

Complaint No. CC00600000057769
BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY MUMBAI

Complaint No. CC00600000057769

Saif Ali Khan Pataudi ... Complainant

Versus

Orbit Enterprises Ltd. & Anr. Respondent

MahaRERA Project Registration No. P51800006763

Coram: Shri. Mahesh Pathak, Hon'ble Member - I/MahaRERA

Ld. Adv. Dharam Jumani appeared for the complainant.

Ld. Adv. Vibhav Krishna a/w. Ld. Adv. Sachin Karia and Ld. Adv. Deepali Shetty i/b Law Point appeared for the respondent No. 1.

ORDER

(Thursday, 06th October 2022)

(Through Video Conferencing)

1. The complainant above named has filed this complaint seeking directions from MahaRERA to the respondent to handover the possession and to pay interest/ compensation for the delayed possession as per the provisions of section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of booking of the flats/ units bearing nos. 805 and 806 in the respondent's registered project known as "**Indian Newspaper Society - INS**" bearing MahaRERA registration No. **P51800006763** located at Bandra Kurla Complex, Mumbai.
2. These complaints were earlier heard by MahaRERA along with other connected complaints filed with respect to this project and after hearing



the parties, these complaints were transferred to the Ld. Adjudicating Officer/ Mumbai vide interim order dated 16/12/2019 to decide the quantum of compensation sought by the complainants. The Ld. Adjudicating Officer/ Mumbai was also directed to transfer the complaints back to MahaRERA after deciding the quantum of compensation.

3. Accordingly, the parties appeared before the Ld. Adjudicating Officer/ Mumbai. However, these complaints were again referred to MahaRERA by the Ld. Adjudicating Officer/ Mumbai on 31-03-2021 to review the aforesaid interim order dated 16/12/2019 in view of the judgement and order passed by the Hon'ble Maharashtra Real Estate Appellate Tribunal in the case of Mr. Pankaj Agarwal.
4. Thereafter, this complaint was heard on several occasions and same was heard finally by the erstwhile Member-1/ MahaRERA on 13-06-2022 and the same was closed for order.
5. However, the final order could not be passed in this complaint due to the retirement of the erstwhile Member-1/ MahaRERA. Hence, this complaint was again heard by the MahaRERA on 26-07-2022 and was heard finally on 23-08-2022 as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions if any. Accordingly, both the parties appeared for the hearing and made their submissions. MahaRERA heard the submissions of the parties and also perused the available record.

6. After hearing the arguments of both the parties, the following Roznama was recorded: -

“Both parties are present. Both parties have argued the matter at length. They are directed to upload their written arguments as soon as possible. The complainant has based his prayers for interest on the fact that the possession has been delayed from 1st August, 2017 till February, 2021 and beyond because the respondents have not communicated the balance amount to be paid although admittedly, letter has been issued to complete the formalities to take possession. He also refutes the argument that the delay because of non-payment to MMRDA is a legitimate delay as allottees cannot be held responsible for such delays as per case law.

Even though the OC has been obtained in February 2021, the complainant avers that he was not offered possession in the proper manner and the MahaRERA directions do not apply to the complainant since he was not a party to that matter and neither does his name appear in the list submitted by the respondent regarding pending dues from allottees.

The respondents have refuted the claims of the complainant beyond the O.C. obtained in February, 2021 and aver that the MahaRERA order is applicable to all allottees and this was specifically pointed out to complainant and he was requested to take possession by completing the formalities. The respondent further mentions that even before that date, the delay is not attributable to the respondent and the issue is subjudiced in the Hon'ble High Court since 2017. Furthermore, the respondent points that the complainant has not raised the complaint in the proper form (Form B) which is notified for the purpose. Respondent is directed to upload its written arguments in the matter.

In view of the above, this matter is reserved for orders."

7. It is the case of the complainant that he purchased one office bearing No. 701 on the 7th floor in INS Building for a total consideration of Rs. 28,00,00,000/-. Accordingly, he paid an amount of Rs. 1,00,00,000/- as earnest money which was later adjusted towards consideration of the units. Thereafter, the respondent issued a letter of allotment dated 14/05/2008 to him recording its intention to enter into an agreement for sale with him. Thereafter, the complainant kept paying instalments as per the demand raised by the respondent towards the final consideration but it did not sign any agreement for sale with him. Thereafter two separate agreements for sale dated 5/7/2016 for Unit nos. 805 and 806 were executed for a total consideration of Rs. 14,43,81,800/- and Rs. 10,90,20,800/- respectively and the respondent misled him into paying Rs. 13,00,00,000/- and Rs. 10,00,00,000/- respectively, prior to the execution of the said agreements for sale instead of the stipulated 20% i.e. 2,18,04,160/-. The agreements for sale further recorded that the respondent would provide possession of the Units 805 and 806 on or before 31/07/2017 which has not yet been given. The complainant on perusing the website of the MahaRERA noticed that the completion of the project date was changed to 31/12/2019 and the project was changed under the banner of Midcity while there are no details on the website for the benefit of the purchasers. Further, the respondent has obtained the extension of time by deceit and the completion date should be treated as 31/07/2017 and not 31/12/2019. Moreover, the respondent has failed to execute and register new agreements with him. The complainant therefore prays for compensation along with interest at the rate of 18% from the date of filing this complaint till payment/realization thereof

and to set off the amount due from him to the respondent promoter and from demanding any further payments from him for the instalments due towards the sale price of the Units.

