BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

1. Complaint No. **CC006000000209611**

Dharmesh J Shah ... Complainants

Versus

Sakhi Saurabh Dant ... Respondents

2. Complaint No. **CC006000000210288**

Vivek Saraf ... Complainant/s

Versus

M/s. Sakshi Developers through its prop. Sakshi Dant ... Respondents

3. Complaint No. **CC006000000231166**

Kishore Shambhudutt Mishra ... Complainants

Versus

1. Sakshi Developers
2. Sakshi Saurabh Dant
3. Saurabh Dant ... Respondents

MahaRERA Project Registration No. P51700009056

Coram: **Shri. Mahesh Pathak, Hon'ble Member – I/MahaRERA**

Ld. Adv. Reshma appeared for the complainant in serial no. 1.

Ld. Adv. Pankaj B appeared for the complainant in serial no. 2.

Ld. Adv. Rajkumar Mishra appeared for the complainant in serial no. 3.

None appeared for the respondents.

ORDER

(Tuesday, 26th March 2024)

(Through Video Conferencing)

1. The complainants above named have filed these 3 separate online complaints before the MahaRERA on **03-01-2022 (serial no. 1), 07-3-2022 (serial no. 2), and 12-05-2022 (serial no. 3)** mainly seeking directions from MahaRERA as mentioned in the table in clause (5) herein, under the provisions of the Real Estate (Regulation & Development) Act, 2016 (from now on referred to as 'RERA') in respect of their flats booked in the respondent's registered project known as "**SAKSHI ENCLAVE**" bearing MahaRERA registration no. **P51700009056** located at Village - Dahisar, Dist. Thane.

2. These complaints were clubbed together and were heard on several occasions by the MahaRERA and finally on **09-11-2023** as per the Standard Operating Procedure dated 12-06-2020 issued by the MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and were also informed to file their written arguments, reply & and rejoinder, if any. Accordingly, serial no. 1,2 and 3 complainants appeared and made their respective submissions. However, despite the notice respondents remained absent. The MahaRERA heard the arguments of the complainants and also perused the available records.

3. After hearing the complainants in serial no.1 serial no. 2 and serial no. 3, the following Roznama was recorded in these complaints-

" The complainants are present. The respondent is absent. In fact, the respondent has never appeared before the MahaRERA. The respondent has also not filed any reply to these complaints. The complainants in Sr. Nos. 5 and 6 have prayed for refund along with interest and compensation for the delay as the project is delayed and the original date of possession, according to the agreement for sale, was December 2017 (in Sr. No. 5 - CC006000000209611) and August 2017 (in Sr. No. 6 - CC006000000210288). The complainant in Sr. No. 7 has pointed out that the flat which was booked as per the allotment letter of December 2012 has already been sold to a third party, for which the complainant has filed an FIR as well. Therefore, the complainant (in Sr. No. 7 -CC006000000231166) prays for refund along with interest and compensation for the delay. As per the MoU / allotment letter of December 2012, the date of possession mentioned is 30 months i.e. by June 2015. The respondent is granted one last chance to file its replies to these complaints along with its written arguments as a last chance within a period of 2 weeks i.e. by 23-11-2023. The complainants may file their rejoinder to the said replies of the respondent along with their written arguments within a further period of 2 weeks i.e. by 07-12-2023, even if the respondent does not file any reply. In case the respondent does not file any reply, the MahaRERA would be constrained to decide these matters ex-parte against the respondent on merits. Accordingly, these matters are reserved for orders suitably after 07-12-2023 based on the arguments of the complainants as well as reply, rejoinder and written arguments filed in these complaints."

4. Despite aforesaid directions, the respondent/s has/have failed to upload any reply to the said complaints. The complainants in serial nos. 1 and 3 have uploaded their written arguments on record of MahaRERA on 07-12-2023 and 18-11-2023 respectively in their complaints. The same has been taken on record. The

MahaRERA has perused the available records.

