MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI.

No. MahaRERA/VH/WARRANT/33/03/2023.
Date: 28th March 2023.

To,
The Collector, Thane
Collector Office, Court Naka,
Thane (West), Maharashtra 400601

Sub: Execution of the warrant under Section 40(1) of RERA in Complaint No. **CC006000000196221** filed by **BIRENDRA RAM KARAN SHUKLA** Vs. **ASSETS REALITY** in **Project No. P51700008568.**

Sir,

I am forwarding the recovery warrant under Section 40 (1) of RERA & for its execution. You are requested to look into the matter personally and get the warrant executed at the earliest. On realization of the amount, you are requested to inform us.

Yours faithfully,

(Dr. Vasant Prabhu)
Secretary
MahaRERA, Mumbai.

Encl.: Warrant with
necessary papers.

BIRENDRA RAMKARAN SHUKLA
Received

Details of the attachable assets to be required u/s 17/2 of Maharashtra Realization of Land Revenue Rules 1967. When Revenue Recovery Certificate is under the provision of Revenue Recovery Act 1890.

No. MahaRERA/VH/WARRANT/33/03/2023.
Date: 28th March 2023.

1.	Name and address of the firm: -	**BIRENDRA RAM KARAN SHUKLA** ROOM NO 13, RAMBHUJARAT NIWAS, FARID NAGAR, BHANDUP WEST, NEAR SHIV SHARDA MANDAL, Mumbai Suburban - 400078. **Mobile No.- +91- 7208902074** **Email ID: -** birendrashukla1972@gmail.com
2.	The sum to be recovered.	**Interest for delayed possession of Rs. 5,91,497/- on the principal amount paid by the complainant of Rs. 11,77,110/- calculated till 01/04/2023 with further interest till possession.**
3.	The provision of law under which the R.R.C. is sent to recover the sum as in arrears of Land Revenue.	**Recovery warrant u/s 40(1) of Real Estate (Regulation and Development) Act, 2016 and Rule 3 of Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeals, etc.) Rules, 2017.**
4.	No. & Date of order under which amount is ordered to be recovered.	**Complaint No.: CC006000000196221** **Final Order dated: 5th August 2021**
5.	Full name and address of the defaulter with name of the building, room no., road name, village name/town, taluka, Dist. Pin Code No.	**ASSETS REALITY** 1-002, SANGHVI ESTATE, NEW RTO ROAD, KHADAKPADA, NEAR CINE MAX, Dist. Thane, Taluka Kalyan - 421301.

		RITESH MISHRA (Partner) - Authorized Signatory & Contact Person C4 1301, PUNYODAYA PARK, ADHARWADI JAIL ROAD, NEAR DON BOSCO SCHOOL, KALYAN – 421301. **Mobile No.- +91- 9867421071** **Email ID: -** riteshzed@gmail.com
6.	**Full details of the property of defaulter against which the process may be executed.**	The Project known as **"THE CHALETS AVENUE"** situated at Plot Bearing No / CTS no / Survey Number/Final Plot no. **12/1,** at **Badlapur, Tal. Ambernath, Dist. Thane - 421503.** **a)** Housing project which is duly registered under the RERA Act bearing Registration No. **P51700008568.** **b)** Other apartments which are still not booked. Note: Land on which the project is being implemented, apartments that are already booked with other allottees should not be attached so that the project can be completed.
7.	**Immovable property:** **a) Name of the building House/Building.** **b) Room No.** **c) Name of the village/town** **d) Road name/gally name** **e) Sr. No./ II No. of the property** **f) Area of the property in square meters**	**c)** If by attaching the property mentioned in 6 above still arrears remain, then the properties/offices or any other movable or immovable properties of the defaulters be attached and auctioned. In order to ascertain unsold inventory and other properties of defaulters, you may adopt the procedure similar to which laid

	g) CTS No. of the property area of the property.	down under Order 21 Rule 41 CPC – namely to examine the judgement debtor to disclose his property and produce its property card, failing which he can be sent to jail for 3 months.

