

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

Complaint No. CC006000000209613

Mr Neelesh Jha and Mrs Tricia Jha ... Complainants

*Versus*

M/s. Lucina Land Development Limited ... Respondent

**MahaRERA Project Registration No. P52000000835**

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

Ld. Adv. Jayashree Gilra appeared for the complainants.

Ld. Adv. Abir Patel appeared for the respondent.

**ORDER**

(Thursday, 11<sup>th</sup> July 2024)

(Through Video Conferencing)

1. The complainants above named have filed this online complaint before the MahaRERA on 04-01-2022 mainly seeking directions from MahaRERA to the respondent - promoter to handover the possession and to pay interest and compensation for the delayed possession as prescribed under provisions of Section 18 of the Real Estate (Regulation & Development) Act, 2016 (from now on referred to as 'RERA') in respect of the booking of a flat bearing no. 5A - 807 in the respondent - promoter's registered project known as "**Indiabulls Park 2**" bearing MahaRERA registration no. **P52000000835**, located at Village - Kon, Dist- Raigarh.
2. This complaint was heard on several occasions and the same was finally heard on 13-02-2024 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 were also informed to file their written arguments, reply & and rejoinder, if any. Accordingly, both the parties appeared as per their appearances recorded in the roznama and made their respective submissions. The MahaRERA heard the submissions of both the parties as per their appearances and also perused the available records.

3. After hearing the both the parties, the following Roznama was recorded in the complaint-

*“Both the parties are present. The complainant has filed this complaint for possession along with interest and compensation for delay. As per the agreement for sale of April 2016, the possession was supposed to be given in November 2020, however, the project is still incomplete. The details of the agreement for sale has been mentioned in the table given in the hearing dated 01-10-2023. The complainant has pointed out that although the respondent in its reply is relying on the injunctions granted by CIDCO from May 2017 till April 2019 in respect of boundary dispute with neighbouring plot owner, the actual allotment letter is of 2011. Therefore, the complainant has invested the monies in the project for more than a decade now. The complainant has also pointed out that Covid-19 circulars for moratorium and application of force majeure does not affect the rights of the allottees. The respondent has pointed out the difficulties in completion of the project due to the above-mentioned injunction by the CIDCO from May 2017 till April 2019 when the commencement certificate was finally obtained. Moreover, the respondent has also pointed out clause 22 of the agreement for sale which mentions the force majeure conditions including injunctions, stay etc. Moreover, the respondent has also contended that Covid -19 Circulars would apply and the date of possession would be extended accordingly since the date of possession i.e. November 2020 comes during the covid period. The respondent has also pointed*

*out to the arbitration clause in the agreement for sale which is refuted by the complainant on the ground that it has been raised belatedly. In view of the above, the respondent may file its written submissions within a period of 2 weeks i.e. by 27-02-2024. Further 2 weeks' time i.e. till 12-03-2024 is granted to the complainant to file written submissions in the complaint. Accordingly, this matter is reserved for orders suitably after 12-03-2024 based on the arguments of both sides as well as reply, rejoinder and written arguments filed in the complaint."*

4. Pursuant to the specific directions given by the MahaRERA, the complainants have uploaded additional written submissions on record of MahaRERA on 12-03-2024. The same is accepted and taken on record. The MahaRERA has perused the available record.
5. It is a case of the complainants that they purchased a flat bearing no 807 on 8<sup>th</sup> floor, A wing of the project "Indiabulls Park 2" area admeasuring of 765.33 sq.ft. with 1 covered car parking as on 27/09/2011 for total consideration of Rs. 56,95,400/- plus other charges as mentioned in clause 8 of the agreement for sale. The parties entered into an agreement for sale as on 07/04/2016 by paying stamp duty amounting Rs. 2,84,800/- and registration charges amounting Rs. 30000/-. Till date, the complainants have paid Rs. 30,15,461/- i.e. 52% of the consideration value to the respondent including the amount of S. T., VAT and GST. As per clause 22 of the agreement, the respondent has agreed to handover the possession as on 30-11-2020 plus 9 months grace period if the projects gets delayed because of the situation which is beyond the control of the respondent due to natural calamities etc. Further, the construction work was going very slowly and no progress could be seen on site as mentioned in the agreement for sale. The respondent failed to handover the possession on 30/11/2020 while the complainants kept on

