UBEFORE THE MAHARASHTRA

REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Hearing held through Hybrid mode

1. COMPLAINT NO. CC12503106

ASSETS REALITY …COMPLAINANT

VS

1. BIRENDRA RAMKARAN SHUKLA
2. NEELAM BIRENDRA SHUKLA …RESPONDENTS

a/w

2. COMPLAINT NO. CC12503142

ASSETS REALITY …COMPLAINANT

VS

1. VINOD BABAN MIRKUTE
2. VAISHALI VINOD MIRKUTE …RESPONDENTS

a/w

3. COMPLAINT NO. CC12503144

ASSETS REALITY …COMPLAINANT

VS

1. PANDHARINATH DAULAT RAUT
2. PRATIKSHA PANDHARINATH RAUT …RESPONDENTS

MAHARERA PROJECT REGISTRATION NO. P51700008568

Order
April 02nd, 2026
(*Date of hearing- 25.02.2026 matters were reserved for order*)

Coram: Manoj Saunik, Chairperson, MahaRERA
Advocate Anwar Landge present for the complainant at sr. nos. 1 to 3
Respondents at sr. nos. 1 to 3 present in person

1. The complainant at sr. nos. 1 to 3 is the promoter within the meaning of section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016 ("**The Act**") of the Real Estate Regulatory Authority ("**RERA**") who has registered the project namely **"THE CHALETS AVENUE"** under section 5 of the act bearing **MAHARERA Project Registration No. P51700008568.** The respondents at sr. nos. 1 to 3 are the allottees within the meaning of section 2(d) of the Act.

2. On the MahaRERA project registration web page, the proposed date of completion is mentioned as 30.11.2018 and the revised proposed date of completion is mentioned as 31.03.2026. The project is yet to receive the occupancy certificate.

3. The complainants at sr. nos. 1 to 3 are seeking the following reliefs:

Sr. no.	Complaint no. and Date of filing	Relief sought
1.	CC12503106 04.09.2025	*a. That this Hon'ble Authority be pleased to declare that the agreement dated 02.03.2017executed between the complainant and the respondents is not valid, subsisting and binding in respect of flat no. 702, 7th Floor, "A" Wing in the building known as the Chalets Avenue admeasuring 28.57 square meters carpet area standing on plot of land bearing Gut No. 12, Hissa No. 1, area admeasuring about 0-40-0 HRP equivalent to 4000 square meters.* *b. That this Hon'ble Authority be pleased to direct the Respondents to cooperate with the complainant in execution and registration of cancellation deed with respect to agreement dated 02.03.2017 executed between the complainant and the respondents stands cancelled in view of non-payment of various dues in respect of flat no. 702, 7th Floor, "A" Wing in the building known as The Chalets Avenue admeasuring 28.57 square meters carpet area standing on plot of land bearing Gut No. 12, Hissa No. 1, area admeasuring about 0-40-0 HRP equivalent to 4000 square meters.* *c. Or in the alternative to prayer clause (c) above, in the event the Respondents failed to execute and register cancellation deed of Agreement dated 2nd March 2017, in that event officer of this Hon'ble Authority be appointed / authorized to execute such an appropriate cancellation deed with further direction to the authority to add upon the same.* *d. That this Hon'ble Authority be pleased to hold that the complainant is entitled to forfeit the amount paid by the respondents to the complainant in view of the respondents' failure to fulfil terms and conditions of the agreement.* *e. That this Hon'ble Authority be pleased to direct permanent injunction and restrain the respondents not to interfere and / or attempt to create tranquillity in the compound of society where the flat is situated and / or restrain the respondents not to attempt to enter into possession of subject flat.* *f. Costs.* *g. Further relief/s to the complainants as may deem fit and proper under the circumstances of the case.*