5. The complainants by filing these online complaints have prayed for reliefs as mentioned herein below. The information provided by them in their respective online complaints is as follows -:

Complaint no.	**Flat booked**	**Date of agreement for sale and Possession date**	**Total consideration and Consideration of paid /outstanding dues**	**Reliefs**
Serial no. 1 CC00600 00002096 11	Flat 401, 4th floor	02-06-2017(AFS) 30-12-2017 (date of possession)	Rs. 72,00,000/- out of which Rs. 56,43,000/- paid (out of which Rs.30,15,000/- (borrowed loan)	to refund along with interest and compensation, cost and penalty to the promoter for not completing the project, to strictly adhere to the regulation of the RERA
Serial no. 2 CC00600	Flat 502, fifth	30-08-2016 (MOU for 502) 21-07-2021	Not mentioned Rs. 25,00,000/-(paid)	to hand over possession within 2

00002102 88	floor Later agreed with flat 602, sixth floor.	(Letter of allotment-cum-agreement for 602) For 502: After obtaining occupancy certificate not later than 31-8-2017 For 602: 31-12-2021 (date of possession)		months or in alternative refund Rs. 25,00,000/- along with interest, compensation to secure similar accommodation in the same area **(As per roznama dated 9-11-2023 the complainant sought refund along with interest and compensation)**
Serial no. 3 CC00600 00002311	201, 2nd floor, admea	21-12-2012 (MOU) The date of possession is not	Rs. 42,00,000/- Rs. 30,00,000/-(paid)	to refund along with interest and cost, penalty

66	suring area 600sq.ft.	clearly mentioned - within 30 months		for not completing the project, to strictly adhere the regulation of RERA.

6. It is the case of the complainant at sr no. 1 that he booked the said flat in the respondent's registered project vide registered agreement for sale, the details of which are mentioned in the table above at para-no. 5. The complainant has paid Rs. 56,43,000/- towards the consideration amount out of which Rs. 30,15,000/- was disbursed by the bank as loan and the balance of Rs. 26,28,000/- was paid by him and the same is acknowledged by the respondent while executing the agreement for sale. The complainant stated that the respondent has failed to handover possession of the said flat on the agreed date. Nevertheless, the respondent no. 1 has shown a very lethargic attitude towards the completion of the said project. The complainant stated that despite various follow-up taken via visiting the office of respondent no. 1, it gave false promises regarding the possession of the said flat. Consequently, the complainant has to stay in a rented house and endure rent expenses. Hence, being aggrieved by the said actions on the part of the respondent, the complainant has filed this complaint for refund, penalty for not completing the project, strictly adhering to the regulation of the RERA, cost of the complaint and possession.

7. It is the case of the complainant at sr no. 2 that he booked the said flat vide memorandum of understanding dated 30-08-2016 (hereinafter referred to as

"said MOU"). As per clause 5 of the said MOU, if the possession is not handed over in the agreed time, the complainant can recover his paid amount along with interest @ 24% calculated from the date of receipt of the booking. However, the respondent's representatives informed him that there was an unanticipated delay, hence the project will be completed by 30-09-2018 and therefore MOU was mutually extended till 30-09-2018. The said terms were confirmed by the respondent vide email dated 06-08-2017. However, the project was far from completion even in January 2019. Hence on 14-02-2019, the complainant requested for refund of the amount paid by him towards the said flat. However, even after several follow ups, the respondent neither offered possession nor refunded the amount as requested. Thereafter, the respondent informed that it is unable to provide possession of the said flat till 30-06-2019. Thereafter, in July 2021, the respondent confided that they are unable to provide possession of flat no. 502 and offered the complainant, flat no. 602 of the same project. Relying on the representations of the respondent, the complainant accepted the offer and executed the allotment letter cum agreement dated 21-07-2021. The amount of Rs. 25,00,000/- lying with the respondent was treated as the booking amount of the flat 602. As per the said allotment letter cum agreement for sale respondent promised to provide the possession by 31-12-2021. However, the respondent again failed to hand over the same as agreed. The complainant further pointed out that the respondent tried to document at certain places that the amount paid by the complainant was as an investor however, the same is not true and clause (b) of the allotment letter clearly indicates the same. In this background, the complainant has filed this complaint and sought reliefs as mentioned in the table above at para no.5.

