

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

COMPLAINT No: CC006000000057049

Mr. Atul Waichal

.... Complainant

Versus

M/s. Wadhwa Realty Pvt Ltd

.... Respondent

MahaRERA Registration No. **P51800001089**

Coram: Hon'ble Dr. Vijay Satbir Singh, Member-1

The complainant appeared in person.

Adv. Anulata Saundankar appeared for the respondent.

ORDER

(13th August, 2019)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to pay interest for the delayed possession under section-18 of the Real Estate (Regulation and Development) Act, 2016 (hereafter referred as "the RERA Act, 2016") in respect of the booking of a flat No.1603, on 16th floor, in building No. F in the respondent's project known as "**Anmol Fortune-II**" bearing MahaRERA registration No. **P51800001089** at Goregaon (West), Mumbai.
2. The matter was heard on several occasions and the same was heard finally today. During the hearing held today, the complainant appeared in person and none appeared for the respondent. However, the respondent has filed his written submission dated 14-06-2019 on record of MahaRERA.
3. It is the case of the complainant that he had booked the said flat for a total consideration amount of ₹ 2,84,48,000/-. The registered agreement for sale was executed between the complainant and the respondent on 28th

Asst.

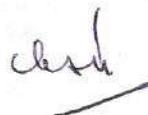
July, 2015. According to the said agreement for sale, the respondent was liable to handover possession of the said flat to the complainant on or before 31st December, 2017. Till date the complainant has paid an amount of ₹ 2,90,95,000/- to the respondent towards purchase of the said flat. However, the respondent has failed to handover the possession of the said flat to the complainant on agreed date of possession i.e. December, 2017. The respondent obtained occupancy certificate in the month of November, 2018 and handed over possession of the said flat to the complainant in the month of April, 2019 i.e. during pendency of this complaint. Hence the complainant has filed this complaint seeking interest from 1st January, 2018 till the date of possession.

4. The respondent disputed the claim of the complainant and argued that, the said delay occurred in handing over possession of the said flat to the complainant is not an intentional delay. He further argued that, the project got stuck up due to the factors which were beyond his control. The respondent further argued that, the Hon'ble Maharashtra Real Estate Appellate Tribunal in its order dated 10-05-2019 passed in Appeal No. AT00600000010888 has considered the reasons for the delay and granted exemption for some genuine reasons. The respondent argued that, in the present case, due to force majeure reasons there was a delay, such as, environmental clearance, change in government policy and the order of National Green Tribunal
5. He argued that, due to change in government policy, the proposal submitted to MCGM for occupancy certificate was required to be resubmitted before the MHADA. He further argued that, there was an issue with regard to sufficient water connection for the said project as MHADA failed to provide the same. Hence he filed complaint No. CC006000000078923 before the MahaRERA against the MHADA for wing E of the said project. Therefore, in view of the order of the Appellate Tribunal, he is entitled to seek 6-month grace period. Moreover, with great efforts,



he obtained occupancy certificate from MHADA in the month of November, 2018 and handed over possession of the flat to the complainant in April, 2019. The respondent, therefore, prayed for dismissal of this complaint.

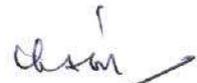
6. In the present case, during the hearing held on 17th June, 2019, the MahaRERA had directed to call the officials from MHADA to explain the delay for grant of occupancy certificate and the matter was adjourned to 30-07-2019. However, on 30-07-2019, no hearing was taken. Hence the said directions could not be complied with. Hence the MahaRERA has no other option, but to decide the matter on merits as per available record.
7. The MahaRERA has examined the rival arguments advanced by both the parties as well as record. In the present case, admittedly, there is a delay in handing over possession of the flat to the complainant. The complainant is, therefore, seeking interest for the delayed possession. The respondent has argued that there is no intentional delay. The project got delayed due to environmental clearance, change in government policy and the order of National Green Tribunal. He further relied upon the judgment given by the Maharashtra Real Estate Appellate Tribunal in Appeal No. AT006000000010888 and requested for grace period of 6 months.
8. In the present case, admittedly, the complainant has paid entire consideration amount to the respondent. According to clause No. 18 of the agreement dated 28-07-2015, the respondent was liable to handover possession of the said flat to the complainant on or before 31st December, 2017 with grace period of 6 months i.e. 30th June, 2018. However, the same is not handed over to the complainant on the agreed date mentioned in the agreement. However, the respondent has obtained occupancy certificate in the month of November, 2018 and given possession of the said flat to the complainant in the month of April, 2019. Hence the MahaRERA feels that considering the reasons cited by the respondent for delay, the



respondent had sufficient time of 6 months grace period to complete the said project by June, 2018. However, he has failed to complete the same. Hence the MahaRERA feels that the respondent has violated the provision of section-18 of the RERA Act, 2016.

9. The MahaRERA, further feels that after the commencement of the provisions of RERA Act, 2016, which came into effect from 1-5-2017, the home buyers are entitled to claim interest under section-18 of the RERA Act, 2016 for the delay till the possession of the flat is handed over. However, in the present case, since the respondent has obtained occupancy certificate in the month of November, 2018, the complainant is entitled to seek interest till November, 2018.
10. In the light of these facts, the MahaRERA directs the respondent to pay interest to the complainants from 1st July, 2018 (**31st December, 2017 + 6 months grace period as per clause No. 18 of the agreement**) till the date when occupancy certificate is obtained by the respondent for the complainant's flat i.e. 5th **November, 2018** at the rate of Marginal Cost Lending Rate (MCLR) plus 2% as prescribed under the provisions of Section 18 of the RERA Act, 2016 and the Rules made there under.
11. With the above directions, the complaint stands disposed of.

महा-रेरा



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