BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Virtual Hearing held through video conference as per MahaRERA Circular No.: 27/2020

CORAM: Ravindra Deshpande, Member II, MahaRERA

COMPLAINT NO.: CC001000000050304

BARAKHA CHOUDHARI …COMPLAINANT

Vs

DAXA MAGRAJ GOLCHHA …RESPONDENT

MahaRERA Project registration No. P51600013498

FINAL ORDER

01.04.2026

(Date of hearing: 24.04.2025)

Mr. Badal Singhvi present for the Complainants
None present for Respondent

1. The Complainant has filed present complaint seeking directions to the Respondent to complete the project at the earliest and obtain the Completion Certificate. The Complainant has further prayed that the Respondent be directed to pay compensation for the delay in completion of the project at the prevailing market rate of interest for the past four years.

   The facts are narrated as under :-

2. The Complainant is a genuine allottee who purchased a 3 BHK residential flat bearing Flat No. F-103 in the project developed by the Respondent Promoter. The booking of the said flat was made in the year 2014, and thereafter a registered Agreement for Sale was executed between the parties. As per the terms and conditions incosaid agreement, the Promoter had assured that the construction of the project would be completed and possession of the flat would be handed over on or before 2016 along with the necessary Completion Certificate/Occupancy Certificate from the competent authority.

3. It is contended that despite lapse of more than four years beyond the promised possession date, the Respondent has failed to complete the project and has not offered possession of the flat to the Complainant. It is the case of the Complainant that the Promoter has delayed the construction without providing any proper explanation or prior intimation to the allottees regarding the reasons for such delay.

4. It is further contended that the Complainant has repeatedly requested the Respondent to complete the construction and hand over possession of the flat; however, the said requests have not been responded to. It is also contended that the Promoter has subsequently revised the layout plan and extended the completion timeline without informing or obtaining consent of the Complainant, which is contrary to the obligations of the Promoter under the Real Estate (Regulation and Development) Act, 2016. Additionally, despite the project being incomplete and possession not being offered, the Respondent has been demanding annual maintenance charges from the Complainant, which according to the Complainant is arbitrary and unjustified.

5. In view of the prolonged delay and the conduct of the Respondent Promoter, the Complainant has approached the Authority seeking directions against the Promoter for expeditious completion of the project and issuance of Completion Certificate, along with compensation in the form of interest at the prevailing market rate for the delay of approximately four years caused in handing over possession of the flat.

6. The Respondent, through its partner Mrs. Daxa Maghraj Golecha, has filed an Affidavit in Reply opposing the complaint and seeking dismissal of the same. The Respondent submits that the project "Wallfort Garden" is being developed in phases consisting of two buildings with six wings. Building No. 1 comprising Wings A and B commenced in the year 2014, whereas Building No. 2 comprising Wings C, D, E, and F commenced in the year 2015. It is stated that the initial booking of Flat No. 103 situated on the stilt ground floor of Wing F was made in the financial year 2014–2015 by the original purchasers, namely Mrs. Barkha Navin Choudhary and Mr. Nilam Lalchand Barant, and an Agreement for Sale was executed and registered on 24.02.2015 before the Sub-Registrar at Malegaon under a construction-linked payment plan.

7. The Respondent contends that the allottees failed to adhere to the agreed construction-linked payment schedule. According to the Respondent, after making the initial payment in the year 2015, the purchasers did not make any further payments until the year 2020, thereby causing delay attributable to the purchasers themselves. It is further submitted that the project was duly registered with MahaRERA bearing Registration No. P51600013498 with an initial completion date of 30.06.2021, which was later extended. The Respondent states that the project also suffered delays due to the outbreak of the COVID-19 pandemic between 2019 and 2021, during which labour migration and restrictions imposed by local authorities adversely affected the progress of construction.

8. The Respondent further submits that pursuant to revised development permissions and municipal regulations applicable in Malegaon, an additional floor was sanctioned under a further Commencement Certificate dated 24.08.2020, and the Respondent is in the process of applying for further permissions for additional floors. It is also stated that the construction of the initial phase consisting of stilt, ground, first and second floors of Wing F has already been completed and essential infrastructure such as lift installation, water supply lines and electrical lines has been provided.