8. The respondent no. 1 promoter (hereinafter referred to as 'the respondent') has filed its reply on record of MahaRERA stating that the complainant has filed the aforesaid complaint against it for the reliefs mentioned therein. The MahaRERA vide order dated 16/12/2018, has transferred aforesaid complaint to Ld. Adjudicating Officer. It has challenged the said order and has filed appeal bearing No. AT00600000052243 before the Hon'ble Appellate Tribunal on 11.02.2020 which is pending. It has come across the judgment and order dated 31/08/2020 passed by Hon'ble Appellate Tribunal in Appeal No. AT00600000052542 and Appeal No. AT00600000052543, in which the issue pertaining to jurisdiction of MahaRERA and the Ld. Adjudicating Officer has been decided by the Hon'ble Appellate Tribunal. The decision of the Hon'ble Appellate Tribunal is binding on the Adjudicating Officer/ MahaRERA. In view therefore, the present complaint is liable to taken up before the MahaRERA. The respondent therefore prayed that the complaint be placed before the MahaRERA for further orders and consideration for proceeding with the matter. The respondent has also uploaded few judgements of the Hon'ble Appellate Tribunal in support of its case on 06-12-2020.
9. The respondent has filed its written submissions on 16-06-2022 opposing the reliefs prayed in the complaint. It further stated that part occupation certificate dated 12.2.2021 has been obtained for the said project which included the complainant's premises and complainant was informed to

take possession of the units upon making the balance payment but he did not take possession nor has he made the balance payment and hence he is liable to pay interest for the delayed payment. It has further stated that vide an order dated 30-3-2021 passed by MahaRERA in Complaint no. CC00600000078980 filed by it against the complainant and other allottees, the MahaRERA has inter alia directed the allottees to take possession of their respective units since the part O.C. had been obtained but the complainant has not complied with the said order. It further stated that, it is opposing the claim for compensation since, vide a purshis dated 10.6.2022 the complainant has informed the MahaRERA that he is restricting the present complaint to prayer (b) and in view thereof the prayer (a) shall automatically stand withdrawn and alleged claim of compensation under prayer (a) stands dismissed. Further, the claim for interest sought by the complainant @18% per annum is beyond the scope of the agreements. Also there is no prayer for claim for interest in accordance with section 18 of RERA and in absence of any pleading or prayer for interest, the same cannot be granted. Further, no set off can be permitted for dues which include GST payments to the government. It further stated that the building INS Tower which includes Unit nos. 805 and 806 is ready since 2014 and MahaRERA has directed the allottees to take possession upon payment of balance consideration and in fact it is the complainant who has defied and not complied with orders of MahaRERA and not paid balance consideration under registered agreements dated 5-7-2016 and therefore the complaint is liable to be dismissed and complainant be directed to take possession of the said units by making balance payment of consideration including payment towards GST.

10. The MahaRERA has examined the submissions made by both the parties and also perused the available record. In the present case by filing this complaint the complainant has mainly sought following reliefs: -

“a. That this Hon’ble Tribunal be pleased to pass an order directing the Respondent to pay compensation amounting to Rs. 7,46,00,946/- (Rupees Seven Crore Forty-Six Lakh Nine Hundred Forty-Six Only) as sought in Clause/Paragraph E hereunder to the Applicant along with further interest at the rate of 18% from the date of filing this Application until payment/realization thereof;

b. The Hon’ble Tribunal be pleased to direct the Respondent to set off the amount due from the Applicant to the Respondent in respect of the Agreements from the total compensation granted under Prayer Clause “a” hereinabove, with the balance amount being remitted to the Applicant;

c. Pending the hearing and final disposal of the present Application, this Hon’ble Tribunal be pleased to pass an order of temporary injunction restraining the Respondent either through itself or through its office bearers, servants, agents and representatives from seeking / demanding further payments from the Applicant for the instalments due towards the sale price of the Units amounting to Rs. 2,34,12,600/- (Rupees Two Crore Thirty-Four Lakh Twelve Thousand Six Hundred Only);”

11. Further, from the aforesaid submissions prima facie, it appears that the complainant has mainly contended the following issues in this complaint: -

a. The complainant has restricted his prayers for interest for the delayed possession under section 18 of the RERA from 1/8/2017 till February, 2021 and beyond the said period since the respondent has not

communicated the balance amount to be paid although admittedly, he has issued a letter to complete the possession formalities.