8. It is the case of the complainants at sr no. 3 that his mother Smt. Subhadra Mishra

had booked the said flat in respondent no. 1's registered project vide memorandum of understanding dated 21-12-2012 (hereinafter referred to as "MOU'). He stated that till date an amount of Rs. 30,00,000/- has been paid in instalments towards the said flat. The respondent had promised that the IOD and commencement certificate would be obtained within three months and further promised to provide possession of the said flat within 30 months. The complainant further claimed that the respondents had agreed that if they fail to give timely possession, they will pay interest @18% p.a. on or before 10th of every month until execution of agreement for sale. Further, it was agreed that the respondents will not revoke or cancel the said allotment/MOU until the handover of possession of the said flat to the complainant. Thereafter, in December, 2019 respondent no. 3 informed that respondents are not able to provide flat 201 and in lieu of it they offered flat 801, however this flat was of 405 sq. ft. instead of 600 and as per the draft agreement forwarded by the respondents, the consideration also was changed to Rs. 90,00,000/-. Thereafter, the complainant's mother expired and left the registered will dated 14-06-2017 and bequeathed the said flat to the complainant. After her demise on 07-04-2020 complainant tried to make various follow-ups to execute an agreement for sale. However, the respondent failed to do so. The complainant further stated that thereafter a meeting was held with respondents nos. 2 and 3 wherein the respondents agreed to refund the said amount. However, despite multiple follow up, the respondents avoided to refund the amount as agreed and only paid Rs.7,50,000/-. Moreover, it submitted that he found that all the flats were sold out and the respondents have misappropriated the consideration amount received by the complainant. The complainant stated that the respondents now are not reachable and not traceable. Therefore, the complainant took a search report of the said land wherein he found that the respondents have sold the said

flat to some other allotees for Rs. 72,00,000/-. Moreover, he found that the respondents had borrowed 3 crores from a financial institution against the said project including the complainant's said flat. Hence, being aggrieved, he lodged an FIR against the respondents. The complainant also sent a letter to the respondents on 03-03-2022. However, till date, the respondent failed to revert and did not bother to refund the amount. Hence, being aggrieved by the said actions on the part of the respondents, the complainant has filed this complaint for refund along with interest and cost of the present proceeding.

9. The complainants at sr.no.1 and sr.no.3 have uploaded their written notes of arguments on records of MahaRERA on 7-12-2023 and 18-11-2023 respectively wherein they have reiterated all the facts that are already submitted in their respective complaints.

10. In the present case, the MahaRERA has observed that the complainants have filed these online complaints before MahaRERA on 03-01-2022, 07-03-2022 and 12-05-2022 respectively seeking reliefs under section 18 of the RERA towards refund of the entire money paid by them along with interest and compensation. However, till date the respondent/s has/have(as applicable) not bothered to upload its/her/their replies to these complaints, even though these complaints were visible to the respondent/s in its/their project login. Even as per the SOP dated 12-06-2020, the respondents were liable to upload their reply in digital form in these complaints however, till date the respondent/s has/ have not complied with the said direction. Furthermore, though the notices for virtual hearings held before the MahaRERA on 11-04-2022, 03-08-2023 and 9-11-2023 have been duly served upon it/her/them, however, the respondent/s has/ have failed to appear for the said hearings. Further, on the last date of hearing held on 9-11-2023, two

weeks' time was granted to the respondent/s to file its/her/their reply as a last chance. However, despite specific directions, the respondent has/have failed to upload any reply/written submission on record of MahaRERA. It shows that the respondent/s is/are not willing to contest these complaints. Hence, the MahaRERA has no other alternative but to proceed with the matter ex-parte against the respondents on merits.

