

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

Complaint No. CC00500000095819

Mrs. Vidula Girish Rao

... Complainant

Versus

Aurangabad Holiday Resorts

... Respondent

MahaRERA Project Registration No. P52100007295

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

Ld. Adv. Ajay Gadegaonkar appeared for the complainant.

Ld. Adv. Mustafa Kachwala appeared for the respondent.

ORDER

(Thursday, 11th July 2024)

(Through Video Conferencing)

1. The complainant above named has filed this online complaint before the MahaRERA on 17-11-2021 mainly seeking directions from MahaRERA to respondent to handover the possession along with interest and compensation as prescribed under the provisions of section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of a Flat No. 203 on 2nd floor in Building B, in the respondent's registered project known as "JUBILEE PARK" bearing MahaRERA registration no. **P52100007295** located at Warje, Taluka. Haveli, Dist. Pune.
2. This complaint was heard on several occasions and the same was heard finally on 21-02-2024 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. On the said dates of hearings, the parties have appeared as per their appearances recorded

in the Roznamas and made their respective submissions. The MahaRERA heard the submissions of the parties as per their appearances and also perused the available record.

3. After hearing the argument of both the parties, the following Roznama was recorded in the complaint on 21-02-2024:-

On 21-02-2024- "Both the parties are present. The matter was kept today for final arguments as the respondent has filed its reply to the complaint and the complainant has filed a rejoinder to the said reply of the respondent. The respondent has also uploaded its written submissions. Therefore, the complainant may upload her written submissions within a period of 1 week i.e. by 28-02-2024. The complainant has filed this complaint for possession along with interest and compensation for delay as the date of possession mentioned in the agreement for sale of June 2012 was June 2014. Entire consideration has been paid by the complainant and the project is still incomplete. Therefore, the complainant prays for possession along with interest and compensation for delay in possession. The respondent has pointed out the reasons for delay in completion of the project, mainly due to Covid-19 pandemic as well as issue of environment clearance which is still pending, although the respondent has applied for the same. In view of the above, this matter is reserved for orders suitably after 28-02-2024 based on the arguments of both the sides as well as reply, rejoinder and written submissions filed in the complaint."

4. Despite the specific directions being given by the MahaRERA, the complainant has not uploaded her written submissions on the record of the MahaRERA. Hence, the MahaRERA has perused the available record.
5. It is the case of the complainant that she purchased the said flat in the respondent's said project vide a registered agreement for sale dated 18-06-

2012. The total consideration of the said flat was Rs.31,04,740/-. out of which she has paid the entire amount inclusive of TDS to the respondent. The complainant further stated that the respondent was duty bound to handover the possession of the said flat within 24 months of the execution of the said agreement (on or before 17-06-2014). However, the respondent failed and neglected to handover the possession of the said flat on the agreed date. The respondent failed to discharge its obligations imposed on him in accordance with the promises made by them. As such, the respondent is liable to handover the possession along with the compensation as per section 18(1) and 18(3) of the RERA. Alternatively, the respondent is also liable to pay interest for every month of delay till the actual handing over possession of the said flat. Further, it is also necessary to penalize the respondent u/s 61 of the RERA. The complainant further stated that she does not intend to withdraw from the project. However, being aggrieved by the actions of the respondent, she has filed this complaint before the MahaRERA seeking reliefs as prescribed under the provisions of the RERA towards possession along with interest, compensation and necessary occupation certificate.

6. The respondent on 20-11-2023 although has tried to upload its affidavit in reply on record of MahaRERA. However, the same could not be uploaded due to some technical error. However, the respondent has also uploaded its written submission on record of MahaRERA on 23-11-2023. Hence, the MahaRERA has perused the said submissions filed by the respondent.
7. In the said written submission, the respondent has stated that on 03-04-2014, the respondent applied for Environmental Clearance before the Maharashtra Pollution Control Board. In or around 2015 the construction of the said project was partly completed and then however it was stopped. The respondent had applied for Environment Clearance before the competent and appropriate