(Dr. Vasant Prabhu)
Secretary
MahaRERA, Mumbai

Mumbai
Date: **28th March 2023**

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI.

No. MahaRERA/VH/WARRANT/33/03/2023.
Date: 28th March 2023.

Recovery Warrant U/s. 40(1) of Real Estate

(Regulation and Development) Act, 2016 and Rule 3 of Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017.

Complaint No.: CC006000000196221

Project No: P51700008568

BIRENDRA RAM KARAN SHUKLA --- Complainants.

Versus

ASSETS REALITY --- Respondents.

To,
The Collector, Thane
Collector Office, Court Naka,
Thane (West), Maharashtra 400601

Whereas the above-named complainant has filed the above complaint No. **CC006000000196221,** and the Authority/Adjudicating Officer passed the enclosed order wherein the respondent was directed to pay interest from 01/04/2018 on the consideration amounts paid till handing over possession.

And whereas the respondent has failed to comply with the order.

And whereas the amount ordered is recoverable from the respondents as an arrears of land revenue by virtue of Section 40(1) of Real Estate (Regulation and Development) Act, 2016 and Rule 3 of Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017.

You are hereby directed to recover the ordered amount from the respondent as the arrears of land revenue and pay it to the complainant and report the compliance.

The necessary information is:

1) **Name of complainant with his address:**

BIRENDRA RAM KARAN SHUKLA

ROOM NO 13, RAMBHUJARAT NIWAS, FARID NAGAR, BHANDUPWEST, NEAR SHIV SHARDA MANDAL, Mumbai Suburban - 400078.

Mobile No.- +91- 7208902074
Email ID: - birendrashukla1972@gmail.com

2) **Name of respondents/promoters/directors/partners**

ASSETS REALITY

L-002, SANGHVI ESTATE, NEW RTO ROAD, KHADAKPADA, NEAR CINE MAX, Dist. Thane, Taluka Kalyan - 421301.

RITESH MISHRA (Partner) - Authorized Signatory & Contact Person

C4 1301, PUNYODAYA PARK, ADHARWADI JAIL ROAD, NEAR DON BOSCO SCHOOL, KALYAN – 421301.

Mobile No.- +91- 9867421071
Email ID: - riteshzed@gmail.com

3. **Name of the project & its location:**

The Project known as **"THE CHALETS AVENUE"** situated at Plot Bearing No / CTS no / Survey Number/Final Plot no. **12/1**, at **Badlapur, Tal. Ambernath, Dist. Thane - 421503.**

a) Housing project which is duly registered under the RERA Act bearing Registration No. **P51700008568.**

b) Other apartments which are still not booked and not mortgaged to any Financial Institutions/Bank.

Note: Land on which the project is being implemented, apartments that are already booked with other allottees and apartments that are

mortgaged to Financial Institutions/Banks should not be attached so that the project can be completed.

4) **Particulars of immovable property and any other movable and immovable property:**

a) If by attaching the property mentioned in 3 above still arrears remain, then the properties/offices or any other movable or immovable properties of the defaulters be attached and auctioned. In order to ascertain unsold inventory and other properties of defaulters, you may adopt the procedure similar to which laid down under Order 21 Rule 41 CPC - namely to examine the judgement debtor to disclose his property and produce its property card, failing which he can be sent to jail for 3 months.

5) **Amount to be refunded:**

Interest for delayed possession of Rs. 5,91,497/- on the principal amount paid by the complainant of Rs. 11,77,110/- calculated till 01/04/2023 with further interest till possession

6) **Enclosures:**

i) Final order dated. 5th August 2021.
ii) Order of Non-compliance dated 2nd December 2022.
iii) Interest calculation submitted by the complainant.

