

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

COMPLAINT No: CC006000000001394

Mr. Omkar Dabholkar

.... Complainant

Versus

M/s. Neelkamal Realtors (Suburban) Private Limited

MahaRERA Registration No - P51700003433

..... Respondent

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

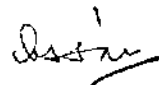
Adv. Deepali Parab appeared for the complainant.

Adv. Sushant Chavan appeared for the respondent.

Order

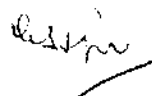
(7th March, 2018)

1. The complainant is an allottee in the MahaRERA registered project bearing No. P51700003433 known as "DB Ozone" at Mira Road. He had purchased a flat bearing No. 902 in Building No. 2 from the original allottees, namely, Mr. Pravin Moiley and Mrs. Prema Moiley vide registered sale-cum-assignment dated 12-12-2013. The said original allottees had purchased the flat from the respondent vide registered agreement for sale dated 23-2-2010, in which the date of possession was mentioned as 31-12-2014 with grace period of 12 months i.e. 31-12-2015. The respondent had also given NOC for the said transaction as the complainant had agreed to abide by the terms and conditions of the original agreement executed on 23-2-2010. However, the complainant could not get possession of the flat as per agreement. The complainant, therefore, claims interest and compensation for delayed possession under section 18 of the Real Estate (Regulation and



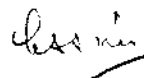
Development) Act, 2016, for an early possession of the flat and rent. He has further prayed that the additional infrastructure and development charges demanded by the respondent should also be waived of.

2. During the hearings, the complainant submitted that the respondent had failed to give possession of the flat as the original registered agreement. Further, the respondent with mala fide intention and without any logical reasons vide letter dated 27-11-2017 raised the demand for increased infrastructure charges amounting to Rs. 4,41,000/- and development charges amounting to Rs. 4,41,000/-. The said demand was never mentioned in the agreement for sale executed in the year 2010 and in 2013. The respondent, therefore, be penalized by imposing 10% penalty of the project cost for not adhering to the rules.
3. In his defense, the respondent raised the issue of maintainability of this complaint, on the ground that, since the agreement had been registered under the provisions of MOFA Act (still in force), the present complaint was governed under the provisions of MOFA Act only. This complaint was, therefore, not maintainable before this Authority under the RERA Act. The respondent further clarified that the project of the respondent was a part of Rental Housing Scheme of MMRDA having total 25 buildings within the jurisdiction of Mira Bhayander Municipal Corporation at Thane District. The construction work of the said project started after commencement certificate issued in the year 2010 and is going on in phase wise manner. As per clause No. 29 of the agreement for sale executed between them, the agreed date of possession with grace period was December, 2015. The said clause also mentioned that the respondent was entitled for extension if the project got delayed due to non-availability of steel/construction material, war, civil commotion or an act of God, any notice /order /rule /notification of the Government/MBMC/Public authority/court/tribunal, economic downturn or any event which is beyond the control of the developer or force majeure etc., The



possession of the flat could not be handed over to the complainant due to following reasons which were beyond their control and covered by clause 29 of the agreement of sale.

- a) Due to economic downturn /crises i.e. escalation in construction cost and even the flats could not be sold in the market and hence they could not generate the funds for construction purpose.
 - b) There was an undue delay in availability of sand on time for construction of the said project as the sand mining was banned in all coastal regulated areas across the State of Maharashtra. Even the quarrying of stone was simultaneously banned in the entire State by the Environment Ministry, which resulted into non-availability of stone for construction as per the order passed by the Hon'ble High Court in PIL No. 138 of 2006. The said ban was lifted only in the month of Feb 2014 by the order of National Green Tribunal.
 - c) Further, the State Environment Impact Assessment Authority (SEIAA) is not providing any clearance for stone quarry and has stopped issuing permissions to stone-crushing units.
4. Besides, the respondent has given the date of 31-12-2019 as the revised completion date under MahaRERA to cover the unforeseen delay in view of the extension provision being restricted under the RERA Act. Further, since the project was delayed, the respondent is ready and willing to refund an amount of Rs. 47,97,676/- paid by the complainant till date with interest aggregating to Rs. 14,11,973/- calculated till 30-11-2017. He also agreed to refund the service Tax or VAT paid by the complainant. Hence, the respondent requested to dismiss the present complaint on the ground of maintainability.
5. In addition to above, the respondent stated that the original purchaser had booked the flat for a total consideration amount of Rs.23,24,952/-. The