11. The MahaRERA has examined the rival submissions made by the complainants and also perused the available record. In the present case, the complainants claiming to be the allottees of this project have approached the MahaRERA seeking reliefs under section 18 of the RERA initially towards refund of the entire money paid by them along with interest and compensation (except in complaint at sr. no.2 as per the original prayer he seeks possession along with interest and compensation). The complainants have sought the said substantive reliefs mainly on account of delay in handing over possession of their respective flats and also due to unfair trade practise adopted by the respondent/s by creating third party rights in respect of their flats (as applicable).

12. However, the complainant at sr. no. 2 has amended the main prayers from **"possession along with interest and compensation**" to **"refund along with interest and compensation"** during the course of hearing held on 9-11-2023. The respondent/s has neither appeared for the said hearing nor has objected to the said amendment sought by the said complainant. Hence, the said amendment sought by the complainant at sr. no. 2 is allowed.

13. Hence, in all 3 complaints, the MahaRERA has to decide the substantive reliefs sought by these complainants towards refund along with interest and compensation under section 18 of the RERA. The complainants have agitated the

said reliefs by virtue of the registered agreement for sale dated 02-06-2017 (in sr. no.1) and allotment letter cum agreement / MOU (as applicable) dated 21-07-2021 (sr. no. 2) and 21-12-2021 (in sr. no. 3).

14. In the present case, as per the web page information uploaded by the respondent Mrs. Sakshi Saurabh Dant a Proprietor of M/s. Sakshi Developers has registered this project with the MahaRERA in her individual capacity. However, these complainants while filing these complaints have joined the husband of the respondent viz Mr. Saurabh Dant and the said Proprietary Firm viz M/s. Sakshi Developers as party respondents, although they are not necessary party. Hence, all the respondents are hereinafter referred to as the 'respondent promoter' for sake of brevity.

15. The complainants have agitated their claim under section 18 of the RERA by virtue of the registered agreements for sale/allotment letter cum agreement/ MOU (as applicable) as executed by the respondent promoter on various dates as mentioned in the aforesaid table at para-no. 5, the respondent has agreed to handover possession of the said flats to them on various dates as mentioned in the aforesaid table at para-no. 5. However, despite making substantial payments to the respondent, the respondent has failed to handover possession of the said flats to them on the said agreed dates of possession(mentioned in the aforesaid table at para-no.5). Hence, they have filed these complaints. To support their contentions, the complainants have submitted the copies of the said registered agreement for sale/allotment letter cum agreement/ MOU (as applicable) on record of MahaRERA.

16. In this regard, it is pertinent to examine the phrase "**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."

17. From a plain reading of section 18 of the RERA, it is clear that if the promoter fails to handover the possession of the flat to the allottees as per the terms and conditions of the agreement for sale on the date specified therein, the allottee has two choices either to withdraw from the said project or to stay with the project. In case the allottee chooses to withdraw from the project, the allottee is entitled to seek a refund along with interest including the compensation and if the allottee wishes to stay in the project he is entitled to seek interest for the delayed possession as prescribed under section 18 of the RERA read along with relevant rules made thereunder.

18. The respondent has failed to cite any justified reasons for the said delay caused in handing over possession of the said flats to these complainants as per the agreement for sale/allotment letter cum agreement /MOU. Also, the

respondent promoter despite notice/ directions has neither appeared for the hearings held before the MahaRERA nor has filed any reply to these complaints. Hence, all the contentions made by the complainants about execution of the said agreement for sale/allotment letter cum agreement/MOU relied upon by the complainants and the dates of possession mentioned therein remain undisputed and unchallenged. Hence, the complainants are entitled to seek refund along with interest under section 18 of the RERA.

19. In addition to this, the complainants (as applicable) have also contended that the respondent has sold the said flats allotted to them to third-parties and thereby indulged in unfair trade practise. Hence, the said complainants have sought refund of the entire money on that ground also. Even, the said contention of the complainants has not been denied by the respondent by filing any reply on record of MahaRERA.

