

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

1. Complaint No. CC006000000141186

Mr.Napolian Estibeiro & Anr Complainants

Versus

M/s. Shreeji Constructions Respondent

Along with

2. Complaint No. CC006000000110806

Mr.Andrea Tellis & Anr Complainants

Versus

M/s. Shreeji Constructions Respondent

Along with

3. Complaint No. CC006000000120937

Mr.Noel D'Mello Complainant

Versus

M/s. Shreeji Constructions Respondent

Along with

4. Complaint No. CC006000000120930

Mr.Noel D'Mello Complainant

Versus

M/s. Shreeji Constructions Respondent

Along with

5. Complaint No. CC006000000120967

Mr.Sunil Butello Complainant

Versus

M/s. Shreeji Constructions Respondent

Along with

6. Complaint No. CC006000000110799

Mr.Eric Michael Almeida & Anr Complainants

Versus

M/s. Shreeji Constructions Respondent

Along with

7. Complaint No. CC006000000110797

Mr. A Felix & Anr Complainants

Versus

M/s. Shreeji Constructions Respondent

Project Registration No. P51800004400

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

Adv. Godfrey Pimenta appeared for the complainants.

Adv. Prasham Shah appeared for the respondent.

ORDER

(28th January, 2020)

1. The above 7 complaints have been filed by the allottees in the project registered with MahaRERA bearing No. P51800004400 known as **“Shreeji Atlantis”** at Malad (West) Dist- Borivali, Mumbai, under Section-18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as “RERA”). They are seeking directions from the MahaRERA to the respondent to handover possession of their respective flats along with occupancy certificate and also to pay interest for the delayed period of possession in respect of booking of their flats in the said project of the respondent.
2. These complaints have been filed with respect to the same project and hence they were clubbed together and finally heard today. During the hearing, the complainants have argued that they had booked their respective flats in the respondent's project between the year 2015 to 2016 and the registered agreements for sale have also been executed between both the parties. According to the said agreements for sale, the respondent was liable to hand over possession of the said flats to the complainants on or before 31-12-2018. Though the complainants have paid substantial amount to the respondent amounting to 80% to 90% towards the



consideration amount, however, till date the respondent has neither handed over the possession of the said flats to the complainants nor completed the said project, violating the provisions of section 18 of the RERA . Hence the complainants prayed for relief under section 18 of the RERA, directing the respondent to pay interest for the delayed possession. With regard to the reasons of delay cited by the respondent, the complainants have stated that it is an SRA project undertaken by the respondent. If there was any delay in getting permissions, the respondent should have approached the Hon'ble High Court for getting appropriate reliefs. The respondent has collected around Rs. 100 crores from the allottees, and got the said land for development free of cost. Hence, the respondent had incurred the construction cost only. Then the respondent could have, therefore, completed the project after collecting such huge amount of money. Even if it was not getting MOEF NOC, it could have approached the Ministry of Environment for getting NOC. However, it has not taken such steps. Even if the reasons of delay cited by the respondent are considered as genuine, the respondent can seek only 6 month grace period and for remaining period of delay the respondent is liable to pay interest for the delayed possession under section 18 of the RERA to them.

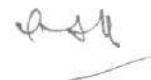
3. The respondent filed his reply on record of MahaRERA and disputed the claim of the complainants and argued that, the project has been delayed for the reasons beyond their control as the SRA being the planning authority did not issue LOI for a period of 3 years despite regular follow ups with the SRA and hence the construction of the said project got

delayed. However, it is expecting the LOI in next few weeks and it will complete the project as per the revised completion date mentioned in MahaRERA registration i.e. 31-12-2022 and all the homebuyers have been regularly informed about the same.

