

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

Virtual Hearing held through video conference as per
MahaRERA Circular No.: 27/2020

1. COMPLAINT NO. CC006000000193129

1. ANIL KISHINCHAND RAJANI ...COMPLAINANTS
2. KAJAL ANIL RAJANI

a/w

2. COMPLAINT NO. CC006000000221130

GANESH PRAFUL TONDWALKAR ...COMPLAINANT

VS

SPENTA ENCLAVE PVT. LTD ...RESPONDENT/S

MAHARERA PROJECT REGISTRATION NO. P51800001050

Order

November 21, 2024

(Last Date of hearing – 30.10.2024 - the matters were reserved for order)

Coram: Shri. Manoj Saunik, Chairperson, MahaRERA

Complainants at Sr. No. 1 & 2 present in person.

None present for Respondents.

1. The Complainants are home buyers / allottees within the meaning of Section 2(d) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the “**said Act**”) of Real Estate Regulatory Authority (hereinafter referred to as the “**RERA**”) and the Respondent is the Promoter/Developer within the meaning of Section 2(zk) of the said Act. The Respondent is registered as the Promoter of the Project namely “**ALTAVISTA - PHASE 1**” under section 5 of the said Act bearing **MAHARERA Project Registration No. P51800001050** (hereinafter referred to as the “**said Project**”).

2. On the MahaRERA Project registration webpage the proposed completion date is mentioned as 31.12.2019, the revised date of completion is mentioned as 31.07.2024. The project has received part occupancy certificates dated 13.11.2019, 11.12.2020 & 22.12.2023 bearing number SRA/ENG/3104/MW/STGL/AP which are applicable to the subject flats in the captioned complaints.
3. The Complainants are seeking the following reliefs:

SR. NO.	COMPLAINT NO.	RELIEFS SOUGHT
1.	CC006000000193129	<p>"1) As respondent has failed to give possession of the said flat, The Complainants pray to the Hon'ble Authority for Interest on paid amount, due to the delay of said possession from the Respondent, under section-18 of RERA, for the delayed period starting from 1st January 2019 until the possession is given.</p> <p>2) Apart from the above, it has come to the Complainants notice, that the Respondent is effectively charging the maintenance before being able to give the said possession. Therefore, Complainants pray to the Hon'ble Authority to impose on Respondent, to implement the terms and conditions as per the 'Agreement for Sale' of the maintenance clause, and start charging maintenance from the date of the said possession."</p>
2.	CC006000000221130	<p>"That the Respondent be directed to pay interest for the delay in possession from the date of possession as provided in the registered Agreement for Sale (as detailed in Exhibit "A") till the handing over possession of the Flat as per section 12 and 18 of RERA Act, 2016. ii) That the Respondent be directed to pay the interest due to be paid to the Complainants for the delay in possession on or before 7th day of every month till the date of handing over of the possession to the Complainants. That, in the event if the Respondent deliberately fails to comply with the above cited prayer clause 1 and 2, the total monthly accrued interest/compensation, due to be paid to the Complainants from the date of handing over the possession of the flat to be adjusted/attuned to the balance dues for the club membership fee whenever demanded by the Respondent. iv) That the Respondent be directed to pay Rs.5,00,000/- towards mental harassment and financial loss caused to the Complainants. That as per the provisions of section 69 of RERA Act 2016, the Promoters, Directors, Key Management personnel of the Respondent be punished for the offence they have committed under the Act. vi) That, the Hon'ble MahRERA to protect the interest of the Complainants, provide any other relief provided under the Real Estate (Regulation and Development Act), 2016."</p>

4. The captioned complaints were heard in the virtual hearing dated 30.10.2024, wherein the following Roznama was recorded by this Authority:

SR. NOS.	COMPLAINT NO.	ROZNAMA RECORDED
1.	CC006000000193129	"The Complainants at Sr. No. 1 and 2 are present and the Complainant at Sr. No. 3 is absent, the Respondent is absent in all the captioned complaints. This is the second consecutive absence of the Respondent. Thus, the matter was heard ex parte. Heard Complainants at Sr. No. 1 and 2 at length. Complainants state that the matter is squarely covered in the complaint filed before the Authority and adopt the averments of the complaint as their arguments. In view thereof, the matter is reserved for ex parte orders for Sr. No. 1 and 2."
2.	CC006000000221130	

5. The brief facts in the complaints are as follows:

SR. NO.	COMPLAINT NOS. / DATE OF FILING	FLAT NO.	DATE OF AFS ¹	POSSESSION AS PER AFS	TOTAL CONSIDERATION (INR)	TOTAL AMOUNT PAID (INR) (Excluding Stamp duty, taxes and other charges)	RELIEFS SOUGHT
1	CC006000000193129 25.07.2020	Flat No. 1904 - 19 th floor, Wing B	05.07.2016	31.12.2018	1,42,33,300/-	1,41,69,447/- (sum of amount of receipts provided by the complainant)	Interest for delay
2	CC006000000221130 16.05.2022	Flat No. 1207. - 12 th floor, Wing C	20.06.2017	31.12.2019	98,57,995/-	98,57,995/-	Interest for delay & compensation for mental harassment

6. The brief submissions of the complainants are as follows:

- A. That as per the terms of the agreement entered between the complainants and the respondent, the date of possession of the subject flat was 31.12.2018 for complaint at Sr. No. 1 and 31.12.2019 for complaint at Sr. No. 2 hereinabove.
- B. That the respondent failed to give possession within the time period agreed in the agreement.

