

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

Complaint No. CC006000000209623

Atul Avinash Dixit

... Complainant/s

Versus

Gaurang Associates

..Respondent/s

MahaRERA Project Registration No. P51700009458

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

The complainant appeared in person

None appeared for the respondent.

ORDER

(Wednesday, 10th July 2024)

(Through Video Conferencing)

1. The complainant above named has filed this online complaint before the MahaRERA on 05-01-2022 mainly seeking directions from MahaRERA to the respondent to execute agreement for sale for flat no. 402 and to handover the possession along with interest for delay, compensation and rental loss for the said flats as prescribed under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the flats bearing nos. 603 and 402 (hereinafter referred to as "the said flats") in respect of the respondent's registered project known as "TULSI VRINDAVAN SOCIETY." bearing MahaRERA registration no. **P51700009458** located at Thane (M Corp.), Dist. **Thane**.
2. This complaint was heard on several occasion and the same was final heard on

27-02-2024 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 and they were also informed to file their written submissions if any. Accordingly, the complainant appeared and made his submission. However, despite notice, the respondent remained absent. The MahaRERA has heard the argument of the complainant and also perused the available record.

3. After hearing the argument of the complainant, the following Roznama was recorded in this complaint on 27-02-2024:-

27-02-2024:- "The complainant is present. The respondent is absent. However, the respondent has filed its reply to the complaint and the complainant has filed a rejoinder to the said reply. Accordingly, the respondent may file its written arguments within a period of one week i.e. by 05-03-2024. The complainant may also file written arguments within a further period of 1 week i.e. 12-03-2024 along with a copy of the agreement for sale of the said flats 402 & 603 and the occupancy certificate which was admittedly received in January 2024. The complainant has also mentioned during the hearing that he has obtained possession after receipt of occupancy certificate and this complaint is filed for interest and compensation for delay as per the earlier allotment and agreement for sale for flat No. 501 and 502, for which the date of possession was June 2018. However, the said flats were cancelled in March 2022 vide a registered cancellation deed and new agreements for sale for flat No. 402 and 603 was executed on the same day. The date of possession in the new agreement for sale was December 2023. In case the respondent does not file any written arguments, the MahaRERA would be constrained to decide this matter based on the reply of the respondent. The complainant may file his written arguments even if the respondent does not file any written arguments. In view of the above, this matter is reserved for orders suitably after 12-03-2024 based on the arguments of the complainant and the reply, rejoinder and written

arguments filed in the complaint."

4. However, despite specific directions given by the MahaRERA, both the parties have not uploaded any written arguments on record of MahaRERA. However, the complainant has uploaded possession letter, occupation certificate, request letter and agreements for sale on record of MahaRERA on 11-03-2024. The same is accepted and taken on record. The MahaRERA has perused the available record.
5. It is the case of the complainant that he has booked the flats bearing nos. 501/502 and 402 in the respondent's registered project by executing the agreement for the sale for flat no. 501/502 dated 28-11-2017 for which he has paid the entire consideration. As per the said agreement, the respondent has agreed to handover the possession to the complainant on or before 30-06-2018. The respondent hasn't executed agreement for sale for the flat no. 402 however, he has paid the entire consideration for the same. After the UDCPR and as per request of the respondent, the sale deed for flat no. 501/502 was cancelled and sale deed of flat nos. 603 & 402 were registered on 30-03-2022. The actual layout of flat no. 402 is completely different from the floor plan attached with the sale deed. There is a pillar in the middle of the living room. The respondent had promised to pay the compensation for those mistakes. The members of the old Tulsi Vrindavan society had filed a reconciliation request with MahaRERA. The reconciliation took place on 22-02-2019 wherein the respondent promised the possession by July 2019 however it is not done. Hence being aggrieved with the actions of the respondent, the complainant filed the present complaint to execute agreement for sale of flat no. 402 and to seek possession along with interest for delay, compensation and rental loss for the said flats.
6. The respondent on other hand refuted the facts of the complainant and

