BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Hybrid Hearing held through video conference as per MahaRERA Circular No.: 49/2025

Complaint No. CC006000000251584

1. Mr. Kishore Amrutlal Harsora ..Complainant/s
2. Mrs. Ranjanben Kishore Harsora

Vs

1. M/S. Balaji Construction Co. ..Respondent/s
2. Mr. Anil Thakurdas Kursija

MahaRERA Project Registration No. P51700008216

O R D E R
(10.11.2025)
(*Date of Hearing:04.12.2024)*

Coram: Shri. Ravindra Deshpande, Member-II, MahaRERA

Adv. Virendra Kanojia for Complainant/s
None for Respondent/s

1. The complainants have filed the present complaint praying that the Respondent be directed by this Hon'ble Authority to complete the construction of said building in all manner and handover the possession of said Flat viz Flat No.901 admeasuring 435 square feet carpet area on the 9th floor in the Building No.4 (Building No.A1 as per the plans sanctioned by the Corporation), in the project known as "Trinity Oasis", at village- Bhayenderpada, Ghodhbunder Road, Thane West-400610, to Complainants/Allottees at the earliest by informing new date of possession when Complainant/Allottees shall get possession of said Flat. They have further prayed that the Respondent be directed by this Hon'ble Authority to pay interest to Complainants/Allottees at the rate as prescribed under Real Estate (Regulation and Development) Act, 2016 read with Maharashtra Rules & Regulations, 2017 for the delay period i.e. from the month of 1st January 2017 till 30th June 2022 and thereafter

continue to pay interest every month of delay till Promoter handover actual possession of said Flat to Complainants/Allottees.

2. In short the facts of the complaint are as follows:

3. It is submitted by the complainants that the Complainants are senior citizens and both are husband and wife. The complainants are "Allottees" within the definition of Section 2(d) of the RERA Act. The Respondent has undertaken development of project known as "TRINITY OASIS" comprising of several multistoried buildings with lavish and modern amenities on huge plot of land bearing Survey No. 197, Hissa No. 16, New Survey No. 100, Hissa No. 16, Old Survey NO. 198, Hissa No. 4PT, New Survey No. 98, Hissa No. 4/B situate at Village Bhayanderpada, Street- Ghodbunder Road, Taluka and DistrictThane, in the registration district and sub-district of Thane within the limits of Thane Municipal Corporation. (hereinafter referred to as "the said Entire Project"). Out of said entire Project this present complaint is in respect of Building known as "Building No. 4" (Building No.A1 as per the plans sanctioned by the Corporation) in project known as TRINITY OASIS" at Village Bhayenderpada, Bhayanderpada, Street- Ghodbunder Road, Taluka and DistrictThane, Maharashtra-400 610 which is registered with RERA under No. P51700008216 as ongoing project as this project was started prior to coming into effect of RERA Act. (Hereinafter referred to as "the said Project").

4. The complainants further submitted that in the year 2012-13, the Respondent No.l has announced the said Entire Project and started taking booking. After enquiry with their office that Respondent No.l will handover possession within 3 years i.e. on/or before December, 2016, the Complainants have booked a Flat No.901 in Building No.4 (Building No. Al as per the plan sanctioned by the Corporation in the said project) on/or about 15.06.2013 and started making payment as per booking letters and demands made by Respondent from time to time. Vide a registered Agreement for Sale dated 16th November, 2013 executed by and between Respondent and

Complainants (Allottees) which is registered at Sr.No. TNN1/8384/2013 dated 16.11.2013, whereby Respondent No.l has agreed to sell and Allottees has agreed to purchase a Flat No.901 admeasuring 435 square feet carpet area on the 9th Floor in Building No.4 (Building No. Al as per the plans sanctioned by the Corporation) in the project known as "Trinity Oasis", at village Bhayenderpada, Ghodhbunder Road, Thane West- 400610 (herein after referred to as "the said Flat"). A copy of said Agreement for Sale dated 16th November, 2013.