2.	CC12503142 06.09.2025	*a. That this Hon'ble Authority be pleased to declare that the agreement dated 23.10.2018 executed between the complainant and the respondents is not valid, subsisting and binding in respect of flat no. 912, 9th floor, "A" Wing in the building known as the Chalets Avenue admeasuring 24.06 square meters carpet area standing on plot of land bearing Gut No. 12, Hissa No. 1, area admeasuring about 0-40-0 HRP equivalent to 4000 square meters.* *b. That this Hon'ble Authority be pleased to direct the respondents to cooperate with the complainant in execution and registration of cancellation deed with respect to agreement dated 23.10.2018 executed between the complainant and the respondents stands cancelled in view of non-payment of various dues in respect of flat no. 912, Wing A in the building known as the Chalets Avenue admeasuring 28.57 square meters carpet area standing on plot of land bearing Gut No. 12, Hissa No. 1, area admeasuring about 0-40-0 HRP equivalent to 4000 square meters;* *c. Or in the alternative to prayer clause (c) above, in the event the respondents failed to execute and register cancellation deed of agreement dated 23.10.2018, in that event officer of this Hon'ble Authority be appointed / authorized to execute such an appropriate cancellation deed with further direction to the authority to add upon the same.* *d. That this Hon'ble Authority be pleased to hold that the complainant is entitled to forfeit the amount paid by the respondents to the complainant in view of the respondents' failure to fulfil terms and conditions of the agreement.* *e. That this Hon'ble Authority be pleased to direct permanent injunction and restrain the respondents not to interfere and / or attempt to create tranquillity in the compound of society where the flat is situated and / or restrain the respondents not to attempt to enter into possession of subject flat.* *f. Costs.* *g. Further relief/s to the complainants as may deem fit and proper under the circumstances of the case.*
3.	CC12503144 07.09.2025	*a. That this Hon'ble Authority be pleased to declare that the agreement dated 11.10.2017 executed between the complainant and the respondents is not valid, subsisting and binding in respect of flat no.311, 3rd floor, "A" Wing in the building known as the Chalets Avenue admeasuring 24.06 square meters carpet area standing on plot of land bearing Gut No. 12, Hissa*

		No. 1, area admeasuring about 0-40-0 HRP equivalent to 4000 square meters. *b. That this Hon'ble Authority be pleased to direct the respondents to cooperate with the complainant in execution and registration of cancellation deed with respect to agreement executed between the complainant and the respondents stands cancelled in view of non-payment of various dues in respect of flat no.311, 3rd Floor, "A" Wing in the building known as The Chalets Avenue admeasuring 26.04 square meters carpet area standing on plot of land bearing Gut No. 12, Hissa No. 1, area admeasuring about 0-40-0 HRP equivalent to 4000 square meters;* *c. or in the alternative to prayer clause (c) above, in the event the respondents failed to execute and register cancellation deed of agreement dated 11.10.2017, in that event officer of this Hon'ble Authority be appointed / authorized to execute such an appropriate cancellation deed with further direction to the authority to add upon the same.* *d. That this Hon'ble Authority be pleased to hold that the complainant is entitled to forfeit the amount paid by the Respondents to the complainant in view of the respondents' failure to fulfil terms and conditions of the agreement.* *e. That this Hon'ble Authority be pleased to direct permanent injunction and restrain the respondents not to interfere and / or attempt to create tranquillity in the compound of society where the flat is situated and / or restrain the respondents not to attempt to enter into possession of subject flat.* *f. Costs.* *g. Further relief/s to the complainants as may deem fit and proper under the circumstances of the case.*

4. The captioned complaints were heard on 25.02.2026 wherein the following roznama was recorded by this authority:

Sr. No.	Complaint no. and Date of filing	Roznama Recorded
1.	CC12503106 04.09.2025	*"Heard all the parties. Matters are reserved for orders."*
2.	CC12503142 06.09.2025	
3.	CC12503144 07.09.2025	

