

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

Complaint No. CC005000000106646

Dr Anant Bagul

... Complainant/s

*Versus*

Goel Ganga India Pvt Ltd

...Respondent/s

**MahaRERA Project Registration No. P52100000399**

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

Ld. Adv. Swaroop Godbole appeared for the complainant.

Adv. Mane appeared for the respondent.

**ORDER**

(Wednesday, 19<sup>th</sup> June 2024)

(Through Video Conferencing)

1. The complainant above named has filed this online complaint before the MahaRERA on 03-03-2022 mainly seeking directions from MahaRERA to the respondent to refund along with interest, compensation and cost as prescribed under section 18 under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of a flat bearing no. 1001, situated on 10<sup>th</sup> floor in the building no. F1 (hereinafter referred to as "the said flat") in respect of the respondent's registered project known as "GANGA BHAGYODAY F BLDG." bearing MahaRERA registration no. **P52100000399** located at **Pune (M Corp.), Dist. Pune.**
2. This complaint was heard on several occasion and was final heard on 08-02-2024 as per the Standard Operating Procedure dated 24-01-2024 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the

parties have been issued prior intimation of this hearing and they were also informed to file their written submissions if any. Accordingly, the complainant appeared and made their submission. Despite notice, the respondent remained absent. The MahaRERA has heard the argument of the complainant and also perused the available record.

3. After hearing the argument of the parties concerned (as per their appearances), the following Roznamas were recorded in the said hearings in this complaint:-

*i)02-11-2023: "Both the parties are present. The complainant has filed this complaint for refund along with interest and compensation for delay. The project was supposed to be completed in December 2017 as per the agreement for sale of May 2016. The complainant has paid more than 80% of the consideration amount. However, the project is still incomplete. Therefore, the complainant has filed this complaint for refund along with interest and compensation for delay. The respondent is directed to file a reply to the complaint within a period of four weeks i.e. by 30-11-2023. Further two weeks i.e. 14-12-2023 is granted to the complainant to file rejoinder to the reply of the respondent. The respondent has pointed out certain legal difficulties due to which the project is delayed. The matter is adjourned to a suitable date after 14-12-2023 for further hearing. List this matter for next hearing on 08-02-2024."*

*ii) 08-02-2024:-" The complainant is present. The respondent is absent (but appeared later). Moreover, the respondent has also not filed any reply to the complaint despite directions in the previous hearing. The complainant has filed this complaint for refund along with interest and compensation for delay as the project was not completed by December 2017 which was the date of possession as per agreement for sale of May 2016. The respondent is granted one last chance to file its reply and written arguments within two weeks i.e.*

*by 22-2-2024. The complainant may file a rejoinder to the reply of the respondent along with his written arguments within a further period of two weeks i.e. by 7-3-2024 even if the respondent does not file any reply. In case the respondent does not file any reply, the MahaRERA will be constrained to decide this matter ex-parte against the respondent. The matter is reserved for order suitably after 7-3-2024 based on the arguments in the hearing as well as the reply, rejoinder, and written arguments filed in the complaint."*

4. However, despite specific directions being given to the respondent, it has failed to upload any reply to this complaint. The complainant has also not uploaded any rejoinder/written arguments on records of MahaRERA. Hence, the MahaRERA has perused the available record.
  
5. It is the case of the complainant that, he has booked the said flat in the respondent's registered project by executing a registered agreement for the sale dated 30-05-2016. The said flat was booked for a total consideration amount of Rs. 1,20,02,820/- (excluding tax), out of which he has paid Rs. 1,03,90,483/- along with Rs. 7,20,000/- and Rs. 30,940 for stamp duty and registration charges respectively. The respondent gave assurance to complete the said project on time and has already completed the phase I, accordingly handed over possession to the allottees. Therefore, the complainant has paid the entire amount to the respondent. As per clause 5 of the said agreement for sale, the respondent agreed to handover the possession of the said flat by December 2017. However, it has failed to hand over possession of the said flat to him. Thereafter the complainant made several requests to the respondent for the refund of his money which the respondent has neglected to respond. Hence, being aggrieved with the actions of the respondent, the complainant has filed this complaint for refund along with interest, compensation and cost under the provisions of the RERA.

6. In the present case, the MahaRERA has observed that the complainant has filed this online complaint before MahaRERA on 3-03-2022 seeking refund along with interest and compensation on account of the delay under section 18 of the RERA. However, till date the respondent promoter has not bothered to upload its reply to this complaint, though this complaint was visible to the respondent in its project login. Even as per the SOP dated 12-06-2020, the respondent was liable to upload its reply in digital form in this complaint. However, till date the respondent has not complied with the said direction. Furthermore, the respondent although has appeared for the hearings held on 2-11-2023 and 08-02-2024, when the specific direction was given to the respondent to file its reply within the stipulated time period. Also, on the last date of hearing held on 28-02-2024, two weeks' time i.e., till 07-03-2024 was granted to it to file its reply as a last chance. However, despite specific directions being issued, it has failed to upload any reply/written submission on record of MahaRERA. It shows that the respondent is not willing to contest this complaint. Hence, the MahaRERA has no other alternative but to proceed with the matter ex-parte against the respondent on merits as directed by the MahaRERA during the last hearing held on 28-02-2024.
7. The MahaRERA has examined the submissions made by the complainant and also perused the available record. The complainant herein by filing this complaint has approached the MahaRERA mainly seeking reliefs under section 18 of the RERA towards refund of the entire money paid by him along with interest and compensation. The complainant has agitated his claim by virtue of the registered agreement for sale dated 30-05-2016.
8. The complainant has contended that as per the said registered agreement for sale signed by the respondent promoter, the possession of the said flat has