taking follows up for which respondent kept on giving so many reasons and sometimes avoiding answering calls and messages of the complainants, which was very disappointing and not acceptable. The respondent kept on sending the demand letters to them and sent as again on completion of 11th slab as on 07/12/2021. Replying to this demand letter, the complainants asked the respondent about the construction progress and also expressed their disappointment for slow work. The respondent replied stating that it is providing a new completion date of 30/06/2023 plus 12 months extension due to Covid - 2019 pandemic lockdown, which was to the utter shock of the complainant. As they had booked flat in year 2011, but after 9 years of the booking, firstly the respondent could complete only 11 floors of the project till 2021 and now had again revised the possession date till 2023 plus 1 year of grace period. As per clause 22 of the agreement for sale, the respondent had already mentioned a clause where it could claim 9 months grace period over the possession date of November, 2020 if any situation occurs which was go beyond its control. So considering that it has already taken an advantage of the same by not giving possession till November, 2020 plus 9 months grace period which comes to August, 2021 and now again he is claiming additional 12 months period of extension for Covid-19 nation wide lockdown. It means it is taking undue advantage of both extensions and fooling them by delaying the possession day by day. The complainants have quoted the provisions of section 18 of the RERA and therefore has filed this complaint praying to direct the respondent to handover the immediate possession with OC along with the interest on delayed possession as per the SBI MCLR plus 2%. from the date of payment till possession and for compensation as and by way of rent from date of possession till delivery of flat as per the market value and for legal costs.

6. The respondent has filed its reply on 4-9-2023 stating that the present sale transaction was entered into when the MOFA was in force prior to the RERA. Further, under clause 43 of the agreement for sale dated 7-4-2016, the parties expressly agreed to refer their disputes to arbitration and as held in multiple cases decided by the MahaRERA, the parties need to take recourse to arbitration in case of agreements containing an arbitration clause and hence cannot file complaints under section 31 of the RERA. Further, the only grievance of the complainants is that of alleged delay in possession. The date of possession mentioned in clause 22 of the said agreement is 30-11-2020 with additional 9 months grace period bring the date to August, 2021 subject to a further reasonable extension on account of mitigating events mentioned in clause 22 of the agreement for sale and hence there is a contractual understanding between the parties. Covid 19 pandemic is a notified and globally recognized force majeure event and the MahaRERA vide orders dated 18<sup>th</sup> May 2020 and 6<sup>th</sup> August 2021 permitted extension by an aggregate of 12 months to project completion timelines. Further, section 18 of the RERA is triggered only when the promoter fails to give possession in terms of the agreement for sale. The complainants are relying on the date of possession while completely ignoring the sub clauses on reasonable extension contained in the said agreement. Moreover, the complainants are not residents of Maharashtra while they are having address in Haryana while the RERA has been promulgated to protect the interest of genuine homebuyers and not enrich the flat purchases and convert home buying into a commercial venture. Further, by letter dated 20-1-2017 the respondent was intimated about the prohibitory order passed by Dy. SLR Karjat (CIDCO) issuing stop work notice and permitted the respondent to apply for partial permissions. The MMRDA on 02-08-2018 finally addressed a letter to the respondent inter alia approving the revised layout submitted by developer through letters dated 19-04-2018

and 06-06-2018. Thereafter, the developer requested the CIDCO on three occasions for grant of a revised commencement certificate so as to enable the respondent to recommence construction on site. The respondent also made all necessary payments to CIDCO for grant of approvals sanctions. Ultimately on 18-04-2019 an amended/revised commencement certificate was issued by CIDCO. Further, all events were beyond the reasonable control of respondent. The respondent further dealt with the complaint para-wise and denied the contents thereof.