5. It is further submitted by the complainants that the total agreed consideration of said Flat Rs.24,57,000/- (Rupees Twenty Four Lakhs Fifty Seven Thousand only). Out of which the Complainants have paid Rs.19,00,000/- (Rupees Nineteen Lakhs only) till date towards the part consideration amount of the said Flat and in addition to above Complainants have also paid a sum of Rs.1,00,491/- (Rupees One Lakh Four Hundred Ninety One Only) towards Service Tax and VAT. Apart from above the Complainants have borne and paid a sum of Rs.1,47,420/- towards stamp duty and Rs.26,010/- towards Registration Charges. The Complainants are ready and willing to make payments towards said Flat as per agreed terms and schedule as mentioned in said Agreement for Sale dated 16th November, 2013, but the Respondent has stopped further construction and therefore, not made further demand of installment as per agreed payment schedule mentioned in the Agreement, although the Complainants were always ready and still ready to make further payment. As per clause No.07 of said Agreement for Sale dated 16th November 2013, the Respondent/Promoter had agreed to handover possession of said Flat on/or about 31st December 2016. The Complainants has several times requested to the Respondent via telephone and by visiting office to complete the construction and accept the balance amount and hand over the possession of the said Flat, but every time Promoter sought time to handover possession of said Flat on one pretext or other. During the personal discussion held with Respondent No.2 recently, the Complainants have demanded the possession of said Flat No.901 and shown their readiness to make balance payment, but the

Respondents had sought some time by saying that they will complete the project very soon and compensate to the Complainants for the delay in possession.

6. **It is further submitted by the complainants that when Complainants visited the RERA website to check status they came to know that the Respondents have very cleverly without any information to Complainants, modified the date of completion to 30.06.2024.** As per agreed terms the Respondent/Promoter are bound to handover possession of said Flat by 31.12.2016, but even after expiry of about 4 years and Six month, from the due date of possession the Respondent failed to offer possession of said Flat. Therefore, the complainants / Allottees through Advocate's Notice dated 30th June 2021 called upon the Respondents to handover the possession of said Flat otherwise pay interest at the rate as prescribed under RERA, 2016 read with Maharashtra Rules & Regulations, 2017 for the delay period i.e. from the month of January 2017 to till date and continue to pay interest every month of delay till handover of actual possession of said Flat. A copy of said Notice dated 30th June 2021 alongwith proof of delivery. Vide the said Notice dated 30th June 2021, the Complainants have informed to the Respondent that they desires to continue with the said Project therefore, called upon Respondent to complete the construction of said building in all manner and handover the possession of said Flat at the earliest by informing new date of possession and also called upon Respondent to pay interest at the rate as prescribed under Real Estate (Regulation and Development) Act, 2016 read with Maharashtra Rules & Regulations, 2017 for the delay period i.e. from the month of January 2017 till December 2020 within a period of 15 days 04 Nov.2024 from the date of receipt of said notice by the Respondent and thereafter continue to pay interest every month of delay till Respondent handover actual possession of said Flat to Allottees. Thus, as required under section 18(1)(b) of RERA Act, the Complainants informed to the Respondents that they do not want to withdraw from the Project and demanded interest as per RERA Act and rules made there under.

7. It is further submitted by the complainants that even after receipt of said Notice dated 30th June 2021, the Respondent neither complied with the demand made by the complainants nor replied the same without assigning any reason which clearly establishes that the Respondent is irresponsible and not serious with the issues and problems faced by Complainants. However it is confirmed, established that the claim of Complainants are accepted and admitted and admitted by the Promoter as Promoter has failed to send any reply to said notice dated 30th June 2021. The Complainants have already informed to the Respondent that looking into current status of building it appears that Respondent will not be able to handover possession of said Flat in near future and there is inordinate delay on his part in completion of said Project. Due to such reluctant nature and delay in kánding over the possession of said Flat, the Complainants and their family members are suffering a lot and their future planning is spoiled for the reason of delay in possession of said Flat. Not only this, due to delay in possession, the Complainant, who are senior citizens are suffering a huge mental problem and because of that Complainants' health are at Complainants, their future planning is spoiled which is causing risk and because of delay in giving possession of the said Flat to huge losses to them due to delay on part of Promoter.