uploaded the reply on record of MahaRERA on 12-12-2023, wherein it has stated that in the year 2017, the complainant booked 2 flats bearing nos. 501 & 502 by executing agreement for sale 28-11-2017. Since there were some changes in the sanctioned plans of the above-said flat no. 501/502, both the parties have executed a fresh agreement for sale dated 30-03-2022 for flat no. 603 (in lieu of the earlier flat no. 501/502) and thereby , the earlier agreement for sale dated 28-11-2017 stood cancelled. As far as flat no. 402 is concerned, it has stated that the complainant booked the said flat no. 402 in the said project in the year 2019 for which an allotment letter was issued on 21-01-2019. However, it has executed the agreement for sale with the complainant for the said flat no. 402 on 30-03-2022. Further, as per clause 6 of the said agreements for sale dated 30-03-2022, the possession of the said flats was to be handed over to the complainant on or before 31-12-2022. However, due to the health issue of one of the partners of the respondent's partnership firm viz Mr. Deepak Sane from July, 2020 till 2023, the progress of the said project got affected, as the other partner viz Sayali Deepak Sane(wife of Mr. Deepak Sane) was not aware of the day-to-day affairs of the said project(as the same was looked after by the other partner viz Mr. Deepak Sane). In spite of the said health issue, with the help of the investors, it has completed the construction of the said project in August, 2023 and it has applied for the occupation certificate. The respondent stated that there is no intentional delay on its part and therefore, it has prayed for dismissal of this complaint.

7. The complainant uploaded rejoinder to the above-mentioned reply on records of MahaRERA on 19-12-2023. The flat nos. 501/502 is a single flat and has been first registered on 28-11-2017 where the date of possession mentioned was 30-06-2018, therefore reason for delay due to Covid 19 is not valid. After rigorous follow up, he received the allotment letter for the said flat no. 402 in January 2019. The complainant stated that Mr. Sane of M/s Gaurang Associates

assured him of interest payment for delayed possession. Therefore, the agreements of sale of flat nos. 603 & 402 were registered with the extended completion date after receiving written commitments from Mr. Deepak Sane that M/s Gaurang Associates would be paying interest for delayed possession. Hence, agreement of sale of flat nos. 501/502 got cancelled. Further, the complainant stated that the society members are taking all the efforts to obtain the OC and are spending money from their pockets. Hence, the complainant is seeking interest for delay possession, reimbursement of the funds paid by the society and to impose penalty on the respondent.

8. The MahaRERA has examined the rival submissions made by both the parties and also perused the available record. The complainant who is an allottee of this project by filing this complaint before the MahaRERA under section 31 of the RERA on 5-01-2022 has approached MahaRERA mainly seeking two substantive reliefs such as i) execution of agreement for sale for flat no. 402, and ii) for interest and rent on account of delay from 1-07-2018.
9. The complainant has contended that he has booked two flats in this captioned project registered by the respondent promoter bearing nos. 501/502 and 402. The respondent has executed the registered agreement for sale for flat nos. 501 / 502 on 28-11-2017, however, no agreement for sale was registered for flat no. 402. Further, as per the agreement for sale dated 28-11-2017, the respondent has agreed to handover possession of the said flat no. 501/502 to him on or before 30-06-2018. However, since the possession has not been handed over to him. He filed this complaint seeking the aforesaid reliefs.
10. However, from the record, it appears that after filing of this complaint before the MahaRERA due to change in UDCPR, the respondent cancelled the said agreement for sale dated 28-11-2017 executed for flat nos. 501/502 and new

flat no. 603 has been allotted to the complainant. Accordingly, both the parties have signed and executed agreements for sale for both the flats bearing nos. 603 and 402 on 30-03-2022, ostensibly after filing of this complaint.

11. In view of the said subsequent action on the part of the respondent promoter, it appears that the relief sought by the complainant at point no. (i) for execution of registered agreement for sale for flat no. 402 does not survive. Hence, the only issue which remains to be decided in this complaint by the MahaRERA is the relief at point no. (ii) sought by the complainant towards interest/ rent on account of delay in handing over possession of the said flat.
12. As far as the said substantive relief towards interest and rent sought by the complainant under section 18(1) (a) of the RERA, the complainant has contended that as per the agreement for sale dated 28-11-2017 signed by the respondent promoter for flat nos. 501/502, it has agreed to handover possession of the said flat to him on or before 30-06-2018. However, till date the project is incomplete and possession has not been handed over to him. Hence, he prayed for interest and rent on account of delay under section 18 of the RERA.
13. The respondent has assailed the aforesaid claim of the complainant mainly contending that in view of the execution of the agreement for sale dated 30-03-2022 for flat no. 603, the earlier agreement for sale dated 28-11-2017 executed for flat no. 501/502 stood cancelled. Further, as per the agreements for sale signed on 30-03-2022 for both the flats nos. 603 and 402, the date of possession is 31-12-2022. However, the project got delayed mainly due to the health issues of one of the partners of the respondent's firm. The said delay was beyond its control. Hence, it has prayed for dismissal of this complaint.