9. The Respondent further contends that at the request of the purchaser and after completion of the initial structure, a Deed of Conveyance dated 07.09.2020 was executed whereby the purchaser's accepted possession of the flat on an "as is where is basis" along with fit-out possession and furniture. It is submitted that under the said Deed of Conveyance, the purchasers had inspected all title documents, plans and approvals relating to the project and agreed to the terms and conditions contained therein. The Respondent also relies upon clauses of the said agreement which provide that the promoter is entitled to carry out additional construction or consume further FSI/FAR as permissible under the Development Control Regulations without altering the configuration of the subject flat, and that the purchasers have given their irrevocable consent to such future development.

10. Further, the Respondent states that under the terms of the agreement the purchasers are liable to bear their proportionate share of municipal taxes, maintenance charges and other outgoings in respect of the building and project. The purchasers were also required to pay certain deposits and charges including security deposit, water line charges, electrical infrastructure charges

and maintenance deposits aggregating to Rs. 95,000/-, which were payable prior to possession or execution of conveyance. The Respondent therefore submits that the purchasers are liable to pay such charges and other outstanding dues in accordance with the agreement.

11. In view of the aforesaid circumstances, the Respondent contends that the delay, if any, cannot be attributed solely to the promoter and that the complainant is not entitled to the reliefs sought, including compensation for delay. The Respondent accordingly prays that the complaint be rejected.

12. The Complainant has filed a rejoinder affidavit opposing the contentions raised by the Respondent in its Affidavit in Reply. The Complainant submits that the Respondent's reply is incomplete, misleading, and does not present the true factual position of the project. The Complainant states that the payment schedule under the Agreement for Sale was linked to construction milestones and not merely timelines; however, the Respondent never provided any construction progress updates, photographs, or formal communications to the Complainant regarding the stage of construction or delay in the project. It is further contended that the Respondent never issued any demand letters or payment requests specifying the amount payable, mode of payment, or due dates, thereby preventing the Complainant from knowing the status of construction or making stage-wise payments as contemplated under the agreement.

13. The Complainant further submits that the Respondent has wrongly attempted to justify the delay in completion of the project on account of the COVID-19 pandemic. The Complainant points out that as per the executed Agreement for Sale, the promised completion date of the project was September 2016, which had already expired well before the pandemic. Even thereafter, the developer had sufficient time between 2016 and 2019 to complete the project but failed to do so for unjustifiable reasons. It is further stated that even the revised completion date reflected on the Maharashtra Real Estate Regulatory Authority (MahaRERA) website as 21.03.2021 has also expired and the project still remains incomplete, with only four out of the five approved floors having been completed under the revised plan, thereby causing considerable hardship, mental stress, and uncertainty to the Complainant.

14. The Complainant also disputes the Respondent's claim that fit-out possession of the flat was handed over. According to the Complainant, the grant of fit-out

possession without completion of essential infrastructure and services is contrary to regulatory expectations. It is contended that several necessary amenities and facilities were not completed at the relevant time, including installation of elevators, landscaping, tree plantation, and the construction of the community building. The Complainant further states that the elevator for Wing-F was installed only in the year 2022 and that no fit-out certificate, completion certificate, or occupancy certificate has been issued by the Respondent. The Complainant asserts that no written notice was ever given by the developer informing that the flat was ready for possession, nor did the Complainant carry out any formal inspection or provide written acceptance of possession.

15. It is further submitted that the project continues to function as an active construction site, as construction of additional floors is still underway and the same access routes, parking areas, and common spaces are being used by the developer for storage of construction material. The elevator is also being used by the developer for transportation of construction materials, which indicates that the project has not reached completion. The Complainant alleges that the revised layout plans have not been uploaded on the MahaRERA website and that the Respondent is attempting to delay the completion of the project while avoiding regulatory scrutiny.

16. The Complainant further contends that certain terms and conduct of the Respondent are unfair and prejudicial to the purchaser. These include demanding full payment despite the project being incomplete, seeking payment of municipal taxes for an under-construction building where the apartment unit is not yet registered in the municipal records, charging maintenance despite common amenities and services not being fully completed, and utilizing electricity from the common utility meter for ongoing construction activities while the electricity charges are being borne through maintenance collected from purchasers. The Complainant therefore submits that the allegations of delayed payment by the purchaser are unfounded, particularly in the absence of any documented construction progress updates or payment demand notices from the developer. The Complainant reiterates that the Respondent's claim of having granted fit-out possession of the flat on an "as is where is basis," especially when essential infrastructure such as elevators and statutory approvals was absent, is neither fair nor legally sustainable.

