

Complaint No. CC006000000210555

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

1. Complaint No. CC006000000210555

Joel Badigar ... Complainant/s

Versus

Jayesh Buildcon ... Respondent

Along with

2. Complaint No. CC006000000210558

Sangita Vikram Kere ... Complainant/s

Versus

Jayesh Buildcon ... Respondent

MahaRERA Project Registration No. P51700005257

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

The complainants appeared in-person.

None appeared for the respondent/s. महा-रेरा

ORDER

(Thursday, 27th June 2024)

(Through Video Conferencing)

1. The complainants above named have filed these 2 separate online complaints before the MahaRERA on 26/03/2022 (Sr. Nos.1 and 2) seeking directions from MahaRERA to the respondent - promoter to handover possession of their flats with occupancy certificate; along interest and compensation as prescribed under the provisions of the Real Estate (Regulation & Development) Act, 2016

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(hereinafter referred to as 'RERA') in respect of booking of their respective flats (as mentioned in the table below) in the respondent - promoter's registered project known as "VARSHA MEADOWS" bearing MahaRERA registration No. P51700005257 located at Katemanivli, Dist. Thane.

2. These complaints were heard by the MahaRERA on 05/12/2023 and the same were heard finally on 05/03/2024 as per the Standard Operating Procedure dated 12/06/2020 issued by the 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 the complainants, the following Roznamas were recorded in these complaints -

i) On 05/12/2023 :

"The complainant in the complaint at Sr. No. 4 is present. The complainant in the complaint at Sr. No. 5 is absent. The respondent is absent. The respondent has also not filed its reply to these complaints. Moreover, the project registration has lapsed in November 2022. The respondent is directed to file its reply to these complaints within a period of 2 weeks i.e. by 19-12-2023 and initiate steps to extend the project registration. The complainants have filed these complaints for interest and compensation for delay as the project was supposed to be completed in May 2021, however, the occupancy certificate for the project was received in November 2022 and the possession was handed over to the complainant in February 2023. The complainants may file their rejoinder to the reply of the respondent within a further period

of 2 weeks i.e by 02-01-2024. These matters are adjourned to a suitable date after 02-01-2024 for further hearing and as a last chance to the complainant in the complaint at Sr no. 5. List these matters for next hearing on 05-03-2024."

ii) On 05/03/2024 :

"The complainants are present. The respondent is absent. The respondent has also not filed any reply to these complaints. However, the OC for the project has been received in November, 2022 and the complainants have since obtained possession in February, 2023 in s.no.11 (CC006000000210555) and May 2023 in s.no. 12 (CC006000000210558). Therefore, as the dates of possession have lapsed in May 2021 in s.no.11 (CC006000000210555) and November, 2020 in s.no. 12 (CC006000000210558), the complainants pray for interest along with compensation for the delay. The respondent is given one last chance to file its replies to these complaints along with written arguments within a period of one week i.e. by 12-3-2024. Further one week's time i.e. till 19-3-2024 is granted to the complainants to file their rejoinder along with written arguments. In case the respondent does not file any replies to these complaints, these matters will be decided ex parte against the respondent on merits. In view of the above, these matters are reserved for orders suitably after 19-3-2024 based on the arguments in the complaint as well as the replies, rejoinders and written arguments filed in these complaints. The complainants may also upload the possession delivery letters as well as any set off given by the respondent for the delay in their rejoinders and written arguments."

4. However, despite specific direction being given to the complainant/s, they have not uploaded any submission on record of MahaRERA. Despite directions the respondent remained absent and failed to upload any reply or written submission on record of MahaRERA. Hence, the MahaRERA has

perused the available record.

5. The complainants by filing these 2 (two) separate online complaints have prayed for refund along with interest and compensation for the delay. The details of the flats booked by them, dates of agreements for sale, dates of possession, total consideration and consideration paid are as per the table given below -

<ul style="list-style-type: none"> • Sr. No. • Complaint No. • Name of Complainant/s • Flat No. • Total Consideration • Consideration Paid 	<ul style="list-style-type: none"> • Agreement for Sale (AFS) • Date of possession As per AFS (DOP) 	Relief/s
<p>1. CC006000000210555 Joel Badigar Flat No.403, Building type no. 2 Rs. 46,00,000/- Rs. 45,76,000/-</p>	<p>22/02/2021 (AFS) 28/05/2021 (DOP)</p>	<p>a) Handover possession with occupancy certificate (OC) along with interest and compensation. b) Admit as member of society.</p>
<p>2. CC006000000210558 Sangita Vikram Kere</p>	<p>05/09/2019 (AFS) NA (DOP)</p>	<p>Handover possession with occupancy</p>