- b. The complainant also refutes the contention of the respondent that, the project got delayed mainly because of non-payment to MMRDA and it is a legitimate delay, as allottees cannot be held responsible for such delays as per case law.
- c. Further, though the OC has been obtained in February 2021, he was not offered possession in the proper manner.
- d. The order dated 30-03-2021 issued by the MahaRERA in complaint filed by the respondent bearing No. CC00600000078980 does not apply to this complainant since he was neither a party to the said complaint and neither does his name appear in the list submitted by the respondent regarding the dues pending from allottees.

12. However, the aforesaid claim of the complainant has been resisted by the respondent promoter mainly contending the following issues and praying for dismissal of this complaint: -

- a. The respondent promoter has refuted the claims of the complainant for interest beyond the date of O.C dated 12-02-2021.
- b. The respondent further stated that the order dated 30-03-2021 passed by the MahaRERA in its complaint bearing No. CC00600000078980 filed against the allottees of the project is applicable to all allottees and this was specifically pointed out to complainant and he was requested to take possession by completing the formalities.
- c. Even before that date, the delay caused in this project is not attributable to it and the issue is sub-judice before the Hon'ble High Court at Bombay since 2017 in the Writ Petition filed by it against MMRDA.

d. The complainant has not filed this complaint in the proper form (Form B) which is notified for the purpose of compensation.

13. As far as the reliefs sought by the complainant for compensation on account of the delay is concerned, the MahaRERA has noticed that the said claim does not survive now, since the complainant has restricted his claim to interest for the delayed possession. Further, the Hon'ble Supreme Court of India in its recent order dated 11-11-2021 passed in Civil Appeal No(s) 6745-6749 of 2021 (M/s. Newtech Promoters and Developers Pvt Ltd versus State of UP and Ors.), has now decided the power of the "Authority" as well as the "Adjudicating Officer" under sections 71 and 72 of the RERA. Hence now, power to grant interest under section 18 of the RERA vests with MahaRERA and since the complainant is not pressing for any compensation, the contentions raised by the respondent about filing of this complaint in Form-B does not survive.
14. As far as the prayer sought by the complainant for grant of interest at the rate of 18% p. a. is concerned, the MahaRERA is of the view that, the Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of real estate projects, Registration of real estate agents, rates of interest and disclosures on website) Rules, 2017, provides that the rate of interest payable by the promoters to the allottees or by the allottees to the promoters, as the case maybe, shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent. Hence, the claim of the complainant for interest at the rate of 18% has no substance under the provisions of RERA. Therefore, the same stands rejected.

15. As far as the other issue raised by the respondent about the applicability of order dated 30-03-2021 passed by the MahaRERA in Complaint No. CC006000000078980 is concerned, the MahaRERA has noticed that the present complainant is not a party to the said complaint. Hence, the respondent cannot rely upon the said order in the present complaint.
16. As far the claim of interest for the delayed possession sought by the complainant under section 18 of the RERA on account of delay, it is pertinent to examine the relevant provisions of section 18 of the RERA, which read as under: -

"18 (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, –

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

17. The aforesaid explicit provision under section 18 of the RERA clearly provides that on failure of the promoter to handover possession of the apartment to the allottee on the agreed date of possession mentioned in the agreement for sale, the allottee has two choices; either to withdraw from the project or to continue in the project. If the allottee intends to withdraw from the project, the promoter, on demand of the allottee, is liable to refund the entire amount paid by the allottee along with interest and compensation as prescribed under RERA. If the allottee is willing to continue in the project, then in that event, the promoter is liable to pay interest for the delayed possession.
18. Likewise, in the present case, as per the registered agreements for sale dated 5-7-2016, the respondent promoter had agreed to handover possession of the said units to the complainant on or before 31-07-2017. Admittedly, the possession was not handed over to him on the date specified in the agreements for sale. However, to justify the said delay in handing over of the possession of the said units to the complainant, the respondent has mainly contended that the said delay is caused mainly due to the demand notice issued by the MMRDA for payment of lease premium and due to the non-payment, it has not been granted any permissions by the MMRDA. Even, to get the said demand notice set aside, it has been constrained to file a Writ Petition before the Hon'ble High Court of Judicature at Bombay. It has also contended that the project got delayed due to non-payment of outstanding dues by the allottees of this project, due to which it was constrained to file a complaint bearing No. CC00600000078980 before MahaRERA against such non-performing allottees. In the said complaint, an order was passed on 30-03-2021, whereby the direction was given by MahaRERA to

handover possession of the units to the said allottees in accordance with the agreements for sale. Hence, it has stated that the present complainant is also bound by the said order of MahaRERA.