8. The complainants further submitted that looking into its location and amenities and facilities agreed to be provided in the Project, the Complainants has agreed to purchase the said Flat with a view to shift therein on possession, therefore, the Complainants has informed to the Respondent about their willingness to continue with said project and do not want to withdraw from the project. But even after receipt of said Notice the Respondent neither replied the same nor complied with the said notice and the Respondent failed to pay interest as per RERA. Therefore, the Complainants were compelled to approach this Hon'ble Authority.

9. The complainants further submitted that the Project was started in the year 2012-13 by the Promoter and the Complainants have made payment as per schedule of payment. The Promoter has never informed to the Complainants about any stay or force majeure on Project. As per knowledge of Complainant, there is/was not any stay granted by any Court or Authority to the said ongoing project which prevented the Promoter from carrying out further construction and completing the finishing work. Therefore, Complainants are entitled for the interest from the month of January 2017 till Promoter actually hand overs possession of said Flat. Lastly the complainants submitted that further said Project is registered under the RERA as ongoing project having retrospective effect, and all the provisions of RERA applicable to all the units of Project i.e. sold and unsold, therefore, entire claim of Complainant falls under RERA Act.

10. The matter was firstly listed on 20.03.2024.. On that day, the Advocate was present on behalf of the Complainant. None appeared for the Respondent. The Respondent was absent today, even though notice of hearing and link of hearing was duly served upon the Respondent. Therefore, considering the principle of natural justice and to have fair trial, this matter was adjourned to 10.06.2024. It is recorded in the said roznama that if the Respondent remains absent subsequently on the next date, then matter will be proceeded ex-parte against the Respondent. On 10.06.2024, advocate of complainant was present, none was present on behalf of respondent. As respondent remained absent consequently for the second time, therefore, an ex-parte order was passed against the respondent and matter was listed for arguments on 29.08.2024. On 29.08.2024, the advocate of the complainants was present and Adv. Minal Chandnani appeared for the respondents. The Advocate of the Respondent submitted that the Respondent instructed her, but she could not upload vakalatnama on maharera website as website is not in functioning. The Advocate of the Complainants submitted that already Ex-Parte order was passed against the Respondent. I have gone through the last rozanam dated 10.06.2024 which discloses

that on that day ex parte order has been passed against Respondent. Considering the submissions of the Advocates of both parties, the matter stands adjourned to 04.12.2024.

11. On 04.12.2024, the Advocate for the Complainant is present, however Respondent was absent. The Respondent is absent even though the link for the hearing and notice for the hearing was duly served upon the Respondent. On perusal of the last roznama dated 29/08/2024 which shows that the Advocate Minal Chandani was present on behalf of the Respondent and submitted that she could not upload vakalatnama on the Maharera website as the website is not functioning. It is seen that none present on behalf of the Respondent, the matter is proceeded ex-parte against the Respondent. The Advocate of the Complainant submitted that he will upload the written arguments only. The parties were directed to upload the written arguments, if any, on or before 19/12/2024, thereafter this matter will be reserved for orders.

12. Considering the fact that the complaint proceeded ex-parte against the respondent, following points arise for my determination. My findings thereon recorded as under for the reasons stated below:

REASONS

No.	Points	Findings
1	Whether the complainants are entitled for the possession alongwith the interest ?	Affirmative
2	Whether the complainants are entitled for the interest for every month of delay?	Affirmative
3	What Order?	As per final order.