7. The complainants have filed their rejoinder on 7-9-2023 reiterating what has been stated in their complaint.
8. The complainants have also filed written submissions on 12-2-2024 which is repetition of what is stated in their complaint and have uploaded certain judgements in support of their complaint.
9. The complainants have filed their additional written submissions on record on 12-3-2024 stating that the respondent has submitted in the hearing dated 13-2-2024 that they are encountering challenges in accomplishing the project, attributing the delays to the impact of Covid-19 pandemic and also highlighted the arbitration clauses in the agreement for sale however the said reference has been brought up in a belated manner. The complainants have relied upon certain judgements in support of their case along with the judgement passed by the Hon'ble Appellate Tribunal in the state of Tamil Nadu in the matter of SSM Builders and Promoters vs. Swaminathan & Ors. which clearly states in para 18 that *"the existence of arbitration clause in the construction agreement will not take away the jurisdiction of RERA which is constituted under the special enactment."* (Judgement is uploaded on record on 12-3-2024). The complainants have thus prayed for the reliefs as

mentioned in their complaint.

10. The MahaRERA has examined the rival submissions made by both the parties and also perused the available record. The complainants herein claiming to be the allottees of this project have approached the MahaRERA mainly seeking reliefs under section 18 of the RERA towards possession of their flat along with interest and compensation on account of delay in handing over possession of their flat on the agreed date of possession mentioned in the agreement for sale. The complainants have agitated their claim towards possession along with interest and compensation by virtue of the registered agreement for sale dated 07-04-2016. The complainants have contended that as per the said agreement for sale, the respondent was liable to handover possession of the said flat to them on or before 30-11-2020 with grace period of 9 months i.e. till 30-08-2021. However, the respondent has failed to handover possession of their flat to them. Hence, the complainants have filed this complaint seeking reliefs under section 18 of the RERA towards the possession of the said flat along with interest and compensation.
11. However, the aforesaid claim of the complainants has been refuted by the respondent promoter mainly by raising the issue of maintainability of this complaint in view of the arbitration clause 43 mentioned in the said agreement for sale under the provision of MOFA. It has mainly contended that the present complainant is not maintainable under the provisions of the RERA. It has also cited section 8 of the MOFA against the provisions of section 18 of the RERA, in which the complainants are seeking such reliefs. As far as the delay caused in this project, it has stated that it was due to the letter dated 20-01-2017 issued by the CIDCO whereby a stop work notice was issued due to the prohibitory order passed by Dy. SLR Karjat (CIDCO). However, against the said letter, it has filed an Appeal and got it vacated on

15-06-2017. It was also constrained to apply for revised plan and finally it got commencement certificate for this project only in the month of April 2019. It has stated that the said delay was beyond its control.

12. In addition to this, the respondent has also contended that these complainants are the residents of Haryana and have booked the said flat for the purpose of an investment. Hence, they are not entitled to seek any benefits under RERA legislation and therefore, it has prayed for dismissal of this complaint.

13. As far as the issue of maintainability of this complaint on the ground of arbitration clause no. 43 mentioned in the said agreement for sale raised by the respondent, the MahaRERA is of the view that the same is raised by the respondent at a belated stage when this matter was placed for final hearing on merits. Admittedly, the record shows that this complaint was heard by the MahaRERA for the first time on 05-05-2022, when both the parties opted for conciliation. Thereafter, this complaint was heard by before the MahaRERA Conciliation Forum on 23-08-2022 and by the MahaRERA on 01-08-2023 and 7-11-2023. However, during the said hearings the respondent has not raised the said issue however, for the first time in its reply filed before the MahaRERA on 04-09-2023 it has raised the said issue. Hence, the MahaRERA is not inclined to entertain the same at such a belated stage.

14. Further, as far as another issue raised by the respondent that the complainants are not the residents of the MahaRERA and they are from Haryana and they are merely an investors, the MahaRERA is of the view that the said issue has no legal substance, since the complainants have fundamental right to own property and also there is no bar under RERA to own property in other states of India. Also, the respondent has signed and



executed the registered agreement for sale dated 7-04-2016 and has sold the said flat being the allottees. Hence, after signing of the said agreement for sale with the complainants as the allottees, it cannot term them as investors.