(Dr. Vasant Prabhu)
Secretary
MahaRERA, Mumbai

Mumbai
Date: **28th March 2023**

BEFORE THE MAHARASHTRA

REAL ESTATE REGULATORY AUTHORITY, MUMBAI

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

Complaint No. CC006000000196221

Birendra Ram Karan Shukla ...Complainant/s

Vs

M/s. Assets Reality ...Respondent/s

MahaRERA Project Registration No. P51700008568

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Complainant present in person
Advocate Yatin Gujrathi for the Respondent

Order

August 05, 2021

1. The Complainant is a home buyer and an Allotee within the meaning of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016 and the Respondents are Promoters/Developers within the meaning of Section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016. The Respondents have registered their project **"THE CHALETS AVENUE"** under section 5 of the Real Estate (Regulation and Development) Act, 2016 (**"RERA"**) bearing MAHARERA **Registration No. P51700008568** (hereinafter referred to as the **"said Project"**).

2. On 18.05.2021, the following roznama was passed by this Authority:

   "Complainant present in person. Mr. Yatin Gujrathi, Advocate appear for Respondent. The complainant states that he had booked a flat in 2016 and was to get possession March 2018. The complainant also contends that he has paid substantial amount.

   The Ld Counsel for Respondent contends that the RERA completion date was extended to December 2018 and subsequently to June 2021. Further, he

contends that Respondent would be able to complete and handover possession by June 2021.

The complainant however contends that in view of delay his financial planning is disturbed and he his finding it difficult to make further payments.

Both parties to attempt to arrive at an amicable settlement by 31/05/2021.

The Ld Counsel for Respondent is requested to take the lead to bring about an amicable settlement. In case no settlement terms are arrived at by 31/05/2021, the matter will be closed for orders."

Though the Ld. Counsel for Respondent was requested to bring about an amicable settlement in the matter, but no settlement is arrived between the parties.

3. The reliefs sought by the Complainant is as follows:

"a) *The Respondent is directed to pay the interest to the Complainant as per Section 18 under Real Estate Regulation and Development Act, 2016. Withing Stiputlated time period as deem fit by the Maharera Authortiy.*

b) Respondent be directed to refund the cost of litigation incurred of the current complaint.

c) Respondent be imposed a penalty for violating the RERA rules and regulations.

d) The Respondent be directed to strictly adhere to Real Estate Regulation and Development Act, 2016 and its Rules and Regulations.

e) Any other relief as this Hon'ble Authority may deem fit and proper."

4. The submission of the parties in the hearing held on 18.05.2021 are as under:

A) The submission of the Complainant is as follows:

a. Vide an agreement of sale dated 02.03.2017, an apartment No. 702 on the 7th floor, in wing "A", admeasuring 503 sq. ft (carpet) in the said Project for a total consideration of Rs.12,07,200/- (including all taxes total amount of Rs.14,51,974/-) (hereinafter referred to as "**said apartment**")

was agreed to purchase by the Complainant (hereinafter referred to as **"said agreement"**).

b. Total amount paid by the Complainant was Rs.11,77,110/- and balance amount of Rs.2,74,861/- (including tax amount) remains to be paid by the Complainant.

c. The possession date as per the said agreement was March 2018 which till date has not been handed over.

d. The Respondent has till date not provided the possession of the said apartment to the Complainant because of which the Complainant mentioned that his financial planning is disturbed and he his finding it difficult to make further payments.

5. The submissions of the Respondent are as follows:

a. It is admitted that the said apartment has been booked by the Complainant vide the said agreement in the said Project which for agreed consideration.

b. That the Complainant is in default of his slab wise payment. Therefore, Complainant has violated section 19 (6) of RERA and Complainant is liable to pay interest to Respondent under section 19(7) of RERA as stated in the affidavit in reply dated 15.05.2021 @ para 5 & 10.

c. It is also mentioned that ex - partner Mr. Pankaj J. Trivedi of the Respondent had defrauded the firm and misappropriated monies from firm's account and for this reason there is delay in handing over possession as stated in the affidavit in reply dated 15.05.2021 @ para 12.

d. That the 90 % construction is completed and in the near future OC shall be obtained and possession shall be given to the complainant.

