

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

Complaint No. CC006000000100395

Dhuruba Jyoti Bora

.... Complainant

Versus

Acme Housing India Pvt. Ltd.,

.... Respondent

Project Registration No. **P51700000778**

Coram: Dr. Vijay Satbir Singh, Hon'ble Member – I/MahaRERA

Adv. Rajmani Verma appeared for the complainant.

Adv. K. R. Shekhawat appeared for the respondent.

ORDER

(17th February, 2020)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent for delayed possession under section-18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA") with respect to the booking of a flat in the respondent's project known as "**Alphinia**" bearing MahaRERA Registration No. **P51700000778** at Thane.
2. This complaint was heard on several occasions and the same was finally heard today, when both the parties appeared and made their respective submissions. During the course of hearings, the respondent sought time to settle the matter amicably. However, the settlement could not happen and therefore, the matter was heard on merits.
3. It is the case of the complainant that in the year 2014, he had booked the said flat for a total consideration amount of Rs.1,33,80,288/-. The registered agreement for sale was also entered into between them on 22nd January 2016. According to the said agreement, the respondent had agreed to hand over the possession of the said flat on or before 31st December, 2017. The complainant has paid an amount of Rs.1,31,28,586/- so far. However, the respondent has failed to hand over the possession of the said flat to him till date and hence the present complaint has been filed seeking relief under section-18 of the RERA.

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4. The respondent, on the other hand, has resisted the claim of the complainant in its reply on record of MahaRERA by raising various defences in it. It is the case of the respondent that according to the registered agreement for sale entered into between them, the date of possession was 31st December, 2017 with grace period of six months, i.e. 30th June 2018. However the said date of possession was subject to certain terms and conditions. As per clause No. 9.2 of the said agreement for sale, the only option available to the complainant if the possession is not given on the agreed date is to terminate the agreement for sale and demand refund of money with 9% interest. However, the complainant did not opt for the said clause of the agreement for sale. Even the said clause further provides for extension subject to force majeure conditions, and there are certain reasons which were beyond the control of the respondents which delayed the project for around 18 months, such as,

- i) Stay order in PIL No.36 of 2016 before the Hon'ble High Court filed by one Mr. Mangesh Shelar as regard to the shortage of water supply. In the said PIL, the Hon'ble High Court vide order dated 5/5/2017 restraining the Thane Municipal Corporation from granting further construction permissions and occupancy certificate in respect of the project at Ghodbunder Road and the present project is also affected since it was in the same vicinity;
- ii) Demonetization and implementation of RERA and GST which resulted in cash crunch and therefore, the labourers could not be engaged for carrying out the site work since they were working on daily wages and no cash was available. Further, the respondent was busy in undertaking the compliance for the project registration with MahaRERA after implementation of RERA. Besides, the GST policy was not clear on the manner of its applicability of housing sector due to which the project got delayed.
- iii) In the present project, there are 156 allottees which were required to make timely payment as the construction was totally dependent on it.

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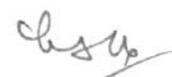
However, the allottees have defaulted in making timely payment which also caused delay in the completion of the project.

- iv) The Shortage of sand, cement and ready mixture concrete during the year 2013-14 and also there was a ban on sand mining, which also caused delay in the completion of the project.
- 5) The respondent further stated that the project is nearing completion and it has mentioned the revised completion date of this project as 31st December, 2020 while registering the project with MahaRERA. They have also applied for occupancy certificate on 29.11.2019, which is expected soon. In view of the aforesaid facts, the respondent prayed for dismissal of this complaint.
- 6) The complainant has filed his rejoinder to the reply filed by the respondent and has denied the averments made by the respondent and stated that the respondent has accepted 98% from him and hence cannot take excuse of force majeure. The respondent has violated the terms and conditions of the agreement for sale. The complainant further stated that the occupancy certificate is not contractual, but is a statutory obligation of the respondent/promoter and the same ought to have been obtained prior to receiving 98% from the complainant till January 2019 itself.
- 7) The MahaRERA has examined the arguments advanced by both the parties as well as record. In the present case, admittedly, there is a registered agreement for sale executed to which the complainant / allottee and the respondent / promoter in which the date of possession with grace period of six months was mentioned as 30th June, 2018 and till date, the possession is not given to the complainant, although the complainant has paid substantial amount towards the construction of the same. The respondent has mainly contended that the project has got delayed due to the stay order dated 5.5.2017 passed by the Hon'ble High Court in PIL No. 36 of 2016, demonetization and implementation of RERA and GST the non payment of



outstanding dues by the allottees, shortage of sand, cement and road mixing concrete between 2013-14 the project got delayed.

- 8) With regard to the reasons cited by the respondent, the said reasons are general in nature and do not provide satisfactory explanation to account for the delay. The stay order given by the High Court, Bombay was vacated on 11th Oct. 2017 after five months. Even if all factors pointed out by the respondent due to which the project got delayed are taken into consideration, the respondent is entitled to get six months grace period in the date of possession to complete the project for handing over possession of the said flat to the complainant. After the provisions of the RERA came into force on 1st May, 2017 the promoter is liable to pay interest for the delay in accordance with the provisions of section-18 of the RERA. Moreover, the payment of interest on the money invested by the home buyer is not a penalty, but, a type of compensation for delay as has been clarified by the High Court of Judicature at Bombay in the judgement dated 6th June, 2017 passed in Writ Petition No. 2737 of 2017. The respondent is, therefore, liable to pay interest for the period of delay in accordance with the terms and conditions of the agreement for sale.
- 9) In view of the aforesaid facts and discussion, the respondent is directed to pay interest to the complainant from 1st January, 2019 till the actual date of possession @ marginal cost lending rate (MCLR) of State Bank of India (SBI) + 2% as prescribed under the provisions of section-18 if the RERA and the rules made therein. In the present case, since the project is nearing completion, the respondent would be at liberty to adjust the interest amount with the outstanding dues payable by the complainant and the same shall be paid at the time of possession.
- 10) With these directions, the complaint stands disposed of.



(Dr. Vijay Satbir Singh)
Member – 1/MahaRERA