

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

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

COMPLAINT NO. CC006000000375143

1. HARSHAD POPATLAL SHAH
2. AVANI HARSHAD SHAH ...COMPLAINANT/S

VS

1. GREENFIELD DEVELOPERS & REALTORS L.L.P.
A Limited Liability Partnership Firm through its partners:
2. AMIT SUNIL GUPTA
3. SUNIL SATPAUL GUPTA
4. GAURAV ARVIND GUPTA
5. ARVIND SATPAUL GUPTA ...RESPONDENT/S

MAHARERA PROJECT REGISTRATION NO. P51800002293

Order

June 24, 2024

(Last Date of hearing – 14.05.2024 - the matter was reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Advocate Ankita Chatterjee present for Complainants.
Advocate Anwar Landge 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 No. 1 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 “OM SATYAM NIWAS CHS LTD” under section 5 of the said Act bearing **MAHARERA Project Registration No. P51800002293** (hereinafter referred to as the “**said Project**”).

2. On the MahaRERA Project registration webpage the proposed completion date is mentioned as 30.04.2019, the revised date of completion is mentioned as 31.07.2020 and the extended date of completion is mentioned as 31.07.2022. The Promoter has not uploaded the Occupancy Certificate till date however the Promoter has made an application for further extension of date of completion and the same is pending for compliance of the office objections and statutory QPRs of the concerned department of MahaRERA.
3. The Complainants are seeking the following reliefs:
*“(a) The Respondents be directed to perform their roles, duties and obligations as undertaken in the registered Sale Deed dated 7th September 2019 and immediately hand over **possession** of the said flat to the Complainants;*
(b) The Respondents be further directed to pay the Complainants interest from the period of 31st July 2020 till the date on which the possession of the said flat shall be given to the Complainant in accordance with Clause 4.1 of the abovementioned agreement read with Section 18 of the Real Estate (Regulation and Development) Act, 2016 at such rate of interest as this Hon’ble Court may deem fit;
(c) Any other relief as this Hon’ble Court may deem fit”
4. The captioned complaints were heard on 14.05.2024, wherein the following Roznama was recorded by this Authority:
 - A. *“The Complainant states that an allotment letter was given in November 2013 and Agreement for Sale (AFS) was executed on 07.09.2019, wherein the date of possession was promised as 31.07.2020. the Complainant has paid the amounts as per the instalments agreed upon. Only the last instalment remains which is to be given at the time of possession. The Complainant seeks possession with interest for the delay.*
 - B. *The Respondent states that a Development Agreement was executed with the society in September 2013, this was a redevelopment Project, and the present Complainant is only an investor. Subsequently, they gave a substantial discount to the Complainant based on which an AFS was execute. The Project is now*

nearing completion and they are likely to be seeing OC soon they also state that they are ready to handover fitout possession.

- C. The Complainant avers that there is nothing on record to show that they are investors. Further, a fit-out possession is an illegal possession, and they cannot occupy the flat based on this. Reasons of GST, COVID, changes in DCR, demonetisation and RERA cannot be cited to condone the delays made.
- D. Parties are given liberty to file written submission if any on or before 28.05.2024, Subsequent to which the matter will be reserved for orders.”

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

COMPLAINT NOS./ DATE OF FILING	FLAT NO.	DATE OF AFS ¹	POSSESION AS PER AFS	TOTAL CONSIDERA TION (INR)	TOTAL AMOUNT PAID (INR)	RELIEFS SOUGHT
CC006000000375143 14.04.2023	903	07.09.2019	31.07.2020	1,34,00,000/-	1,24,62,000/- (as per complaint copy)	Possession along with Interest

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

- A. That the Complainant entered into AFS on 07.09.2019 and has made timely payments in terms of the AFS and only 7% of the amount is remaining to be paid, which has to be paid at the time of taking possession as per the AFS clause no. 1 (c).
- B. That the Respondent has failed to deliver timely possession of the subject flat in terms of the AFS.
- C. The Complainant is an allottee of the proposed Redeveloped Project and not an Investor as falsely claimed by the Respondents.
- D. That the Complainant thus prays for relief of possession of the subject flat along with interest for delay in handover of possession.