5. The brief facts of the complaints at sr. nos. 1 to 3 are as follows:

Sr. no.	Complaint No. and Date of filing	Flat No.	Date of AFS[1]	Date of possession (As per the AFS)	Total Consideration (As per the AFS)	Termination notice issued dates	Reliefs Sought
1.	CC12503106 04.09.2025	702	02.03.2017	March 2018	Rs. 12,07,200/-	01.08.2025	Direction to execute cancellation deed
2.	CC12503142 06.09.2025	912	23.10.2018	30.11.2018	Rs. 15,00,000/-	01.08.2025	Direction to execute cancellation deed
3.	CC12503144 07.09.2025	311	11.10.2017	31.03.2018	Rs. 10,80,000/-	01.08.2025	Direction to execute cancellation deed

6. The brief and combined submissions of the complainant at sr. nos. 1 to 3 are as follows:

A. The complainant at sr. nos. 1 to 3 submits that the agreements for sale were registered between the complainant and the respondents at sr. nos. 1 to 3 in respect of the subject flats.

B. The complainant submits that the respondents at sr. no. 1 have paid an amount of Rs.10,32,336/- towards the consideration, and a total amount of Rs.11,77,110/- has been paid till date including stamp duty and registration charges, service Tax/VAT and legal charges, and the respondents have not made any payment since 2018.

C. That the respondents at sr. no.2 have paid an amount of Rs.11,70,000/- towards the consideration, and a total amount of Rs. 14,70,000/- has been paid till date including stamp duty and registration charges, service Tax/VAT and legal charges, and the respondents have not made any payment since 2018.

D. That the respondents at sr. no.3 have paid an amount of Rs. 9,73,400/- towards the consideration, and a total amount of Rs. 11,93,600/- has been paid till date including towards stamp duty and registration charges, service Tax/VAT and legal charges, and the respondents have not made any payment since 2020.

[1] Agreement for Sale

E. That the complainant issued multiple demand notices in accordance with the prescribed payment schedule to the respondents at sr. nos. 1 to 3, to make payments and clear the outstanding dues. However, the respondents failed to make the payments due under their respective agreements for sale, and therefore the complainant terminated the agreements for sale with the respondents at sr. nos. 1 to 3 vide email dated 01.08.2025.

F. That the termination of the agreements is valid and in accordance with the terms thereof. The respondents at sr. nos. 1 to 3 have not challenged the said termination, and the same has attained finality, therefore no rights survive in favour of the respondents, and the respondents cannot seek possession or enforcement of the agreements. Consequently, the execution proceedings initiated by the respondents are not maintainable in law.

G. The complainant submits that such persistent default has affected the financial position and progress of the project, and the delay in the project was further caused due to circumstances beyond the control of the complainant.

H. Therefore, the complainant at sr. nos. 1 to 3 has filed the present complaints seeking a direction against the respondents at sr. nos. 1 to 3 to execute deeds of cancellation in respect of the subject flats nos. 702, 912 and 311 respectively.

7. The brief and combined submissions of the respondents at sr. nos. 1 to 3 are as follows:

A. The respondents at sr. nos. 1 to 3 submit that substantial amounts have been paid towards the consideration, as well as towards stamp duty, registration charges, GST and other applicable statutory dues, and that they have complied with their contractual obligations.

B. The respondents at sr. nos. 1 to 3 submit that, due to the delay, they had earlier approached this Hon'ble Authority, and the Authority had directed the complainant to pay interest for the delay in handing over possession.

C. The respondents at sr. no. 1 submit that the balance amount of Rs.2,74,864/- is payable only at the time of possession. Therefore, the complainant has no right to terminate the agreement of the flat.

D. The respondents at sr. nos. 2 and 3 submit that, due to prolonged delay and non-completion of the project, the complainant executed an MOU dated 03.02.2025 permitting them to carry out remaining work at their own cost. Accordingly, the respondents at sr. nos. 2 and 3 completed the necessary work in their flats. Due to non-payment of electricity bills by the complainant, they were constrained to pay the electricity charges. The respondents incurred expenses towards the completion of pending work and electricity charges. Thus, the respondents at sr. nos. 2 and 3 do not owe any amount to the complainant, on the contrary, the complainant is liable to pay to them.

