BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,

MUMBAI

1. **Complaint No. CC006000000192729**

Mrs. Minal Prakash Yeole .... Complainants

Versus

1. Karrm Infrastructure Private Limited
2. Ramakant Subhash Jadhav
3. Namdeob Subhash Jadhav
4. Ketan B Patel .... Respondents

Along With

2. Complaint No. CC006000000192920

Vilas Baliram Yeole .... Complainants

Versus

1. Karrm Infrastructure Private Limited
2. Ramakant Subhash Jadhav
3. Namdeob Subhash Jadhav
4. Ketan B Patel .... Respondents

Along With

3. Complaint No. CC006000000192969

Mr. Shamkant Motiram Wani .... Complainants

Versus

1. Mr. Ramakant Subhash Jadhav
2. Mr. Namdeob Subhash Jadhav
3. Karrm Infrastructure Private Limited
4. Ketan Babulal Patel .... Respondents

MahaRERA Project Registration No. P51700008284

Coram: **Dr Vijay Satbir Singh, Hon'ble Member – I/MahaRERA**

Ld. Adv. Shrikant Darveshi appeared for the complainants.

Ld. Adv. T. R. Tipre appeared for the respondents.

ORDER

(Monday, 8th November 2021)

(Hearing Through Video Conferencing)

1. The complainants above named have filed these three separate complaints seeking directions from MahaRERA to the respondents to refund the entire amount paid by them under the provisions of section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of their respective flats in the respondent's registered project known as **"Karram Gardens- 1"** bearing MahaRERA registration No. **P51700008284** located at Ambarnath, Dist. Thane.

2. In the present cases, the respondent no. 1 is the promoter's firm who has registered the project with the MahaRERA, while the respondent nos. 2 & 3 are the partners of respondent no 1 and the respondent no. 4 is the landowner (herein after respondent no 1 is referred to as the respondent). These complaints were transferred to this bench on 14/07/2021 and accordingly, the same were scheduled for hearing on 14/06/2021 and same were heard finally on 05-10-2021 as per the Standard Operating Procedure dated 12-06-2020 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 parties appeared for the hearing and made their

respective submissions. During the course of hearing the learned advocate for the respondents sought time to settle the matter amicably with the complainants. However, the complainants failed to resolve the dispute and requested to decide these complaints on merits. Hence on request of the respondents, after hearing the arguments of the parties, one week time was granted to both the parties to file their reply/ rejoinder / consent terms on record of MahaRERA. With this direction, the hearing was concluded, and the order was reserved.

3. It is the case of the complainants that they have booked their flats in the respondent's project in the year 2014 by executing the registered agreements for sale. However, the respondent has failed to hand over the same to the complainants in accordance with the agreements for sale. Hence, they have approached MahaRERA seeking refund along with interest / rent for the delayed possession under section 18 of the RERA. The complainants have submitted following details in their complaints in support of their claims:

Sr. No.	Name of the Complainants	Flat No./Wing Total Consideration	Date of Agreement Date of Possession	Reliefs Sought
1	Mrs. Minal Prakash Yeole	304/ C-Wing Rs. 26,97,277/- Rs. 24,40,319/-	27/8/2014 August 2015	Refund, Interest & Rent
2	Vilas Baliram Yeole	208/ A-Wing Rs. 9,57,825/- Rs. 10,39,583/-	16/04/2013 -February 2014	Refund, Interest & Rent