4. The respondent further stated that the project mainly got delayed since the project was under scrutiny and hence it was compelled to file Writ Petition in the Hon'ble High Court of Judicature at Bombay. Even the MOEF's NOC was got delayed and hence it could not get the required permissions from the SRA. However, now it has sufficient fund to complete the construction work in the project and the payment of interest at this stage to the complainant allottees would hamper this project which may cause further delay in completion.
5. The delay should be attributed to the government authorities and after a period of 2 years the SRA has issued revised LOI for this project on 23-01-2020 and hence it is entitled to seek 2 years extension for completion of this project till 31-12-2022. The respondent further relied upon various judgements given by the MahaRERA as well as the Maharashtra Real Estate Appellate Tribunal (MahaREAT) to substantiate their claim.
6. The MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case, admittedly, there are registered agreements for sale executed between the complainants / allottees and the respondent / promoter in which date of possession was mentioned as

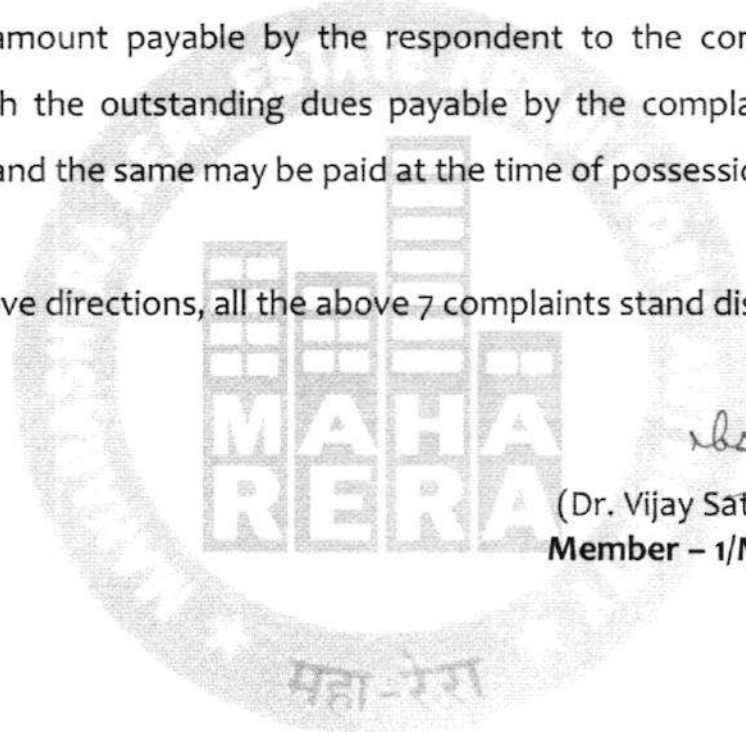
31-12-2018 and till date the possession is not given to the complainants, though substantial amount has been paid by them. It shows that the respondent has violated the provisions of section 18 of RERA and the rules made there under. To justify the case, the respondent has argued that the project got delayed due to delayed permissions by the SRA and other government authorities, which ultimately caused delay in construction on site.


7. The reason cited by the respondent cannot be accepted at this stage since, the said reasons cited by the respondent are not covered under the force majeure clause. There is no fault on the part of the complainants who have put their hard earned money for booking of the said flats in the respondent's project. The respondent has not given any just and reasonable reasons for the alleged delay.
8. Even if all the factors pointed out by the respondent due to which the project got delayed are taken into consideration, they are entitled to seek only 6 months extension which was also agreed by the complainants at the time of hearing which was also permissible under the provisions of MOFA. However, after the provisions of the RERA provisions coming into force on 1st May, 2017, the respondent is, therefore, liable to pay interest to the complainants for delay in accordance with the provision of section 18 of the RERA Act, 2016.



9. In view of above facts and discussion, the respondent is directed to pay interest to the complainants from 1st July, 2019 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 RERA and the Rules made there under. Since the respondent is willing to complete the project and the payment of interest at this stage would jeopardise the project which may cause further delay in the project, the MahaRERA directs that, the arrears of interest amount payable by the respondent to the complainants be adjusted with the outstanding dues payable by the complainants to the respondent and the same may be paid at the time of possession.

10. With the above directions, all the above 7 complaints stand disposed of.




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