14. From the aforesaid submissions made by the respondent and after perusing record viz. the submissions made by the complainant in this online complaint, it appears that the complainant is seeking the said relief at point no. (ii) towards interest/ rent by virtue of the registered agreement for sale dated 28-11-2017 signed and executed for the earlier flat nos. 501/502. However, by virtue of the subsequent allotment of new flat and agreement for sale dated 30-03-2022 for flat no. 603, the earlier agreement for sale dated 28-11-2017 is novated. Hence, the complainant after signing the new agreement for sale dated 30-03-2022, now cannot seek any relief under the earlier agreement for sale dated 28-11-2017 which is not in existence.
15. However, as per the agreements for sale 30-03-2022 signed by both the parties the MahaRERA has noticed that as per clause 6 of the said agreements for sale, the respondent has agreed to handover possession of the said flats nos. 603 and 402 on or before 31-12-2022. Admittedly, the possession has not been handed over to the complainant on the said agreed date of possession.
16. In this regard, 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."

17. The aforesaid explicit provision under section 18 of the RERA clearly specifies that on failure of the promoter to handover possession of the flat to the allottee on the agreed date of possession mentioned in the agreement for sale, on demand of the allottee, if the allottee wishes to withdraw from the project, the promoter is liable to refund the entire amount to the allottee along with interest as prescribed under the provisions of RERA and the relevant Rules made there under. If the allottee wishes to continue in the project, the promoter is liable to pay interest for the delayed period of possession till the actual date of possession.
18. The respondent in reply to this complaint has contended that the project got delay due to the health issues of one of the partners of its firm. In this regard, the MahaRERA is of the view that the said reason for the delay cited by the respondent does not fall within the force majeure factor which can be considered by the MahaRERA as plausibly / justified reason for the said delay. Hence, the MahaRERA is of the view that the respondent has violated the aforesaid provisions of section 18 of the RERA and hence, the complainant is entitled to seek interest on account of the said delay.
19. In the present case, it is pertinent to note that the respondent has obtained part OC for this project on 8-01-2024 and the possession of the said flats are also been handed over to the complainant on 10-01-2024 (as per the possession letters/ OC copy uploaded by the complainant). Hence, the MahaRERA prima facie feels that the complainant is entitled to seek interest on account of delay from 1-1-2023 till the date of OC i.e. 8-01-2024.

20. As far as the reliefs sought by the complainant towards rent on account of the delay, the MahaRERA is of the view that there is no explicit provisions under section 18 of the RERA, under which such claim can be granted favourably to the complainant. Hence, the said claim stands rejected.
21. In the present case, it is pertinent to note that the respondent has obtained part OC for this project on 8-01-2024, however, it has not uploaded the copy of the same on the MahaRERA website in the registration details although it is mandatory on its part, to update the project related information on the MahaRERA website every quarter.
22. In view of the above, the following order is passed:-
- a) The present complaint is partly allowed.
 - b) The claim of rent sought by the complainant stands rejected in view of the observations made in the aforesaid para no.20.
 - c) The respondent promoter is also directed to pay interest for the delayed possession to the complainant on actual amounts paid by the said complainant towards the consideration of the said flats at the rate of SBI's Highest 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 thereunder, from the 1-01-2023 till the date of OC i.e. 08-01-2024.
 - d) Needless to state here, the actual amount as provided under section 18 of the RERA means the amounts paid by the complainants towards the consideration of the said flats only, excluding the stamp duty, registration charges and taxes etc. paid to the government.
 - e) The respondent promoter is also directed to upload the OC dated 8-01-2024 on the MahaRERA website in the registration details within a period of 15 days from the date of this order. Failing which appropriate penal action

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would be taken against the respondent under section 63 of the RERA, if such non-compliance is brought to the notice of MahaRERA.

23. With these directions, the present complaint stands disposed of.

Mahesh Pathak
(Mahesh Pathak)

Member - 1/MahaRERA