Flat No.201, Building type no. 2 NA NA		certificate (OC) along with interest and compensation.
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6. It is the case of the complainants at (sr.nos.1 and 2) that they had booked their respective flat/s (description/ details of which are mentioned in above table) in the respondent's registered project viz. agreement for sale (Sr.no.1 & 2). The complainant/s stated that based on the representations of the respondent they have booked their respective flats in the said project by paying substantive amounts to the respondent. Further, the complainants (Sr.no.1) stated that the total consideration for his flat was Rs. 46,00,000/-, however, the respondent mentioned the total consideration of his flat as Rs.39,60,000/- in the agreement for sale. The complainant at sr.no.1 has also stated that the respondent agreed to handover possession of their flat on 28/05/2021 as per the agreement for sale however, the respondent offered soft possession on 05/02/2023 and unilaterally revised the date of possession. However, the respondent has grossly failed to timely complete the said project due to which complainants have suffered huge losses. Hence, the complainants are seeking for handover of possession of flats with occupancy certificate along with interest and compensation.

7. The MahaRERA has noticed that the complainant/s have filed these online complaints before MahaRERA. However, till date the respondent has not bothered to file its reply/written submissions/ written arguments to these complaints, though the said complaints are visible in its project login on MahaRERA website. Further, as per the Standard Operating Procedure dated 12/06/2020 issued by MahaRERA for hearing of the complaints in online form, the respondent was given last chance and was also liable to upload its reply,

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submissions in a digital form in this complaint within a period of one week i.e. by 12/03/2024. However, the respondent till date has not complied with the said directions. Furthermore, though the notices for the virtual hearings held before the MahaRERA dated 05/12/2023 and 05/03/2024 were duly served on the respondent, however, it has neither appeared for the said hearings nor has filed any reply to these complaint/s. This shows that the respondent is not willing to contest these complaints. Hence, the MahaRERA has no other alternative but to proceed with the matter ex-parte against the respondent on merits.

8. The MahaRERA has examined the submission made by the complainants and perused the available record. The complainants who are allottee of this project by filing these complaints under section 31 of the RERA have approached the MahaRERA mainly seeking relief under section 18 of the RERA towards handing over possession of their flats along with OC and interest and compensation on account of delay. The complainants have mainly contended that as per their respective agreements for sale, the respondent has agreed to timely handover possession of their said flats on various dates as mentioned in the aforesaid table at para no. 5. However, the respondent has failed to handover possession of the said flats as per the respective agreement for sale, despite the fact that they have made substantial payments towards the said flat (as per the complainant at sr. no.1).
9. The complainant at sr. no. 1 has submitted the copy of the registered agreement for sale to show the said violation of section 18 of the RERA by the respondent. However, the complainant at sr.no. 2 has uploaded the copy of Index -II of the said agreement for sale dated 5-09-2019 and a copy of payment receipt issued by the respondent acknowledging the payment of Rs.2,00,000/- but has failed to upload the relevant page of the said agreement for sale

showing the agreed date of possession. Moreso, during the course of hearing she has mentioned that the date of possession is November, 2020. However, in her online complaint she has mentioned the date of possession as 28-05-2021. She has also not pleaded the facts and has also not stated any specific reliefs. In view of the said circumstances, the MahaRERA finds it difficult to ascertain the exact date of possession committed by the respondent to the said complainant.

10. Be that as it may, in this case, as stated hereinabove, the respondent promoter despite notice has neither appeared for the hearings held in these complaints nor has disputed the contentions raised by these complainants by filing its reply on record of MahaRERA. Hence, all these submissions made by the complainants in their respective complaints remain undisputed and unchallenged.
11. However, in this case, it is pertinent to note that the respondent has completed this project and obtained OC for the complainants flats on 22-11-2022 from the concerned competent authority viz KDMC. Also, it has uploaded the Architect Certificate Form-4 on the MahaRERA website in the registration details on the same day i.e. on 22-11-2022. It shows that the project is already complete and hence, no extension is required to be taken by the respondent promoter.
12. As far as the substantive issue of possession sought by these complainants is concerned, admittedly, there are registered agreements for sale dated 22/02/2021 (sr.no.1) and 05/09/2019 (sr.no.2) duly signed by the complainants and the respondent. As per clause 6 of the said agreement for sale (sr.no.1), the respondent was liable to handover possession of the said flat to the said complainant on or before 28/05/2021. Further, the complainant at sr. no. 2 has claimed that the respondent has agreed to handover possession of

the said flat to her on or before 28-05-2021 (as per the online complaint). Admittedly, on the said date the possession of the said flats was not handed over to these complainants. Hence, being aggrieved by the said inaction on the part of the respondent, these complainants have filed these complaints seeking reliefs under section 18 of the RERA.