Reasons as to point nos. 1 & 2

13. In order to avoid repetition of discussion of evidence, it is necessary to discuss point no. 1 and 2 at one and the same time, hence, they are discussed jointly. At the outset,

in my opinion, firstly it is necessary to mention here that the present complaint proceeded ex-parte against the respondent and therefore, contention of the complainant from the complaint remains unchallenged and unshaken on record. After perusing the pleadings of the Complainant's, it is observed that the present complaint is filed by the Complainant against the Respondent seeking possession of the said flat.

14. In the present case, the respondent / builder remains absent though the notice of hearing and link of hearing was duly served upon the respondent and therefore, the complaint proceeded ex parte against the respondent, then evidence adduced by the complainant remains unchallenged and unshaken on record and this authority has no any reasons to disbelieve unchallenged evidence adduced by the complainant.

15. It is observed that as per the said Agreement, the possession of the said flat was to be handed over to the Complainant by the Respondent BY 31.12.2016, which the Respondent has failed to comply. As per the terms of the said Agreement, the Complainant had agreed to purchase the said flat from the Respondent for total agreed consideration amounting to **Rs. 24.57 lakhs**. As per the receipts annexed with the said Agreement, the Respondent has acknowledged the receipt of an amount of **Rs. 19 lakhs**.

16. From the pleadings of the Complainant, it is apparent that the Complainant has filed the present complaint to seek the possession of the said flat from the Respondent, which is dealt in Section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as the **"said Act"**). To decide the present complaint, it is imperative that Section 18 of the said Act is perused:-

Section 18 of the said Act deals with the return of amount and compensation. It reads as follows:

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 to sell 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 allottees, 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."

17. From the plain reading of Section 18, it is clear that if the promoter fails to handover possession as per the terms of the agreement for sale, allottee has a choice either to withdraw from the project or to stay with the project. Further, in case the allottee chooses to be in the project and take possession, is entitled to claim interest for the delayed period of possession on the actual amount paid by him for every month of delay. In the present case, the date of possession as per the terms of the said Agreement was 31.12.2016. Admittedly, the Complainant has not received the possession of the said flat till the date of this order. The Respondent has not refuted the claim of the Complainant by filing the reply on record on MahaRERA. Therefore, this Authority has no reason to disbelieve the contention of the Complainant from the complaint. Hence, by virtue section 18 of the said Act, the Complainant is entitled to an order of possession of the said flat and also interest for delay in handing over possession of the said flat from 01.01.2017 till the possession of the said flat is handed over to the Complainant by the Respondent, which also entitles the Complainant to the cost of the present complaint. In view of the aforesaid, I answer point No. 1 & 2 in affirmative accordingly.

18. On perusal of the project webpage, it is observed that currently the said project is lapsed. Hence, it is required that the Respondent be directed to take appropriate steps to seek extension for the project to complete.

19. As I have recorded my affirmative findings against point no. 1 and 2, hence, I proceed to pass following order:

O R D E R

The complaint is allowed as follows:

1. The respondents are directed to handover possession of the flat no. 901 building no. 4 from project Trinity Oasis to the complainants on obtaining remaining due consideration within 60 days from the date of this order.
2. The respondents are also directed to pay interest on the amount of Rs.19 lakhs at the rate of State Bank of India's Highest Marginal Cost of Lending Rate (MCLR) plus 2% as per the provisions of Rule 18 of the Maharashtra Real Estate (Regulation and Development)(Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 till the realization of the refund amount from 01.01.2017 till handing over of possession of the suit flat alongwith Occupation Certificate.
3. The respondent is directed to pay amount of interest from 01.01.2017 to the date of this order within 60 days and pay interest on the said amount of Rs.19 lakhs till handing over of possession of the suit flat.
4. The respondent is directed to pay Rs.20,000/- towards costs of the complaint.
5. The parties are permitted to adjust their respective current claim and pay balance to whom it is due.

RAVINDRA PADMAKARAO DESHPANDE

Digitally signed by RAVINDRA PADMAKARAO DESHPANDE
Date: 2025.11.10 16:06:45 +05'30'

(Ravindra Deshpande)
Member-II, MahaRERA

Date : 10.11.2025