3	Mr. Shamkant Motiram	402/ E-Wing Rs.34,95,984/- Rs.34,03,574/-	02/02/2015 December 2016	Refund, Interest & Rent

4. The complainants further submitted that, due to delay in giving possession of the said flats by respondent, it has caused lot of mental stress and agony to the complainants. It is further stated that several repeated reminders have been sent by many of the flat purchasers without any favourable response from the respondent who continues not to commit to a completion date for the project. The complainants further stated that they have booked the said flats under the subvention scheme, wherein the respondent had agreed to repay the pre EMI's to the bank till the date of possession by issuing various letters. However, it has failed to make the payments. Thereafter by issuing letters, the respondent has informed them to pay the pre EMI's to the banks, which it would reimburse and same would be adjusted against the outstanding dues at the time of the possession. Accordingly, they have paid the EMI's to the bank. The complainants have stated that though they have paid substantial amount to the respondent, till date they have not been handed over possession of their flats by the respondent. Further, due to the said delay, they were constrained to stay on rental premises for which they incurred huge amounts, which the respondent is liable to compensate. Further they have issued legal notices to the respondent through their advocate and called upon it to refund the entire amounts paid by them along with interest as well as the rent. However, the respondent has not taken any action. Even, the revised completion date mentioned on MahaRERA website by the respondent i.e., 31-05-2019 has lapsed, still the project is incomplete. Hence, they have filed these complaints seeking refund along interest and

payment of rent under section 18 of the RERA. The complainants therefore prayed to allow their complaints.

5. In the present case, it has been observed that the said complainants have filed these online complaints before MahaRERA in the month of March 2020. However, till date the respondent has not bothered to file its reply to these complaints, though the complaints are visible to the respondent in its project. Even after issuance of the SOP dated 12-06-2020, the respondent was liable to upload its reply in digital form in these complaints. Furthermore, though the specific direction was given to it to file its replies on the date of hearing held on 5-10-2021, it failed to do the same. It shows that the respondent is not willing to contest these complaints. Hence, the MahaRERA has no other alternative but to proceed with the matters ex-parte against the respondent on merits.

6. The MahaRERA has examined the arguments advanced by the complainants. The complainants being allottees of this project have filed these complaints seeking refund of the entire amounts paid by them along with interest, due to the delayed possession of their flats, under section 18 of the RERA. There are registered agreements for sale entered into between the complainants and the respondent on the dates mentioned in the table below the aforesaid para-No. 3. The copies of the same have also been uploaded on record of MahaRERA by the complainants. According to clause No. 7 of the said agreements for sale, the respondent has agreed to handover possession of the said flat to the complainants as specified therein.

7. Before dealing with the facts in these complaints, it is pertinent to examine "possession" as contemplated under 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 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."

8. From the plain reading of section 18, it is very clear that if the promoter fails to handover possession as per the terms of the agreement for sale or as the case may be, by the specified date therein, the allottee has a choice either to withdraw from the said project or to stay with the project. Further, in case the allottee chooses to be in the project and take possession, he is entitled to claim interest for the delayed period of possession on the actual amount paid by him for every month of delay. It is important to note here that the examination of the term 'possession' is in context to the agreement for sale

signed by both the parties on the dates specified in para 3 mentioned hereinabove. According to clause No. 7 of the said agreements for sale, the respondent has agreed to handover possession of the said flats to the complainants on the dates specified in para-No. 3 mentioned hereinabove. Admittedly, the possession of the said flats has not been handed over to the complainants on the said dates. Hence, the MahaRERA is of the view that the claim of the complainants towards refund along with interest has substance in law and hence the complainants are entitled to seek relief under section 18 of the RERA.

9. In view of above facts and discussion, the respondent is directed to refund the entire amount paid by the complainants 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 RERA and the Rules made there under from the date of payment till the actual realisation of the said amount to the complainants.

10. However, in view of the mitigating circumstances beyond the control of the respondent promoter and also to ensure that the said project is not jeopardised due to the outflow of finances and is completed keeping in mind the interest of the other buyers of the said project at large, the respondent will have the liberty to pay the refund with interest within a period of 12 months from the date of this order in equal instalments.

11. As far as the claim of rent agitated by the complainants, the MahaRERA is of the view that there is no provision under section 18 of the RERA to grant any rent to the allottee as claimed by the complainants.

12. With regard to the payment of interest to the complainants, 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 and 18th May, 2020 issued by the MahaRERA and the Notification/Order which may be issued in this regard from time to time.

13. With the above directions, all 3 complaints stand disposed of.

14. The certified copy of the order will be digitally signed by concerned Legal Assistant of MahaRERA and it is permitted to send the same to both the parties by e-mail.

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