13. Hence, before dealing with the facts of the present complaints, it is pertinent to examine 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 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."

14. From a plain reading of section 18, it is very clear that if the promoter fails to handover possession as per the terms of the agreement for sale or, by the specified date therein, the allottee has a choice either to withdraw from the said project or to stay with the project. Further, in case the allottee chooses to be in the project and take possession, he is entitled to claim interest for the delayed

period of possession on the actual amount paid by him for every month of delay. Hence, it is important to note here that the examination of the term 'possession' is in context to the agreement for sale signed by both the parties showing the agreed date of possession.

15. As stated hereinabove, the respondent despite directions has not filed any reply to these complaints justifying the said delay caused in handing over of the possession of the said flats to the complainants. However, even if the justification for the delay which has occurred in the project is accepted by the MahaRERA hypothetically, as far as these complaints are concerned, the MahaRERA has noticed that after execution of the said agreements for sale dated 22/02/2021 (sr.no.1) and 05/09/2019 (sr.no.2), the Covid -19 pandemic spread all over the world and affected all sectors of the society including the real estate sector.
16. Considering the said pandemic period as a force majeure factor beyond the control of the promoters, the MahaRERA has granted one year extension by issuing various orders to all the promoters for completion of the projects registered with the MahaRERA.
17. Considering the said one year extension granted by the MahaRERA, the date of possession in this case gets extended till 28-05-2022 from 28-05-2021. However, even on that date the project was incomplete, and the possession was not handed over to the complainants. Hence, the MahaRERA prima facie is of the view that the respondent has violated the provisions of section 18 of the RERA. Hence, the said complainants are entitled to seek reliefs under section 18 of the RERA towards possession of their flats along with interest as prescribed under the RERA and the relevant Rules made thereunder.

18. The record shows that the respondent has completed the said project and obtained OC from the concerned competent authority on 22-11-2022. However, nothing has been brought on record of MahaRERA by the respondent promoter to show that it has offered possession of the said flats to these complainants after obtaining OC for the project on 22-11-2022. Moreso, in complaint at sr. no. 1, it appears that the said complainant was offered possession on 25-01-2023 and the said complainant has obtained possession of the said flat on 05-02-2023. The said complainant although has claimed that it is soft possession, the said contention of the complainant has no legal substance, since the possession was offered with OC dated 22-11-2022. Hence, the MahaRERA is of the view that the said complainant is entitled to seek interest on account of delay till the date of offer of possession i.e., 25-01-2023.
19. As far as the complaint at sr. no.2 is concerned, as stated hereinabove, no supportive document has been submitted on record of MahaRERA by either party (complainant/ respondent) to show that the possession was offered to the said complainant after OC. However, in the said complaint also, legally, the said complainant is also entitled to seek interest from 28-05-2022 till the date of offer of possession.
20. As far as the claim of compensation sought by these complainants, the MahaRERA is of the view that the complainants herein are willing to remain in the project and to have possession of their flats and hence, as provided under section 18(1) of the RERA, they are entitled to claim interest on account of delay. Hence, their claim towards compensation stands rejected.
21. In view of these facts, the following order is passed:-
- Both these complaints are partly allowed.
 - The claim of these complainants towards compensation stands rejected in

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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 complainants on actual amounts paid by the said complainants 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 28-05-2022 till 25-01-2023 (in sr.no. 1) and till the date of offer of possession (sr. no. 2).
- d) The respondent promoter is at liberty to adjust the said amount of interest payable by it to the complainant at sr. no. 2 with the consideration amount payable by the said complainant (if any with similar interest), at the time of possession and the balance amount if any payable by either party be paid at the time of handing over possession
- e) 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.

22. With these directions, both these complaints stand disposed of.



(Mahesh Pathak)

Member - 1/MahaRERA