old Power of Attorney, which was executed on 28-07-2009 by the respondent No. 2 Society, in favour of the respondent No. 1, came to be cancelled, pursuant to the consent terms dated 1-7-2013 filed in Hon'ble High Court Suit No. 268 of 2013, and a fresh Power of Attorney was executed on 29-5-2015. The said process took considerable time, and therefore, the respondent No. 1 was unable to pursue the matter with MCGM, for grant of permissions. The said



delay was caused by the respondent No. 2 for which the respondent No. 1 cannot be blamed.

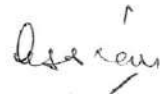
- c) The construction work under the said project was exceeding 20,000 sq.fts, and therefore, Environment Clearance was also essential. The respondent No. 1 applied for the Environment Clearance on 14-12-2015.
  - d) Besides, the respondent No. 1 stated that he was willing to refund the amount paid by the complainant till date i.e. Rs. 12, 02,656/- along with 9% interest from the date of execution of the registered agreement for sale dated 18-8-2011. Even the respondent No. 1 also has shown willingness to allot alternate flat No. E-1202 admeasuring 769 sq.fts carpet area subject to additional payment by the complainant. The respondent No.1 therefore requested to dismiss this complaint.
4. The arguments given by the respondent were examined, and it was found out that the project of the respondent/promoter has been delayed, and he has failed to perform his contractual obligations as per registered agreement for sale executed between both the parties. It is true that, the Development Control Regulation was amended in the year 2012, whereby the concept of fungible FSI was introduced by the Urban Development Department of Maharashtra, and accordingly, all plans sanctioned by the competent authority got changed and the promoters were required to seek amendment in the plans as per the new policy.
5. Even if all the constraints pointed out by the respondent are taken into consideration, there was adequate time to complete the project and handover the possession of the said flat well before the RERA Act, 2016 came into effect on 1<sup>st</sup> May, 2017. According to Sec 18(1) of the Act, if the promoter fails to complete a project or unable to give possession of an apartment, plot or building, the allottee shall be paid interest for the period of delay till handing over of the possession at such rate as may be

prescribed. The Act has provided interest for delay to the home buyer if he wants to continue in the project. This relief was not available under the MOFA. The complainant is, therefore, entitled to claim interest on the amount paid by him.

6. It is clear from the above discussion that, the reasons cited by the respondent do not give any satisfactory explanation for a long delay in completion of the project. 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 above cited judgment dated 6<sup>th</sup> December 2017 passed in W.P. No. 2737 of 2017. The respondent is liable to compensate the home buyer accordingly.
7. Due to the change in Development Control Regulations, 1991 in the year 2012, the plan of the building, wherein the complainant's flat was situated, got amended. Admittedly, the respondent has executed registered agreement for sale with the complainant and sold the flat No. 402 having carpet area admeasuring 693 sq.ft. The respondent promoter is bound to abide by the terms and conditions of the said agreement and hence liable to hand over the possession of the flat to the complainant.
8. In the light of the above facts and circumstances of this case, following order is passed.

#### **ORDER**

- i) The respondent promoter is directed to earmark the flat of the complainant and arrange to hand over the possession of the flat to the complainant.



- ii) The respondent has to pay interest to the complainant for the delayed possession at the prescribed rate under RERA Act, 2016, and the Rules made there under from 1<sup>st</sup> May, 2017 till the actual date of possession on the total amount paid by the complainant.
- iii) The respondent is also entitled to recover his outstanding dues from the complainant.

9. With these directions, the complaint stands disposed of.



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