7. The brief submissions of the Respondent are as follows:

- A. That the factors which affected the progress of the Project are:
- (i) Demonetization.
- (ii) Implementation of the said Act.

¹ AFS-Agreement for Sale.

- (iii) Implementation of GST.
 - (iv) Covid 19 Pandemic.
- B. That the Complainant had filed present complaint against the Respondent with the intention to harass them and to extort more money.
- C. That the Complainant approached the Respondent for the purpose of investment in the project and thus the Complainant are mere investors.
- D. Thus the Respondent prays that the complainant be dismissed with costs.
8. From the facts and the submissions, the issues that need to be considered is *Whether the Complainants in the captioned complaints are entitled to seek reliefs under Section 18 of the said Act ?*
9. Before adjudicating upon the issue framed herein above the Authority observes that the complainant has not provided/filed any evidence to support his averments pertaining to the amount paid by him to the Respondent and after perusal of the submissions made by the parties herein, it appears that the amount remaining to be paid by the Complainant to the Respondent towards the said flat is disputed. The Complainant states that Rs. 9,38,000/- is unpaid which is payable at the time of handover of possession while the Respondent avers that the Complainants are liable to pay 11,52,900/- inclusive of all payments.
10. Moving ahead to examine the issue framed at **para No. 8.** pertaining to reliefs claimed under section 18 of the said Act for possession along with interest on account of delay in handover of possession, 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:

- (i) 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;
- (ii) 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, further the possession of the apartments till date is not handed over to the Complainants. Thus, the Authority shall determine and answer the issue framed at para No. 8 for the captioned complaint by examining the AFS.

13. After examining the AFS pertaining to the captioned complaint the Authority has observed that a date of possession is mentioned in the AFS and the same

shall be considered for the purpose of calculation of interest on account of delay caused, which is tabulated as under:

COMPLAINT NO. & DATE OF FILING	DATE OF AFS ²	POSSESSION AS PER AFS	INTEREST TO BE PAID FROM	INTEREST TO BE PAID TILL
CC00600000037514 314.04.2023	07.09.2019	31.07.2020	01.08.2020	Till the date of Occupancy Certificate

14. Further from the records it is observed that the said Project is not complete as the Occupancy Certificate has not been uploaded by the Promoter/Respondent on the MahaRERA said Project registration webpage till date. Thus, there is a delay on part of the Respondent regarding the handover of possession of the subject flat to the Complainant 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 to conduct due diligence on the Project. The Allottees (*Complainant 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.

² AFS – Agreement for Sale.

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 Respondents have failed to handover possession along with OC 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 complainant in the captioned complaint is entitled to seek relief under section 18 for Possession along with interest on account of delay in handover of possession from the date as more specifically mentioned herein above in para No. 13. Thus, the **issue at para No. 8 is answered in affirmative.**

FINAL ORDER

17. 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 captioned complaint **is allowed.**
 - B. The Complainant **is entitled to claim interest** for delay in handover of possession on the total amount paid to the Respondents from 01.08.2020 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 of receipt of OC.
 - C. The total arrears of interest accrued from 01.08.2020 till the date of this order, after deduction of the moratorium period, shall be set off /adjusted against any outstanding dues required to be paid by the Complainant together with interest in terms of the AFS and the remaining accrued interest payable, if any, be paid in one instalment to the Complainant within 60 days from the date of this order.
 - D. The Respondents are hereby directed to pay the Complainant the further arrears of interest accrued from the date of this order till the date of receipt of OC, in the manner as mentioned in para No. 17. B. herein,

within a period of 3 months in 3 equal monthly instalments from the date of receipt of OC.

- E. The Respondent Promoter is 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. The moratorium period shall be deducted from the total period for which interest is payable.
- F. No Order as to Costs.

(Ajoy Mehta)
Chairperson, MahaRERA