authorities that they could not further carry on the construction without receiving the requisite permission. The Maharashtra Pollution Control Board filed a criminal case against the respondent (Shri. Rajesh Sambhaji Pawar - partner of the respondent) vide Regular Criminal Case No. 4255 of 2015. The respondent freshly applied on PARIVESH portal for Environment Clearance on 19-05-2017. Thereafter the application was listed in the 4th meeting of Expert Appraisal Committee ("EAC"), at New Delhi on 19-02-2018 for consideration. The meeting was held almost after a year from the date of Application. Inadvertently the respondent could not attend this meeting and therefore the application was deferred. The respondent received Letter of acceptance dated 01-02-2021 from the Environment Department however the said file could not be found on PARIVESH portal. Therefore, on 25-03-2021 the respondent resubmitted its application for violation - terms of reference bearing file no. SIA/MH/MIS/62226/2021. Further, on 08-04-2021, EC Application bearing no. SIA/MH/NCP/60016/2021 was listed in 145th State Level Expert Appraisal Committee-II (SEAC-II) meeting. In the said meeting it transpired that vide letter dated 06-04-2021, the respondent had informed SEAC-II that the said project comes under purview of SEAC-III committee and the respondent was permitted to withdraw the application bearing no. SIA/MH/NCP/60016/2021. In the meantime, again the respondent re-submitted application for Violation - Terms of Reference ("ToR") bearing file number SIA/MH/MIS/62226/2021 on 25-03-2021. After the withdrawal of application bearing no. SIA/MH/NCP/60016/2021, the respondent received a revised calculation of FSI and Non FSI area from the Architect. Thereafter, on 04-05-2021 the respondent re-submitted corrigendum in Terms of Reference (Form 9) and bearing file no. SIA/MH/MIS/211317/2021. The said application bearing file no. SIA/MH/MIS/60016/2021 was listed on 12-05-2021. In the meeting, the Committee suggested to submit a new corrected application for Environment Clearance due to FSI and Non FSI changes.

Thereafter, the respondent on 31-05-2021 submitted their reply to SIA/MH/MIS/60016/2021 for consideration. The respondent on 15-06-2021 re-submitted application for the said project on PARIVESH bearing proposal no. SIA/MH/MIS/215352/2021. The application was made without any violations and under reference of Environment Department Circular dated 21-04-2015. Further, on 16-06-2021, the respondent received Letter of Acceptance from Environment Department, Maharashtra for Application made bearing file no. SIA/MH/MIS/215352/2021. The files bearing no. SIA/MH/MIS/60016/2021 and SIA/MH/MIS/215352/2021 were going on parallelly in State Level Expert Appraisal Committee-III ("SEAC-III"). The respondent on request of the Committee submitted the required documents for consideration. It was further submitted by the respondent that, it had completed the said project and only on account of Environment Clearance, the respondent has not been able to provide the OC of said project. Further, on or around 24-03-2020, the Government of India declared a lockdown due to the Covid-19 pandemic whereby no construction activity was permitted to be carried out throughout India including Pune. The MahaRERA issued an Order dated 18-05-2020 whereby a period of 6 months starting from 15-03-2020 was declared to be a force majeure period and was to be treated as a "moratorium period" for the purpose of calculation of interest under Sections 12, 18, 19(4) and 19(7). Due to Covid 19 pandemic, the government offices were closed. The respondent unfortunately cannot set out an approximate timeframe within which it shall receive the grant and able to hand over the same. Further the delay caused was not intentional and not because of the respondent. The respondent on 02-09-2022, submitted its application before the concerned authority/Ministry for Environment Clearance, regarding the said project and received the letter of acceptance on 07-09-2022. The respondent on 22-02-2023, re-submitted the application for the said project bearing proposal no. SIA/MH/INFRA2/432520/2023. The application/proposal was made with

violations and under reference of Environment Department. On 12-06-2023, the respondent received Letter of Acceptance Letter for Terms of Reference. The respondent had applied for Terms of Reference and the said proposal was listed in 176th SEAC3 meeting dated 07-07-2023. The SEACIII Committee after detailed discussion and deliberation decided to recommend the proposal to SEIAA for grant of Term of Reference subject to outcome of matter pending before National Green Tribunal, Pune. The 266th SEIAA Meeting for Terms of Reference under the violation Category was held on 20-09-2023 and the SEAC-III Committee had recommended the proposal to SEIAA in the 176th Meeting, pursuant to which the SEIAA concurred with the decision of SEAC-III Committee in the 176th meeting and decided to grant Term of Reference to the respondent subject to the outcome of matter pending before the National Green Tribunal, Pune. By letter dated 02-10-2023, the respondent informed the State Environmental Impact Assessment Authority - SEIAA that the NGT case is pending, and the final hearing was schedule on 17-10-2023. By the letter, respondent also requested to Terms of Reference letter to the said project. The final hearing of the case before National Green Tribunal was adjourned to 28-02-2024. In the letter dated 25-10-2023 addressed to the respondent, the State Environment Impact Assessment Authority, issued Term of Reference for the proposal/application made on 07-07-2021. The respondent was taking care of total maintenance of the entire project and in view of the above submissions, the respondent was diligently attended the committee meetings and has complied with orders of the SEAC-III. It was submitted by the respondent that the terms of reference have been granted to the respondent and they were waiting for the meeting and cannot really predict as to when it will be conducted as there are many pending cases before the said Committee and that there is only one portal namely, PARIVESH through which the respondent get notified regarding status of their applications. The respondent had suffered on account of circumstances beyond its control, more particularly as mentioned