E. The respondents at sr. nos. 2 and 3 submit that, in the earlier complaints bearing nos. CC006000000344216 and CC006000000397492, during conciliation proceedings, the complainant promoter agreed to pay rent of Rs.4,000/- per month till getting occupancy certificate. However, the said rent amounting to Rs. 1,04,000/- remains unpaid.

F. The respondents at sr. nos. 1 to 3 submit that the project is incomplete, the occupancy certificate has not been obtained, and the promised amenities have not been provided. Therefore, the complainant has no right to terminate the agreements when the delay is solely attributable to the complainant, and the respondents have already paid a substantial amount of the consideration.

8. From the facts and submissions of the parties at sr. nos. 1 to 3, the issue before this authority for adjudication is *whether the complainant at sr. nos. 1 to 3 are entitled to the relief sought under the provisions of the Act?*

9. Before moving to answer the issues framed hereinabove the following observations are noteworthy:

A. It is observed that the complainant promoter at sr. nos. 1 to 3 entered into registered agreements for sale with the respondents at sr. nos. 1 to 3 in respect of the subject flats.

B. It is noted that the project has not yet received the occupancy certificate till date, which clearly indicates that the project is not complete in all respects. In the

absence of the occupancy certificate, lawful possession cannot be offered to the allottees.

C. The Authority observes that the complainant has alleged default on the part of the respondents at sr. nos. 1 to 3 in making payments. However, upon perusal of the record, it is observed that the demand notices as well as the termination notices dated 01.08.2025 were issued after the expiry of the agreed date of possession under the respective agreements for sale. By that time, the contractual timeline for handing over possession had already lapsed. In view thereof, the respondents cannot be termed as defaulters.

D. It is pertinent to note that, as per the orders dated 05.08.2021 and 16.01.2026 passed by this Authority, the complainant promoter was directed to pay interest to the respondents at sr. nos. 1 to 3 for delay in handing over possession, till the actual handover of possession with the occupancy certificate of the subject flats.

E. In the present case, the complainant is not entitled to levy any interest or penal charges upon the respondents, particularly in view of the complainant's failure to obtain the occupancy certificate till date. Even if any amount is assumed to be due and payable by the respondents at sr. nos. 1 to 3, the promoter may set off such amount against any sums payable under the registered agreements for sale, in accordance with the terms of the registered agreement for sale and applicable provisions of law. However, such alleged dues cannot constitute a ground for termination of the registered agreements for sale, particularly when substantial amounts have been paid and the complainant has failed to perform its primary obligation of completing the project and offering possession within the stipulated timeline.

10. Therefore, after considering the observations, provisions of the Act, facts of the case, submissions of the parties and the material placed on record, the Authority hereby concludes that the complainant promoter has failed to handover possession along with the occupancy certificate by the agreed date of possession in the year 2018, and despite the lapse of several years, the Occupancy Certificate has not been obtained till date. The action of the complainant in terminating the agreements and seeking cancellation, amounts to a forced exit of the respondents to defeat the rights of the

allottees, which is impermissible in law and contrary to the provisions of the Act. A promoter who has committed a prior breach, cannot terminate the registered agreement, particularly when substantial consideration amount has already been paid by the respondents at sr. nos. 1 to 3. Such action is hit by the settled principle that a party cannot take advantage of its own wrong. Consequently, the termination of the agreements for sale with the respondents at sr. nos. 1 to 3 is held to be unsustainable in law.

11. Thus, based on the observations made herein above the issue at **paragraph no.8** is answered in the **negative**.

FINAL ORDER

12. Therefore, after considering the observations and provisions of the Act, the materials placed on record, the facts of the case and submissions made by the parties, the Authority passes the following order:

A. The captioned complaints at sr. nos. 1 to 3 are **dismissed** for the reasons more specifically mentioned hereinabove.

B. The complainant is directed to pay a cost of Rs 20,000 (twenty thousand) to each respondent for malicious litigation.

MANOJ SAUNIK Digitally signed by MANOJ SAUNIK Date: 2026.04.02 12:07:46 +05'30'

Manoj Saunik
Chairperson, MahaRERA