¹ AFS-Agreement for Sale.

- C. That the respondent started charging maintenance before giving the possession of the subject flat.
 - D. That the complainant at Sr. No. 1 seeks directives to respondent to charge maintenance only after giving possession of the subject flat.
 - E. **Sr. No. 2** : that the complainant has paid 100% amount of the consideration pertaining to the subject flat.
7. The captioned complaints were proceeded ex-parte, however the Respondent has filed written submissions before the Authority in complaint at Sr. No. 1 and the same are reproduced as follows in brief:
- A. That the respondent denies all the contentions raised by the complainants herein.
 - B. That the project has been completed and has received occupancy certificate on 13.11.2019. The Respondent has also offered possession of the flat to the complainant.
 - C. That the possession of the subject flat was offered on 04.10.2020 to the complainant at Sr. No. 1 herein.
 - D. That the respondent has complied with the clauses mentioned in the agreement and the complaint ought to be dismissed with heavy costs.
8. From the facts and the submissions, the issues that need to be considered is *whether the captioned complaints are entitled to seek relief under section 18 of the said Act ?*
9. Before answering the issues framed in para 8 herein above the following observations are noteworthy.
- A. It is observed that the said project has received part occupancy certificate dated 13.11.2019 which is applicable to the subject flat in the complaint at Sr. No. 1 and the part occupancy certificate dated 11.12.2020 is applicable to the subject flat in complaint at Sr. No. 2.

- B. It is further observed that the Respondent has fulfilled the obligation with regard to formation of society prescribed under section 11 (4) (e) of the said Act and the copy of the registration certificate issued by the Deputy Registrar of Co-operative society, (East and West suburban) SRA, Mumbai dated 06.06.2022 for Wing A, registration certificate of formation cooperative society issued by Assistant Registrar of Co-operative Societies (East and West suburban), SRA, Mumbai dated 25.01.2023 for Wing B and, Wing D. Whereas, with regard to the Wing C of the said project, the respondent has only provided an application dated 06.11.2018 made to the Department of cooperative societies for reservation of name of a proposed cooperative society.
- C. It is observed that the complaint at Sr. No. 1 avers that they have paid entire amount of consideration i.e. Rs. 1,42,33,300/- to the respondent, however, they have provided payment receipts only summing upto Rs. 1,41,69,447/- and the same is recorded under the column "Total amount paid" in the table at para no. 5 hereinabove.
- D. It is observed that the complainant at Sr. No. 2 contends that he has paid entire consideration amount to the respondent including the amount to be paid on possession, as per the terms of the AFS. Further, as the complaint is heard ex-parte and the respondent has not filed any submissions before the Authority, the averment of the complainant regarding the amount paid is considered and the same is recorded in the table at para no. 5 herein.
10. Moving ahead to examine the issue framed at **para No. 8.** pertaining to reliefs claimed under section 18 of the said Act for interest for delay in handover of possession with respect to complaint at Sr. No. 1 and interest on account of delay in handover of possession and compensation for mental harassment with respect to complaint at Sr. No. 2. The Authority shall first move its attention towards section 18 of the said Act which is reproduced hereunder:

"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 allottees, 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.***

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

11. Thus, from the plain reading of section 18 the essentials to seek relief under section 18 are:

- A. Failure of promoter to give possession in accordance with the terms of the contract between the Parties (such as Booking Form, Allotment Letter, Agreement for Sale, etc.) and within the date specified in the contract between the Parties;
- B. Inability of the Promoter to complete the said Project.

12. Hence, it is crystal clear that remedy under the section 18 is available to the Allottee only after the promised date of possession/completion is expired and not before and to determine the issue at hand, it is paramount to examine the documents placed on record so as to discover the date of completion as was agreed between the Parties herein. In this regard it is pertinent to note that the captioned complaints have registered AFS pertaining to their respective flats, and the project has received part occupancy certificate which are applicable to

the subject flats. Thus, the Authority shall determine and answer the issue framed at para No. 8 for the captioned complaints from by examining their AFS.