hereinabove. The delay in obtaining Occupation Certificate was on account of difficulties, hurdles and obstacles faced by the respondent. Therefore, in view of what has been stated hereinabove, the respondent prayed that the present complaint be dismissed with exemplary cost.

8. The complainant on 19-12-2023 uploaded her rejoinder on the record of the MahaRERA, wherein the complainant mostly reiterated the submissions made hereinabove. In addition to the said, the complainant has submitted that, the complainant approached the respondent and sought explanation, however the respondent contended that under the project registration of the MahaRERA, the period was extended up to 30-06-2021. However, the date mentioned on the MahaRERA portal has nothing to do with the date of possession mentioned in the said agreement. The respondent miserably failed to complete the said project as agreed while executing the said agreement. The complainant also pointed out to the respondent that the date mentioned in the registration certificate commencing from 17-08-2017 ending on 30-06-2021. By the said clause, the date of possession mentioned in the said agreement is not extended or cannot be extended. The respondent cannot take any undue advantage of the RERA registration to extend the handing over of the possession. The construction work was stalled by the respondent. The complainant had invested her hard-earned money in the said project. However, the respondent took the complainant for a ride by not completing the said project. Further, the respondent failed to communicate about the progress of the work or the reasons causing the delay in completion of the said project. Hence, the respondent should compensate the for the same. Therefore, the complainant prayed for the reliefs as mentioned in her complaint.
9. The MahaRERA has examined the submissions made by both the parties and perused the available record. In the present case the complainant being an

allottee of this captioned project registered by the respondent, has approached the MahaRERA mainly seeking reliefs under section 18 of the RERA towards possession of her flat along with interest and compensation on account of delay.

10. As regards the substantial issue of interest for the delayed possession, the complainant has mainly contended that according to the said agreement for sale dated 18-06-2012, the respondent has agreed to handover possession of the said flat within a period of 24 months from the date of the said agreement for sale i.e. 17-06-2014. However, the respondent has failed to handover possession of the said flat on the said agreed date of possession. The complainant also contended that whatever delay is caused in the project is the sole responsibility of the respondent being a promoter of the project and it cannot claim that due to Covid-19 pandemic and also the date of completion of this project mentioned on the MahaRERA website for completion of this project is nothing to do with the date of possession mentioned in the said agreement for sale. Hence, she prayed to allow this complaint.
11. The respondent on the other hand has refuted the contention of the complainant and pointed out that the project got delayed mainly due to issue of Environmental Clearance is being delayed and also due to Covid-19 pandemic etc. which were beyond its control. Hence, the respondent has prayed for dismissal of this complaint.
11. In the present case, before dealing with this complaint on merits under section 18 of the RERA, it is necessary to peruse the provision of section 18 of the RERA, which reads 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."

12. The aforesaid explicit provision under section 18 of the RERA makes it clear that on failure of the promoter to handover possession of the flat to the allottee on the agreed date of possession mentioned in the agreements 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, in that event, the promoter is liable to pay interest for the delayed possession.
13. Likewise, in the present case, since the complainant has decided to remain in the project and hence has filed this complaint claiming interest on account of the delayed possession as provided under section 18 of the RERA.
14. In the present case, admittedly there is a registered agreement for sale dated 18-06-2012 entered into between the complainant and the respondent promoter. According to clause 11 of the said agreement, the respondent agreed to

handover possession of the said flat to the complainant within a period of 24 months from the date of the said agreement for sale i.e. 17-06-2014. Admittedly, the possession of the said flat has not been handed over to the complainant on the said agreed date of possession mentioned in the said agreement for sale. Even as on date, the project is incomplete as the OC has not been obtained for the project by the respondent.