19. The reasons of delay cited by the respondent promoter do not give any plausible explanation since, as a promoter of the project it was the obligation of the respondent promoter to obtain all the requisite permissions for carrying out the construction work and the complainant allottee had nothing to do with the same. Moreover, if the project was getting delayed due to the reasons cited by the respondent, in that event, the respondent should have informed the same to the complainant and should have revised the date of possession at the relevant time by executing the supplementary agreements for sale. However, the respondent has not submitted any cogent documentary proof on record of MahaRERA to show that it has ever informed the said reasons of delay to the complainant. Hence, now it cannot be permitted to take advantage of the same.
20. Even if the reasons cited by the respondent are considered to be genuine, in that event, it is entitled to seek extension of 6 months in the date of possession as permissible under MOFA under which the said agreement for sale was executed. Considering the same, the date of possession in this case could be extended from 31-07-2017 till 31-01-2018. However, on that date as well, the project was incomplete and the possession was not handed over to the complainant. It shows that the respondent has violated the provisions of section 18 of the RERA and hence the complainant is entitled to seek interest for the delayed possession under section 18 of the RERA from 1-02-2018.

21. In addition to this, the MahaRERA has also noticed that the said reasons of delay cited by the present respondent have already been considered by the MahaRERA and various orders have already been passed in other complaints filed with respect to the present project whereby the MahaRERA has granted interest for the delayed possession under section 18 of the RERA to the said allottees from 1-05-2017. The complainant being allottee of this project is also entitled to seek similar reliefs at par with the other allottees.
22. However, in the present case, the MahaRERA has noticed that the respondent has completed this project and obtained occupancy certificate for the complainant's flats on 12-02-2021 and also offered possession of the same to the complainant. However, the same has not been taken by the complainant alleging that the possession was not offered to him as per the agreements for sale and the interest amount payable by the promoter should have been adjusted towards the balance consideration amount payable by the complainant. The said contention of the complainant is uncalled for since the complainant should have taken possession of his units and could have made such grievances even after possession. Hence, since the respondent has complied with its statutory liability to obtain occupancy certificate and offer the possession to the complainant, the MahaRERA is of the view that the complainant is not entitled to seek any interest under section 18 of the RERA after the receipt of occupancy certificate for this project.
23. As far as the issues raised by the respondent about non-payment of outstanding dues payable by the complainant is concerned, admittedly,

the complainant herein has not made the balance payment as per the agreement for sale although the possession was offered to him with occupancy certificate. In this regard, it is necessary to peruse the relevant provisions of section 19(6) and 19(7) of the RERA, which read as under: -

“19(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).”

24. The aforesaid explicit provisions clearly provide that the allottee (in the present case 'the complainant') is also equally liable to comply with the obligation cast upon him under the provisions of section 19(6) of the RERA. The complainant should have taken the possession of his units by paying the balance outstanding amount as per the terms and conditions of the agreements for sale, when it was offered by the promoter after obtaining the occupancy certificate, without prejudice to his rights under RERA, however, admittedly, the complainant has not paid the balance outstanding dues as per the agreements for sale. Moreover, there is no explicit provisions under RERA which permit the promoter to adjust the balance consideration amount with the interest amount payable by the promoter. However, it is the prerogative of MahaRERA to issue such direction under section 37 of the RERA. It shows that the complainant

has also defaulted to that extent. Hence, he is also liable to pay interest for the delayed payment under the provision of section 19(7) of RERA.

25. Considering these facts, the following order is passed: -

- a) Since the OC has already been obtained for this project, the respondent is directed to handover possession of the said units to the complainant within a period of 15 days from the date of this order.
- b) The respondent is further directed to pay interest for the delayed possession to the complainant from 1-02-2018 (31-07-2017 plus 6 months' grace period granted under MOFA) till the date of OC i.e., till 12-02-2021, for every month on the actual amount paid by the complainant towards the consideration of the said units at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2% as prescribed under the provisions of section 18 of the RERA and the Rules made thereunder.
- c) With regard to the payment of interest to the complainant, the MahaRERA further directs that the respondent is entitled to claim the benefit of "moratorium period" as mentioned in the Notifications/ Orders nos. 13 and 14 dated 02/04/2020 and 18/05/2020 issued by the MahaRERA and the Notifications/ Orders which may be issued in this regard from time to time.
- d) The complainant is also directed to pay interest for the delayed payment from the date of default till the actual date of payment at the rate prescribed under RERA i.e. Marginal Cost Lending Rate (MCLR) of SBI plus 2%.
- e) It is further directed that at the time of possession, both the parties are at liberty to adjust the outstanding dues/ interest for the delayed payment payable by the complainant with the interest amount

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payable by the respondent on account of delay and the balance amount if any, be paid by either party at the time of possession.

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



(Mahesh Pathak)

Member - 1/MahaRERA