17. The matter was listed for hearing on 24.04.2025, and on that day the son of the Complainant was present, and the Respondent was absent despite due service of the notice of hearing and the hearing link. It was observed that the Complainant has uploaded the complaint summary and rejoinder on the MahaRERA website. The Son of the Complainant submitted that the project is still incomplete, and the Occupancy Certificate (OC) has not been received till date. It was further submitted that the Respondent had agreed to hand over possession in the year 2019; however, the Complainant received possession of the flat in the year 2020 without the Occupancy Certificate. The Son of the Complainant requested time to upload written notes of arguments on the MahaRERA website. Accordingly, time was granted to the Complainant till 28/04/2025 to upload written notes of arguments. Thereafter, the matter was reserved for order.

18. The Complainant has filed written arguments dated 24.04.2025 and submitted that she had booked the said flat in the year 2015 and executed an Agreement for Sale dated 24.02.2015 wherein the promoter assured possession by 30.04.2016. However, the project has not been completed, and the Completion Certificate and Occupancy Certificate have not been obtained till date, resulting in a delay of more than nine years in handing over lawful possession. It is further submitted that although a Sale Deed was executed in 2020, it was done on an "as is where is" basis without obtaining the necessary statutory approvals. The Complainant contended that several amenities and works in the project remain incomplete and that the promoter has illegally demanded maintenance charges despite the project not being completed.

19. The Complainant has further alleged that the promoter has failed to comply with the conditions of the building permission granted by the Malegaon Municipal Corporation, which specifically mandates installation of a solar hot water system for the building. The said system has not been installed till date. It is also contended that the promoter has collected property tax and electricity meter installation charges from the Complainant amounting to Rs. 26,206 and Rs. 6,000 respectively, which according to the Complainant have been illegally charged and therefore are liable to be refunded.

20. The Complainant has also raised objections regarding alleged unauthorised alterations in the project and contended that the promoter should not be permitted to revise layout plans or add additional floors without obtaining prior written consent from at least two-thirds of the allottees as required

under Section 14(2) of the Real Estate (Regulation and Development) Act, 2016. It has further been alleged that the promoter concealed litigation relating to the project, misused project funds, failed to upload revised plans and approvals on the MahaRERA portal, and committed various violations of the provisions of the Act.

21. In view of the above submissions, the Complainant has prayed for compensation of Rs. 15,00,000/- towards delay, mental agony and financial hardship caused due to the prolonged delay of more than nine years and also prayed for refund of charges, direction to obtain Completion and Occupancy Certificates, and imposition of penalties on the promoter for violations of the provisions of the RERA Act.

22. Considering the above facts, following points arise from my determinations. My findings thereon recorded as under for the reasons stated below.

Points

SR. NO	POINTS	FINDINGS
1	Whether the Complainants is entitled to the relief claimed?	Partly Affirmative
2	What Order?	As per final order

Reasons as to point nos. 1

23. It is seen from the pleadings that the Complainant has filed the present complaint seeking directions to the Respondent Promoter to complete the project and obtain Completion Certificate/Occupancy Certificate along with compensation for delay in handing over possession of Flat No. F-103 in the project "Wallfort Garden".

24. From the material on record, it is not in dispute that the Complainant is an allottee of Flat No. F-103 and that an Agreement for Sale dated 24.02.2015 was executed between the parties. It is also admitted that the project is registered with the Authority bearing Registration No. P51600013498. It is further admitted that a Sale Deed was executed on 09.09.2020 and physical possession of the flat was handed over to the Complainant on an "as is where is basis". However, it is not shown on record that the Occupancy Certificate or

Completion Certificate for the said building has been obtained from the competent authority till date.

25. The Respondent has contended that the delay in completion of the project occurred due to non-adherence to the construction linked payment schedule by the purchasers and also due to circumstances such as the COVID-19 pandemic. The Complainant has disputed the said contention and submitted that payments were linked to construction milestones, and that no proper demand notices or construction updates were issued by the Respondent.