6. From the submissions of the Complainant and the Respondent the issue that arises for consideration is that:

   a. *Whether the Complainant is entitled to seek interest for delayed possession of the said apartment?*

7. Before dealing with the facts in this complaint, it is pertinent to examine "possession" as contemplated under section 18 of the said Act:

> *"**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. However, from the plain reading of section 18 it is clear that if the Promoter (Respondent herein) fails to handover possession as per the terms of the agreement for sale by the specified date therein, the Allotee (Complainant herein) has a choice either to withdraw from the said Project or stay with the Project. Further, in case the Allotee (Complainant herein) chooses to withdraw from the said Project, he is entitled to claim refund with interest including compensation against the Promoter (Respondent herein) and in case the Allotee (Complainant herein) chooses to stay in the said Project he is entitled to claim interest for the delay till handover of possession.

9. Thus, in the present complaint, the following observations are noteworthy:

   a. That the Respondent has not disputed and/ or refuted to the possession date i.e. March 2018 and he has admitted same fact in their reply dated

15.05.2021. Thus, there is no dispute with regard this date of possession by the Respondent.

b. Further the provisions of section 18 are clear that if the Respondent fails to handover possession by the specified date i.e. March 2018 is liable to pay interest to the Complainant and this provision does not provide for any waiver or disclaimer or exception or force majeure event happening. It is an absolute provision. Reasons for delay as stated by the Respondent can be grounds for consideration with regard to seeking extension of the completion date under MahaRERA for the said Project and not otherwise.

10. Thus, from the above observations is it clear that the Respondent has violated provisions of section 18 which is clear from its own admission and hence the Respondent is liable to pay interest to the Complainant for the delay in handing over the possession from 01.04.2018 onwards till date of handing over the possession. Thus, the answer to **issue no. a is affirmative.**

FINAL ORDER

The Respondent is directed to pay interest from 1st April, 2018 at the rate as prescribed *under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules 2017* till the handover of possession of the said apartment.

(Ajoy Mehta)
Chairperson, MahaRERA

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

NON-COMPLIANCE APPLICATION

In

COMPLAINT NO: CC006000000196221

BIRENDRA RAM KARAN SHUKLA .... Complainant

Versus

M/S ASSETS REALITY .... Respondents

MahaRERA Registration No. P51700008568

Coram: Dr. Vasant Prabhu, Secretary, MahaRERA

Complainant appeared in person.

None appeared for the respondent.

Order

2nd December 2022

(Through Video Conferencing)

1. The complainant above named has filed the present application for non-compliance of the MahaRERA common Order issued on 05/08/2021 in the above-mentioned complaint (hereinafter referred to as the said complaint), by the respondent.

2. In the said complaint filed by the complainant, the respondent was directed to pay interest for the delay to the complainant from 01/04/2018 at the rate prescribed under rule 18 of MahaRERA rules.

3. On the said non-compliance applications, the hearing was held through video conferencing as per the MahaRERA Circular no.

27/2020 and MahaRERA Order No. 15/2020.

4. During the hearing, the complainant submitted that, the respondent has failed to comply with the order issued by the MahaRERA authority and has not paid the interest for the delay as per the said order. The complainant further submitted that; the respondent has never communicated anything with the complainant. During the last hearing as well, the respondent had sought time to settle the matter with the complainant. However, the same has not been settled yet. The complainant therefore sought issuance of warrant against the respondent under section 40(1) of the RERA.

5. The respondent did not appear for the hearing even though the notice of hearing was duly served upon it.

6. After hearing the arguments of the parties, it is pertinent to note that the respondent has failed to pay the interest for delay to the complainant as per the directions issued in the said order. Hence the complainant is entitled to seek issuance of warrant. Hence, any further time granted to the respondent would lead to injustice to the complainant.

7. Therefore, the MahaRERA has no alternative but to proceed with action under section 40 (1) of RERA against the respondent. It is therefore, directed to issue a recovery warrant under section 40(1) of RERA read along with rule 3 of the Maharashtra Real Estate (Regulation & development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaint & Appeals etc.)

rules, 2017, against the unsold inventory in the project of the respondent.

8. In view of the above, the application of non-compliance stands disposed of.

(Dr. Vasant Prabhu)
Secretary, MahaRERA