BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Complaint No. CC006000000196221 (NC)

Birendra Ram Karan Shukla **..Complainant/s**

Vs

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

MahaRERA Project Registration No. P51700008568

Coram: Shri Ashok Alaspurkar
Hon'ble, Adjudicating Officer,
MahaRERA.

Appearance:
Complainant/s : Appeared in person through VC
present through VC
Respondent/s : Adv. Bhavin Gada a/w Deepak Shukla present through VC

ORDER
(31.10.2025)

1. The complainant has booked Flat no. 702, A Wing in the respondent's registered project known as "The Chalets Avenue" bearing MahaRERA registration No. **P51700008568**. The agreed consideration is Rs. 12,07,200/-. The complainant has paid amount of Rs. 11,77,110/- which is inclusive of registration charges and taxes. The respondent did not hand over possession on time. Hence, the complainant filed present complaint for possession of the flat, interest for delayed possession and other reliefs. The Hon'ble Chairperson decided the complaint by order dated 05.08.2021. The observations and final order are as follows:

"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."

2. The complainant reported non-compliance of the order. Hence, the execution proceeding has been decided by Secretary MahaRERA by order dated 02.12.2022. Following are the observations and directions

"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 4O(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."

Accordingly, warrant under Section 40(1) read with Rule 3 dated 28.03.2023 has been issued with the directions as follows:

"Interest for delayed possession of Rs. 5,91,497/- on the principal amount paid by the complainant of Rs. 11,77,110/- calculated till 0l/04/2O23 with further interest till possession."

3. In pursuance of the above said warrant, recovery Tehsildar had issued notices to the respondent. The respondent developer challenged the same by Writ Petition No. 10952 of 2023. Considering the controversy as to handing over and taking over of possession, the Hon'ble High Court has issued following directions by order dated 25.04.2024:

"8. In these circumstances, we direct that these Demand Drafts shall be deposited with the Registrar, High Court, Appellate Side, Bombay by tomorrow. Once the amount is deposited, the Registrar, High Court, Appellate Side, Bombay shall permit Respondent No.2 to unconditionally withdraw the aforesaid amounts.

9. We have noticed that the order of MAHARERA contemplates that interest is payable till possession of the apartment is handed over to Respondent No.2. In the facts of the present case, we find that there is a serious dispute on this issue. According to the Petitioner-Developer, he is ready and willing to hand over possession of the apartment to Respondent No.2, but it is Respondent No.2, who is refusing to take the same. On the other hand, it is Respondent No.2's case that possession has not been taken because the flat is not ready and it does not have an electricity connection, water connection or the building has an operational lift as his apartment is on the 7 Floor. It is his further case that according to him, the balance consideration for the flat that is payable is only a sum of Rs.2,74,864/-, whereas according to the Petitioner-Developer, the amount is Rs.10,24,000/-, which not only includes the balance sale

consideration, but also payment towards taxes and other various charges as contemplated in the registered sale agreement with Respondent No.2. We find that these issues cannot be gone into in the present Writ Petition. These issues between the Petitioner-Developer and Respondent No.2 can be agitated in appropriate proceedings. We find that at least till date the Petitioner-Developer has complied with the order of MAHARERA, and therefore, the notices dated 10th May 2023, 30th June 2023 and 21st December, 2023 issued by the Tahasildar do not survive any longer and are accordingly discharged."

4. The complainant reported non-compliance of the orders on 24.06.2025. The matter was pending before the Hon'ble Authority. The said execution has been transferred to the Adjudicating Officer in pursuance of the order of delegation of Powers dated 05.04.2023.

5. The matter was heard on 22.07.2025. The complainant submitted that the OC for the project has not been obtained and the order dated 05.08.2021 has not been complied. Since the respondent was absent, the matter was adjourned to 18.08.2025. It is submitted by the complainant that the possession has not been handed over and the construction is illegal. The complainant is required to pay bank charges. The Ld. counsel for the respondent has submitted that the steps have been taken for termination of Agreement for Sale and the notice to that effect has been served on the complainant. The respondent was directed to file written submission. Finally, the matter was taken up for hearing on 17.09.2025. The respondent neither appeared nor filed any reply. It is submitted by the complainant that the termination notice has been replied and proceeding filed to that effect by the respondent is pending.

6. The complainant is claiming execution of the order passed by Hon'ble Chairperson on 05.08.2021. By the said order, respondent has been directed to pay interest on the paid consideration from 01.04.2018 till handing over of possession. Warrant for recovery of interest from 01.04.2018 to 01.04.2023 has been issued. The said controversy was taken before the Hon'ble High Court and note to that effect is taken in the order dated 25.04.2024 which is quoted above. It appears that so far as that warrant is concerned, the amounts were directed to be deposited in the Hon'ble High Court and the present allottee i.e. Respondent no.2 in the said Writ Petition has been allowed to withdraw the same. It is apparent from the order that the said claim as mentioned in the warrant has been duly satisfied.

7. It is also apparent from submission as well as observation in the order dated 25.04.2024 that the complainant claims that the subject flat is not ready in all respect. The respondent claims that the complainant is deliberately avoiding to take possession of the same. The Hon'ble High Court has taken note of the controversy and has observed that the said issue should be decided by the appropriate forum having jurisdiction. The said issue cannot be decided in the execution proceeding as the executable order has to be complied by both the sides, but there is controversy in respect of the possession to be delivered by the respondent and taken by the complainant. It is also pertaining to note that the respondent has issued notice as to termination of the Agreement for Sale and the proceeding is pending. All these issues will have to be decided by the forum after considering the merits of the case. In the circumstances, the issue as to interest to be paid on the consideration w.e.f 01.04.2023 cannot be decided unless the above said issues are finally decided by the forum having jurisdiction. Therefore, the present execution proceeding is required to be disposed of with liberty to the complainant to approach for execution of the

order dated 05.08.2021 after the above said issues are decided and as may be required.

ORDER

1. The present execution proceeding is hereby disposed of.
2. The complainant is at liberty to approach for execution of the order dated 05.08.2021 after the above said issues are decided and as may be required.
3. No order as to cost.

ASHOK LILADHAR ALASPURKAR

Digitally signed by ASHOK LILADHAR ALASPURKAR
Date: 2025.10.31 17:40:08 +05'30'

Date : 31.10.2025
Mumbai

(Ashok Alaspurkar)
Adjudicating Officer,
MahaRERA