13. After examining the AFS pertaining to the captioned complaints the Authority has observed that a date of possession is mentioned in their AFS and the same shall be considered for the purpose of calculation of interest on account of delay caused, which is tabulated as under:

SR. NO .	COMPLAINT NO. & DATE OF FILING	DATE OF AFS ²	POSSESION AS PER AFS	INTERES T TO BE PAID FROM	INTEREST TO BE PAID TILL
1	CC0060000001931292 05.07.2020	05.07.2016	31.12.2018	01.01.2019	Till the date Occupancy Certificate i.e. 13.11.2019
2	CC0060000001931291 06.05.2022	20.06.2017	31.12.2019	01.01.2020	Till the date Occupancy Certificate i.e. 11.12.2020

14. Further from the records it is observed that the said Project is complete with regards to the subject flat as the part occupancy certificates has been uploaded by the Promoter/Respondent on the MahaRERA said Project registration webpage. However, there is a delay on part of the Respondent regarding the handover of possession of the subject flats to the complainants with OC as per the AFS.
15. Further, it is pertinent to note here that the provisions of section 18 do not provide for any waiver or disclaimer or exception. It is an absolute provision. The respondent herein have enumerated instances on account of which the said project has been delayed and that such reasons cannot be attributed to them. While the Authority appreciates the complexity involved in executing a real estate project, it also would like to put on record that there is nothing new in these complexities and every Developer taking up such projects is well aware of them. Thus, while declaring a date, the promoter (*respondent herein*) is required

² AFS – Agreement for Sale.

to conduct due diligence on the project. The allottees (*complainants herein*) have no means to know the issues and problems involved and makes a booking on the sole criteria of the declaration of completion date by the Developer/Promoter. This is the very reason that section 18 remedy does not come with any caveats. This remedy has been made available to ensure that promoter (*respondent herein*) make doable commitments and not frivolous promises, which they then try to wriggle out of by appropriating blame on other entities.

16. Therefore, after considering the aforementioned observations, provisions of the Act, facts of the case, submissions of the Parties and the material placed on record, the Authority hereby concludes that the respondent has failed to handover possession along with occupancy certificate by the agreed dated of possession as per the terms and conditions of the AFS thereby causing considerable delay in completion of the said Project and as such the complaints in the captioned complaints are entitled to seek relief under section 18 for interest for delay in handover of possession with respect to complaint at Sr. No. 1 & 2, from the date as more specifically mentioned herein above in para No. 13. Thus, **the issue at para No. 8 with regard to the captioned complaints at Sr. No. 1 & 2 is answered in affirmative.**
17. With regard to the complainant at Sr. No. 2 claiming compensation for mental harassment, mental torture, agony, EMIs paid, etc., as the case may be, the Authority hereby grants liberty to the Complainants to approach the Adjudicating Officer vide a fresh application for the limited purpose of determination and computation of quantum of compensation.
18. Further, with regard to the prayer of complainant seeking directives to the respondent to charge maintenance and other charges in terms of the agreement, the parties are hereby directed to strictly observe and adhere to the terms of the agreement pertaining to this issue.

19. Lastly, all other reliefs claimed by all the Complainants herein, save and except the reliefs sought under section 18 are rejected, as the Complainants have failed to state in their complaint and has also failed to satisfy this Authority as to which provisions of the said Act gives right to the Complainants to claim such reliefs.

FINAL ORDER

20. Therefore, after considering the aforementioned observations and provisions of the Act, the materials placed on record, the facts of the case and submissions made by the Parties, the Authority passes the following order:
- A. The complaints at **Sr. Nos. 1 & 2 are allowed.**
 - B. The complainants at **Sr. Nos. 1 & 2 are entitled to claim interest** for delay in handover of possession on the total amount paid (*excluding stamp duty, taxes and other charges*) to the respondents from the date mentioned in para No. 13 under the heading '**INTEREST TO BE PAID FROM**' at the rate as prescribed *under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules 2017*, till the date mentioned in para No. 13 under the heading '**INTEREST TO BE PAID TILL**'.
 - C. The respondent is hereby directed to pay the complainant at **Sr. Nos. 1 & 2** the arrears of interest accrued, in the manner as mentioned in para No. 13. herein, within 60 days from the date of this order.
 - D. The Respondent Promoter is NOT entitled to claim the benefit of "*moratorium period*" as mentioned in the Notifications / Orders Nos. 13, 14 and 21 dated 02.04.2020, 18.05.2020 and 06.08.2021 respectively issued by the MahaRERA.
 - E. The complainant at Sr. No. 1 is at liberty to approach the Adjudicating Officer vide a fresh application for the limited purpose of determination and computation of quantum of compensation.

- F. The parties are directed to strictly adhere to the terms of the AFS entered into between them with regard to the issue of charging of maintenance with respect to the subject flats.
- G. No Order as to Costs.

Manoj Saunik
Chairperson, MahaRERA