15. The respondent has not denied the date of possession mentioned in the agreement for sale dated 18-06-2012 nor has it denied the payments made by the complainant. However, it has mainly contended that the said delay was due to certain issue due to which the Environmental Clearance could not be obtained by it and also due to the Covid-19 pandemic etc. It has contended that the said factors were beyond its control. Be that as it may, the respondent promoter has tried to cite various reasons of delay in handing over possession of the said flat to the complainant on the agreed date of possession, however all such constraints occurred after the date of possession mentioned in the agreement for sale got over on 17-06-2014. Being a promoter of the project, it is the duty of the respondent to obtain timely permissions from the competent authority/concerned authorities and the complainant allottee has nothing to do with the same. Hence, the MahaRERA cannot consider the said reasons of delay cited by the respondent as plausible explanation.

15. Even if such reasons for delay are considered to be genuine and beyond the control of the respondent, the MahaRERA prima facia feels that the respondent is entitled to seek 6 months extension which was permissible under the provision of MOFA in which the said agreement for sale was executed between the parties. Considering the said 6 months grace period permissible under MOFA, the date of possession in this case gets extended till 17-12-2014 from 17-06-2014. Even on that extended date of possession, the project was incomplete

and possession of the said flat was not handed over to the complainant.

16. In addition to this, the MahaRERA is also of the view that even if all the factors pointed out by the respondent due to which the project got delayed are taken into consideration, there was enough time for the respondent to complete the project before the relevant provisions of RERA came into force on 1st May, 2017 however, the respondent has failed to do so. It shows that the respondent has violated the provisions of section 18 of the RERA. Hence, the complainant is entitled to seek interest on account of the said delay under section 18 of the RERA.
17. As regards the claim of the complainant towards compensation sought by them under section 18 of the RERA, the MahaRERA is of the view that since the complainant-allottee is willing to remain in the project and to have possession of her flat, she is entitled to seek interest on account of the delay. Hence, her claim towards the compensation stands rejected as per the provision of section 18(1) of the RERA.
18. In the present case, on bare perusal of the webpage information uploaded by the respondent promoter, it appears that the date of project registration lapsed on 30-12-2021 and the respondent promoter has neither uploaded any completion/occupancy certificate nor has uploaded the Architect Certificate Form-4. It shows that the project is still incomplete. Hence, the respondent promoter has to seek an extension in the project validity from the MahaRERA by filing an appropriate application to the MahaRERA within the stipulated time period.
19. In view of the aforesaid facts, the following order is passed:
- a. The present complaint is hereby allowed.

- b. The respondent promoter is directed to pay interest for the delayed possession to the complainant from 1-05-2017 till the actual date of possession of the said flat to the complainant for every month on the actual amount paid by the complainants towards the consideration of the said flat 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. Needless to state here that the actual amount as provided under section 18 of the RERA means the amount paid by the complainant towards the consideration of the said flat only, excluding the stamp duty, registration charges and taxes etc. paid to the government.
- d. However, in view of the mitigating circumstances beyond the control of the respondent and also to ensure that the said project is not jeopardised due to the outflow of finances and is completed keeping in mind the interest of the other buyers of the said project at large, the amount of interest payable by the respondent to the complainants be paid after full obtaining occupancy certificate. The respondent is at liberty to adjust the said amount of interest payable by it to the complainants with the consideration amount payable by the complainants (if any), at the time of possession and the balance amount if any payable by either party be paid at the time of possession
- e. With regard to the payment of interest to the complainant, the MahaRERA further directs that the respondent promoter is entitled to claim the benefit of "moratorium period" as mentioned in the Notifications / Orders nos. 13 and 14 dated 2nd April, 2020, 18th May, 2020 and 6th August, 2021 issued by the MahaRERA and the Notification/Order which may be issued in this regard from time to time.
- f. Further, the respondent promoter is also directed to take immediate

steps for seeking extension of the said project within 30 days from the date of this order failing which the respondent shall be liable to pay penalty under section 63 of the RERA if such default is brought to the notice of the MahaRERA.

18. With the above directions, the complaint stands disposed of.

Mahesh Pathak
(Mahesh Pathak)

Member - 1/MahaRERA

