

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

**Complaint No. CC00600000078327**

Ramji Chaubey

..... Complainant

**Versus**

Haware Engineers And Builders Pvt Ltd  
Project Registration No. P51700001515

..... Respondent

Coram: Hon'ble Dr. Vijay Satbir Singh, Member – 1/MahaRERA

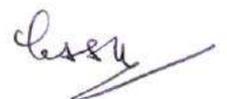
The complainant appeared in person.

Adv. Nishant Tripathi a/w Adv. Vaibhav Bandgar

**ORDER**

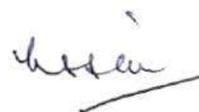
(6<sup>th</sup> August, 2019)

1. The complainant has filed this complaint to MahaRERA seeking directions to the respondent to give early possession of his flat and also to pay interest and compensation for the delayed possession as provided under section-18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "the RERA Act, 2016") in respect of booking of a flat No. 701, admeasuring 539 sq.ft. carpet area, in the respondent's project known as "Dahlia" bearing MahaRERA registration No. P51700001515 at Thane.
2. This matter was heard finally today. During the hearings, both the parties appeared and made their submissions. The complainant has argued that he has booked the said flat in the respondent's project for a total consideration amount of Rs. 47,50,000/-. The registered agreement for sale was executed on 23-03-2017. According to the said agreement, the respondent was liable to handover possession of the flat to the complainant by December, 2017. Till date, he has paid an amount of Rs. 42,38,500/- to the respondent. However, the respondent has not given possession of the flat to the complainant. Hence, the present complaint

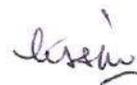


has been filed under section-18 of the RERA Act, 2016, claiming interest and compensation for delayed period of possession.

3. The respondent filed his written submission and disputed the claim of the complainant. The respondent argued that he has obtained NA order for development of the land on 27-11-2006 and subsequently obtained amended permissions, i.e. commencement certificate on 12-04-2013 and other permissions such as, revised commencement certificate on 12-03-2013 from Thane Municipal Corporation & Competent Authority for construction of Building No. A & D. Thereafter, the complainant has booked his flat No. 701 in Building No. A and executed registered agreement for sale on 23-03-2017. As per clause No. I (v) of the said agreement, the respondent was liable to complete the construction of the said building within a period of five years from the date of issue of latest commencement certificate by the local authority subject to any unforeseen hindrances. In the present case, the revised commencement certificate was obtained by the respondent on 12-04-2013 and therefore, the date of possession would be 11-04-2018.
4. The respondent has substantially completed the constructions and applied for various NOCs on 28-12-2016, such as, Lift Fitness Certificate, Sewerage connection NOC from TMC, Tree NOC from TMC etc., However, in RCS Suit No. 631 of 2018, filed by a flat purchaser society, Haware Estate Tulip I & II CHS Ltd. before the Jt Civil Judge S D Thane and obtained exparte ad-interim status quo order in respect of the said project on 22-06-2018. Hence, the occupancy certificate was withheld by the competent authority. The said status quo order was lifted by the Hon'ble AD-HOC District Judge & Additional Judge, Thane in Appeal No. 41 of 2019 vide order dated 6-07-2019. Now the respondent would get the occupancy certificate within 2 to 3 days. The respondent argued that due to mitigating circumstances, the occupancy certificate could not be obtained and possession could not be given to the complainant.



5. The MahaRERA has examined the arguments advanced by the both the parties, as well as record. In the present case, admittedly the complainant has purchased the flat in the respondent's project by executing registered agreement for sale. The complainant has contended that as per the said agreement, the date of possession was December, 2017. However, as per the agreement, the date of possession is mentioned as 5 years from the date of latest commencement certificate i.e. 12-04-2013. Hence, the date of possession was April, 2018, which has already been lapsed. The complainant is, therefore, seeking interest and compensation for the delayed period of possession.
6. With regard to the claim of the complainant for compensation, the MahaRERA feels that since the complainant wants to continue in the project, he can seek only interest for the delayed possession and no compensation can be granted to the complainant as per the provisions of section-18 (1) of the RERA Act, 2016.
7. On going through the various documents, It is seen from the record that the agreed date of possession as per the agreement was April, 2018. The respondent has applied for occupancy certificate to the competent authority. However, it could not be obtained due to the order dated 22-06-2018 passed by the Jt Civil Judge, Thane in RC Suit No. 631 of 2018. Thereafter, as per order dated 4-02-2019, the TMC was restrained from granting occupancy certificate for the said project. However, the said injunction order was lifted by the Appellate Court vide order dated 6-07-2019 passed in MCA No. 41 of 2019. This is the major ground for the delay and the project under reference got stuck up for about 13 months.
8. In this regard, the MahaRERA has perused the order dated 18-04-2019 given by the Maharashtra Real Estate Appellate Tribunal in Appeal No. AT00600000010452, whereby the Appellate Tribunal has condoned 15 months delay in handing over possession of the flat to the allottee due to the status quo order granted by the Court. The respondent has produced



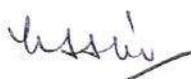
the copy of status quo order passed by the Hon'ble Courts to support his contention. From the said fact, it appears that, admittedly, there was a status quo order due to which the occupancy certificate was withheld by the competent authority and therefore, the project got delayed. The MahaRERA feels that there is a substance in the justification given by the respondent and the MahaRERA feels that there are mitigating circumstances due to which the project got delayed.

9. However, if the justification given by the respondent is considered for the delay, a period of six months seem reasonable to give extension to the date of possession to compute the interest liability in this case.

10. The MahaRERA feels that after the commencement of the provisions of Real Estate (Regulation and Development) Act, 2016, which came into effect, the home buyers were entitled to claim interest under section-18 of the RERA Act, 2016 for the delay till the possession of the flat is handed over.

11. In the light of these facts, the MahaRERA directs the respondent to pay interest to the complainant from 1<sup>st</sup> November, 2018 (April 2018 + 6 months grace period) till the actual date of possession at the rate of 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 there under. Since the project is nearing completion, the MahaRERA directs that the actual amount payable to the complainant towards the interest shall be adjusted with the balance amount payable by the complainant, if any, and the same shall be paid at the time of possession.

12. With the above directions, the complaint stands disposed of.

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