15. As far as the substantive issue of interest and compensation sought by the complainants herein under section 18 of the RERA, before dealing with this complaint on merits, 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."*

16. 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.

17. Likewise, in the present case, alleging that the respondent has failed to handover possession of the flat to the complainants on the agreed date of possession mentioned in the agreement for sale, these complainants have approached the MahaRERA seeking reliefs under section 18 of the RERA towards possession of their flat along with interest and compensation.
18. Admittedly, the agreement for sale registered between the said complainants and the respondent shows agreed date of possession as 30-08-2021 (including grace period of 9 months). However, admittedly on that date the possession of the said flat was not handed over to the complainants on the agreed date of possession mentioned in the said agreement for sale. Hence, they have filed this complaint seeking reliefs under section 18 of the RERA towards possession along with interest and compensation.
19. The respondent promoter has mainly contended that the said delay occurred mainly due to the stop work letter dated 20-01-2017 issued by the CIDCO due to the prohibitory order passed by Dy. SLR Karjat (CIDCO), whereby the work on site was stopped and it has obtained commencement certificate for this project only in the month of April, 2019.
20. As far as the said submissions made by the respondent to justify the said delay, the MahaRERA is of the view that the reasons cited by the respondent do not give plausible explanation. As a promoter, having sound knowledge

in the real estate sector, the respondent was fully aware of the market risks when it launched the project and signed the agreement for sale with the home buyers. Further, if the project was getting delayed due to the reasons cited by the respondent; in that event the respondent should have informed the same to the complainant-allottees and should have extended the date of possession in the agreement for sale by signing supplementary agreement with these complainants. However, no such steps seem to have been taken by the respondent. Hence, now the respondent cannot take advantage of the said reasons of delay. Moreso, to get all the requisite timely permissions from the competent authority is the responsibility of the respondent being a promoter and the complainants being allottees have nothing to do with the same.

21. Even presuming that the said reasons of delay cited by the respondent are accepted as mitigating events which was beyond its control, the MahaRERA is of the view that the said agreement for sale was executed between the parties when the provisions of MOFA were in force. As per the MOFA, the promoter was permitted to seek an extension of 6 months maximum for force majeure reasons. Likewise in this case even if the justifications cited by the respondent are accepted by the MahaRERA, it is entitled to seek only 6 months extension as per the provisions of MOFA in the date of possession mentioned in the said agreement for sale. Considering the said 6 months period as per the MOFA the date of possession in the said complaint gets extended from 30-08-2021 till February, 2022. Even on that date the project was incomplete and the possession of the said flat was not handed over to these complainants. However, even as on date this project is incomplete and the respondent has failed to obtain OC for this project. Hence, the MahaRERA prima facie feels that the respondent has violated the provisions

of section 18 of the RERA and hence, the complainants are entitled to seek reliefs towards interest on account of delay under section 18 of the RERA.

22. As regards the claim of the complainants towards compensation sought by them under section 18 of the RERA, the MahaRERA is of the view that since the complainant-allottees are willing to remain in the project and to have possession of their flat, they are entitled to seek interest on account of the delay. Hence, their claim towards the compensation stands rejected as per the provision of section 18(1) of the RERA.


23. In view of these facts, the following order is passed:-

- a) The present complaint is partly allowed.
- b) The claims of compensation sought by the complainants stand rejected in view of the observations made in aforesaid para no.22.
- c) The respondent promoter is directed to pay interest for the delayed possession to the complainants on actual amounts paid by the complainants towards the consideration of the said flat 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, for every month of delay from February, 2022 (as per AFS 30-08-2021 + 6 months grace period under MOFA) till the date of actual possession of their flat with the occupancy certificate.
- d) Needless to state here, that the actual amount as provided under section 18 of the RERA means the amounts paid by the complainants towards the consideration of the said flat only, excluding the stamp duty, registration charges and taxes etc. paid to the government.
- e) However, in view of the mitigating circumstances beyond the control of

the respondent promoter 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 obtaining full occupancy certificate. The respondent promoter 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.

- f) With regard to the payment of interest to the complainants, 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.

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

  
(Mahesh Pathak)

**Member - 1/MahaRERA**