26. The Real Estate (Regulation and Development) Act, 2016 casts statutory obligations upon the promoter to complete the project in accordance with the declared timeline and hand over possession along with the Completion Certificate or Occupancy Certificate obtained from the competent authority. The allottee is entitled to receive lawful possession along with such approvals.

27. In the present case, although the Respondent has relied upon the execution of the Sale Deed and handing over of possession in 09.09.2020, the material on record indicates that the Occupancy Certificate has not been obtained till date. Grant of possession on an "as is where is basis" without obtaining statutory approvals cannot be treated as lawful possession and does not discharge the promoter from the obligation of completing the project in accordance with law.

28. The justification of delay on account of the COVID-19 pandemic cannot fully explain the delay since the promised possession date had already expired prior to the pandemic period. However, in view of the Respondent's contention regarding non-adherence to the payment schedule, which has not been effectively rebutted by the Complainant, the delay cannot be said to be solely attributable to the Respondent.

29. It is observed that the Respondent executed the conveyance deed in favour of the Complainant on 09.09.2020, whereas as per the Agreement for Sale, the stipulated date of possession was mentioned as 30.09.2016. The Respondent has failed to hand over possession of the said flat within the agreed timeline. Accordingly, the Complainant has sought interest for the delay in handing over possession.

30. The Complainant in the present complaint seeking direction to the Respondent to complete project and obtain completion certificate and also requesting for compensation for delay in handing over possession of flat no. F-103 in the project "Wallfort Garden". On perusal of the pleadings and submissions of the parties it is seen that the Respondent has specifically contended that the purchasers failed to adher e to the construction-linked payment schedule and that substantial payments were made only in the year 2020. The Complainant, on the other hand, has contended that no demand notices or construction progress updates, were issued by the Respondent. It is contention of the Respondent that after booking amount the Complainant made substantial payment in the year 2020 only and the said fact not denied by the Complainant in the rejoinder. As per contention of the Complainant the Respondent agreed to hand over possession on 30.09.2016, it is seen from record that the Respondent executed deed of conveyance on 09.09.2020 and handed over possession of the flat in question on an "as is where is basis" along with fitout possession. The Complainant claiming interest for delay from 30.09.2016 till 09.09.2020. Howeever, the Complainant in the complaint has not mentioned how much amount was paid by her to the promoter till 30.09.2016, it is observed that neither party has placed sufficient documentary material on record to conclusively establish issuance or non-issuance of demand notices. In the absence of such material evidence how much amount paid by the Complainant till 30.09.2016 to the Respondent. It is not possible for this authority to grant interest on delayed possession because, the Respondent contended that till year 2020, the complainant paid booking amount only and not paid any further consideration amount of the suit flat and paid the same in the Year 2020 only. Hence, as Complainant not paid the amount of consideration and not placed on record any evidence regarding payment of consideration till 30.09.2016. Hence, due to lack of evidence the prayer of interest on delayed possession cannot be granted.

31. In view of the above discussion, it is evident that the project has not been completed in terms of statutory requirements as the Completion Certificate / Occupancy Certificate have not been obtained till date.

32. Since, the Complainant has already accepted possession of the flat through execution of the conveyance deed, the relief of refund does not arise. The Complainant is entitled to appropriate directions to the Respondent for completion of the project and obtaining the necessary statutory approvals in accordance with the provisions of the Act. Hence, the Complainant is partly

entitled to the reliefs claimed. Accordingly, Point No. 1 is answered partly in the Affirmative. Hence this authority proceeds to pass the following order:-

O R D E R

1. The present Complaint is allowed as follows:

2. The Respondent / Promoter is hereby directed to complete the remaining construction work of the project and obtain the Completion Certificate/ Occupancy Certificate from the competent authority in respect of the building in which Flat No. F-103 is situated, within 60 days from the date of this order.

3. The Respondent Promoter is directed to upload the relevant approvals and certificates on the MahaRERA website in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Rules made thereunder.

4. No order as to costs.

RAVINDRA PADMAKARAO DESHPANDE

Digitally signed by RAVINDRA PADMAKARAO DESHPANDE
Date: 2026.04.01 17:01:37 +05'30'

(Ravindra Deshpande)
Member II, MahaRERA

Date: - 01.04.2026