not been handed over to him by the respondent on or before 31-12-2017. Thereby, the respondent has violated the provisions of section 18 of the RERA. To support his contentions, the complainant has uploaded the relevant pages of the agreement for sale on record of MahaRERA.

9. In the instant case, the complainant being an allottee of this project has filed this complaint seeking refund of the entire money paid by him along with interest/compensation due to the delayed possession under section 18 of the RERA. There is a registered agreement for sale entered into between the complainant and the respondent promoter on 30-05-2016. According to clause 5(b) of the said agreement, the respondent agreed to handover possession of the said flat to the complainant on or before 31-12-2017. Admittedly, the possession of the said flat has not been handed over to the complainant till date, although as per the complainant, he has paid substantial amounts towards consideration of the said flat.
10. As stated hereinabove, the respondent promoter although has appeared for the hearings held in this complaint through its advocate, it has failed to file any reply to this complaint citing any sufficient reasons for delay in handing over possession of the said flat to the complainant on the agreed date of possession. As a promoter, having sound knowledge in the real estate sector, the respondent promoter was fully aware of the market risks when it launched the project and signed the agreement with the home buyers. Further, if the project was getting delayed due to the reasons known to the respondent promoter, then the respondent promoter should have informed the same to the complainant and should have revised the date of possession in the agreement at the relevant time by executing a rectification deed with the complainant. From the record, it prima facie appears that no such steps have been taken by the respondent promoter.

11. In this regard, 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.”*

- 15 Likewise, in the present case, the respondent has failed to handover possession of the flat to the complainant on the agreed date of possession as mentioned in the registered agreement for sale on 31-12-2017. The respondent has neither disputed the said agreement for sale, date of agreement for sale nor has denied the payments made by the complainant. Hence, all these contentions made by the complainant in this complaint remain unchallenged/ undisputed.

16. However, even if it is presumed that the project got delayed due to the force majeure factors beyond the control of the respondent hypothetically, the MahaRERA is of the view that under the provisions of MOFA, the promoter was entitled to seek 6 months extension due to force majeure reasons. In the

present case, the agreement for sale was executed under the provisions of MOFA. As stated hereinabove, the respondent promoter is also entitled to seek extension of 6 months in the date of possession mentioned in the said agreement for sale meaning thereby, the date of possession in this case gets extended for 6 months from the agreed date of possession mentioned in the said agreement for sale, i.e., till 30-06-2018 from 31-12-2017. However, even on that date the project was incomplete. It shows that the respondent has violated the provisions of section 18 of the RERA and hence, the complainant is entitled to seek refund along with interest under section 18 of the RERA.

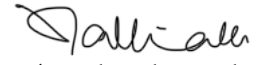
17. As far as the claim of compensation sought by the complainant, the MahaRERA is of the view that as per explicit provisions under sections 71 and 72 of the RERA, the MahaRERA has no jurisdiction to grant any compensation to these complainants. Further, the complainant herein during the course of hearing has not pressed for compensation and also to transfer this complaint to the Ld. Adjudicating Officer/MahaRERA for deciding the quantum of compensation under sections 71 and 72 of the RERA. However, the complainant is always at liberty to agitate his grievances about the compensation by filing separate complaint before the Ld. Adjudicating Officer/ MahaRERA in Form-B as prescribed under relevant Rules framed under the RERA if he so desires.
18. In view of the above facts and discussion, the following order is passed: -
  - a. The present complaint is partly allowed.
  - b. The claim of compensation sought by the complainant stands rejected in view of the observations made in the aforesaid para no.17.
  - c. The respondent is directed to refund the entire money paid by this complainant towards the consideration of the said flat along with

interest 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 the date of payment till the actual realisation of the said money to the complainant.

- d. Needless to state here that the actual amount as provided under section 18 of the RERA means the amount paid by the complainant 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 jeopardized due to the outflow of finances and is completed keeping in mind the interest of the other buyers of the said project at large, it is directed that the amounts of refund along with interest to the complainant shall be paid by the respondent promoter to the complainant after obtaining the full occupancy certificate.
- f. The complainant is also directed to execute the cancellation deed on receipt of payment of refund along with interest from the respondent-promoter.
- g. With regard to the payment of interest to the complainant, 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 6<sup>th</sup> August , 2021 issued by the MahaRERA and the Notification/Order which may be issued in this regard from time to time.

21. With the above directions, the present complaint stands disposed of.





(Mahesh Pathak)

Member - 1/MahaRERA