20. In the present case, all the allotment are done in favour of these complainants after commencement of the RERA. Further, the respondent while registering this project with the MahaRERA has mentioned the proposed date of completion of this project as 31-12-2017 and revised date of completion as 31-03-2019, which is extended till 30-09-2020. However, although the said revised extended date of completion of this project got over, till date the project is incomplete and the respondent promoter has not obtained OC for this project from the concerned competent authority. It shows the violation of section 12 of the RERA by the respondent promoter. Hence, the claim of refund sought by these complainants under section 18 of the RERA is justified.

21. However, in the present case, the MahaRERA has prima facie noticed that

while seeking refund the complainants are claiming interest on account of delay at the rate of 18% and 24% (as applicable). In this regard, it is pertinent to note that as stated hereinabove, these allotments have been done in favour of these allottees after commencement of the RERA. Hence, the complainants cannot seek interest other than what is prescribed under the RERA and the relevant Rules made thereunder. Hence, the claim sought by these complainants towards grant of such interest rate stands rejected.

22. As far as the claim of compensation sought by the said complainants, the MahaRERA has noticed that the said complainants during the course of hearing have not pressed for compensation and also to transfer these complaints to the Ld. Adjudicating Officer/MahaRERA for deciding the quantum of compensation under sections 71 and 72 of the RERA. Needless to state here that as per the explicit provisions of the RERA, the MahaRERA has no jurisdiction to grant any compensation to the complainants. However, the said complainants are always at liberty to agitate their grievances about the compensation by filing separate complaints before the Ld. Adjudicating Officer/ MahaRERA in Form-B as prescribed under relevant Rules framed under the RERA if they so desire.

23. In addition to this, the MahaRERA has also noticed that as on date, the validity of the project registration granted by the MahaRERA has lapsed on 30-09-2020. The respondent has not uploaded form 4 (architect certificate) / occupancy certificate on record of MahaRERA. It shows that the project is still incomplete. Hence, in this case the respondent has to seek extension from the MahaRERA by filing necessary application for revival of this project which has lapsed on 30-09-2020.

24. In the present case, from the available record, it appears that the association of the allottees has already been formed in the name of "Sakshi Enclave registered Flat Owners AOP". The said association has also filed a complaint no. CC006000000364546 before the MahaRERA on 28-02-2023 seeking reliefs under sections 7 and 8 of the RERA. During the hearing held in the said complaint, the said association has informed the MahaRERA that the Bank from whom the respondent has obtained loan has taken symbolic possession of the said project and action under SARFAESI Act has also been initiated against the respondent. Be that as it may, the said proceeding will not affect the rights of the complainants being the allottees of this project and their rights under the RERA will remain intact.

25. In view of these facts, the following order is passed:-

a. The present complaints are partly allowed.
b. The claim of the complainants sought towards compensation stands rejected in view of the observations made in the aforesaid para no.22.
c. The respondent is directed to refund the entire money paid by the complainants towards the consideration of the said flats 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 Real Estate (Regulation and Development) Act, 2016 and the Rules made thereunder, from the date of payment till the actual realisation of the said money to the complainants. Till then, the complainants shall have a charge on the said flats.
d. Needless to state here, that the actual amount as provided under section 18 of the RERA means the amounts paid by the complainants towards the consideration of the said flats only, excluding the stamp duty, registration charges and taxes etc. (as applicable) paid to the government.

e. 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 amount of refund along with interest payable by the respondent-promoter to the complainant-allottees shall be made within a period of 6 months from the date of this order.

f. The complainant at sr. no. 1 is also directed to execute a cancellation deed on receipt of payment of refund from the respondent-promoter.

g. 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, 18th May 2020 and 6th August, 2021 issued by the MahaRERA and the Notification/ Order which may be issued in this regard from time to time.

2. With these directions, all 3 complaints stand disposed of.

(Mahesh Pathak)

Member – 1/MahaRERA