complainant had paid them an amount of Rs. 19,81,471/- towards total consideration of the flat. The respondent granted NOC for re-sale of the said flat to the complainant on 7-1-2014. At that time, the complainant has signed a letter and agreed to abide by the terms and conditions of the agreement for sale dated 23-2-2010. In the agreement, clause No. 36 states that in the event of any additional amount becoming payable in respect of item mentioned in clause No. 34 and 35 of the said agreement, the purchaser shall forthwith pay the said amount without any interest. The clause also covers development and infrastructure charges. The respondent, therefore, stated that since the complainant had agreed for the said clauses of the agreement for sale, he is liable to pay the increased development and infrastructure charges to the respondent.

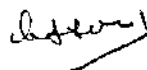
6. The above issue as contended by the respondent in response to the complaint are discussed below.

i) **Jurisdiction –**

The complainant is an allottee in the ongoing project which has been registered with MahaRERA under Section-3 of the RERA Act, 2016. The jurisdiction of this Authority on such project continues till the project gets completed fully and obligation of the promoter towards the home buyer gets fully discharged. This Authority, therefore, has jurisdiction to hear the complainant's grievances concerning the project.

ii) **Economic downturn–**

The respondent's arguments that the project got delayed due to economic downturn, poor sale of flats and escalation in construction costs do not come under the clause of force majeure. As a promoter, having sound knowledge, in the real estate sector, the respondent was fully aware of the market risks while he launched the project and



signed the agreement with the home buyers giving a definite date of possession. Moreover, the nation's economy as a whole has shown consistence growth over the last so many years without any major incidents of recession or inflation. He, therefore, cannot avoid his obligations on the pretext of economic downturn.

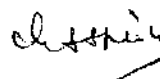
iii) **Ban on sand mining and quarrying of stones –**

Another factor which the respondent has pointed out is that, the project got delayed because of ban on sand and stone mining. However, the said ban was placed in the year 2007 and same was lifted in the year 2014. In this case, the agreement was executed between the respondent and the allottee in 2013 and the respondent was very well aware of all these constraints. Therefore, he cannot make this factor as an excuse for the delay in completion of his project.

iv) **Date of completion mentioned in the registration with MahaRERA**


- The respondent further stated that the revised date of completion mentioned in MahaRERA registration (i.e. 31-12-2019) should be considered as date of possession and no relief could be granted to the complainant. This cannot be accepted as the date of completion of the project in MahaRERA registration can't overwrite the date of possession in the agreement with the allottee. The said issue has been clarified by the Hon'ble High Court of Judicature at Bombay in its judgment and order dated 6th December 2017 passed in W.P.No.2737 of 2017 along with other six connected matters. The agreement of sale determines the relief for the purpose of Section-18 of RERA Act.

7. It is evident from the above discussion that various reasons cited by the respondent for the delay in completion of the project, do not provide any satisfactory explanation. Even if we consider all these, the respondents had sufficient time at his disposal to take necessary action to complete the project in time. The Authority considers a period of six months, beyond the date of possession in the agreement as reasonable for the respondent to overcome



the difficulties pointed out by him. Moreover, the payment of interest on the money invested by the home buyers is not the penalty. It is 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 6th December 2017.

8. Since the complainant wants to continue in the project, he cannot seek compensation or rent from the respondent. With regard to the claim of increase in development and infrastructure charges, the same are part of the terms and conditions of the agreement for sale. There is no provision in RERA Act, under which such relief can be granted.
9. After the provisions of Real Estate (Regulation and Development) Act, 2016, which came into effect, the home buyers were entitled to claim interest under section 18 of the RERA Act, 2018 for the delay till the possession of the flat is handed over.
10. In view of above facts, the respondent is directed to pay interest to the complainant starting six months after the date of possession in the agreement for sale 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.
11. With these directions the complaint stands disposed of.


(Dr. Vijay Satbir Singh)
Member 1, MahaRERA

