

**BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY, MUMBAI**

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

Complaint No. CC006000000198432

**M/S. RUDIS DEVELOPERS
PARTNERSHIP FIRM**

...COMPLAINANT

Vs.

- 1. JITENDRA HARIGOVIND
MISTRY**
- 2. MAYA JATOLIA**
- 3. DEEWAN HOUSING
FINANCE CORPORATION
LTD**

...RESPONDENTS

MahaRERA Project Registration No. P51700009812

**ORDER
(11.02.2025)**

(Date of Hearing: 22.07.2024)

Coram: Shri. Ravindra Deshpande, Hon'ble Member II, MahaRERA

*Adv. Shaikh for Complainant
None for Respondents*

1. The present complaint has been filed by the promoter against the allottee seeking direction against the Respondents to make payment of the balance sale consideration amount of **Rs. 13,88,750/- (Rupees Thirteen Lakhs Eighty Eight Thousand Seven Hundred Fifty only)** along with GST amount of **Rs.72,801/- (Rupees Seventy Two Thousand Eight Hundred and one only)** with interest 18 % per annum from April 2019, or in the alternative to cancel the Agreement to Sale dated 05.06.2018 registered at the office of Sub Registrar of Assurances at Thane-11 under serial No. 6458/2018, in respect of flat being Flat No.604, on

Sixth floor in A wing, area admeasuring 30.427 sq. mt. carpet (hereinafter referred to as the “**said flat**”) in the building known as “**Sunada Circle**” presently known as “**Sunanda Circle Co-operative Housing Society Ltd.**” registered under the MahaRERA Project Registration No. **P51700009812** (hereinafter referred to as the “**said project**”) if the Respondents fail to pay the balance sale consideration and interest thereon and for a declaration that the Complainant is entitled to deal with the said flat to third party.

2. The brief facts of the present complaint are as under:
3. It is the case of the Complainant that the Respondent had agreed to purchase the said flat from the Complainant and accordingly, vide an Agreement for Sale dated 05.06.2018 was executed between the Complainant and the Respondent Nos. 1 and 2 for an amount of **Rs. 25,25,000/- (Rupees Twenty-Five Lakhs Twenty-Five Thousand Only)**. The said Agreement was registered with the office of Sub Registrar of Assurances at Thane-11 under serial No. 6458/2018 (hereinafter referred to as the “**said Agreement**”).
4. That the Respondent Nos. 1 and 2 have paid an amount of Rs. 51,000/- (Rupees Fifty-One Thousand Only) towards the part payment and further informed that the Respondent No. 3 had pre-sanctioned the loan and the Respondent Nos. 1 and 2 have availed the loan amount from the Respondent No. 3 for the payment of balance consideration amount towards the said flat to the Complainant. Accordingly, the Complainant issued letter cum NOC dated 06.06.2018 to the Respondent No. 3 for disbursement of loan on the said flat, vide which, the Respondent Nos. 1 and 2 were called upon to pay the due amount of part payment of **Rs. 10,85,250/- (Rupees Ten Lakhs Eighty-Five Thousand Two Hundred and Fifty Only)** and GST amount of **Rs. 90,900/- (Rupees Ninety**

Thousand Nine Hundred Only) in respect of the said flat. Accordingly, the Respondent No. 3 released an amount of **Rs. 10,85,250/- (Rupees Ten Lakhs Eighty-Five Thousand Two Hundred and Fifty Only)** on behalf of the Respondent Nos. 1 and 2 to the Complainant.

5. That the Complainant has issued letters respectively to the Respondent No. 1 and 2 and called upon them to pay the balance consideration amount of **Rs. 13,88,750/- (Rupees Thirteen Lakhs Eighty-Eight Thousand Seven Hundred Fifty only)** along with GST amount of **Rs.72,801/- (Rupees Seventy Two Thousand Eight Hundred and one only)** in respect of the said flat. After receipt of the letters to the Respondent Nos. 1 and 2, the Respondent Nos. 1 and 2 never approached the Complainant for making the balance payment which shows that the Respondent Nos. 1 and 2 are not willing to fulfil the agreed terms and conditions. The Complainant has informed Respondent Nos. 1 and 2 that the construction of the said project is completed in all manners and that the Thane Municipal Corporation has granted the Occupancy Certificate dated 09.10.2020 bearing Occupancy Certificate No. OCC/0854/20. The Complainant also formed and registered the Society on 31.05.2021 in the name of **"Sunanda Circle Co-operative Housing Society Ltd."** bearing registration No. TNA/(TNA)/HSG/(TC)/33431/2021.
6. That as per the clause No. 4.2 of the said Agreement, it was specifically agreed between the Complainant and the Respondent Nos. 1 and 2 that on purchaser committing three defaults of payment of installments, the promoter shall give a notice of 15 days in writing to the purchaser by a registered post at the address provided by the purchaser. Accordingly, the Complainant had issued notice on 25.03.2021 through it's advocate to the Respondents on the present address

provided by the Respondents by RPAD and called uponf the Respondent Nos. 1 and 2 to pay the balance consideration amount of **Rs. 13,88,750/- (Rupees Thirteen Lakhs Eighty-Eight Thousand Seven Hundred Fifty only)** along with interest amount of Rs. 2,80,000/- (Rupees Two Lakhs Eighty Thousand Only) for delay in payment along with GST amount of **Rs.72,801/- (Rupees Seventy Two Thousand Eight Hundred and one only)** within 15 days from the receipt of the said notice and if the Respondents failed to fulfil the requisition of the aforementioned payment to the Complainant within the stipulated period then the said Agreement shall stand revoked, cancelled and terminated forthwith.

7. That the acknowledgment of notice dated 25.03.2021 sent to the Respondent Nos. 1 and 2 on the address mentioned in the said Agreement and on the AADHAR card of the Respondent Nos. 1 and 2 through its advocate on 27.08.2021 which was posted on 27.08.2021 itself. The said legal notice retuned to the advocate of the Complainant with a remark “No such person in the address” and also the Complainant has sent the legal notice by email address provided by the Respondent i.e. jitendramistry8108@gmail.com on 18.06.2021. The Complainant made all efforts to serve the notice on the Respondent Nos. 1 and 2. Under such circumstances, it can be presumed that the legal notices have been duly served to the Respondents and that thereafter the Respondents failed to comply with the requisition of the aforementioned balance payment.
8. That in the aforementioned transaction in respect of the said flat through estate agent V. S. Estate registered with RERA having registration No. A52000005787 and the Complainant had paid the brokerage charges amounting to Rs. 66,375/- to the V. S. Estate vide bill No. 004 dated 10.01.2018.

9. That in case of non-compliance and termination of the said Agreement, the Complainant is willing to pay amount of Rs. 10,85, 250/- (Rupees Ten Lakhs Eighty Five Thousand Two Hundred and Fifty Only) paid by the Respondent No. 3 to the Respondent No. 3 after deducting the compensation and losses suffered and brokerage paid to V. S. Estate i.e. Rs. 6,375/- by the Complainant for non-compliance by the Respondents to be awarded by this Authority.
10. That in the aforementioned circumstances, the Complainant having left with no other option has approached this Authority.
11. The matter was listed for hearing on various dates and lastly on 22.07.2024, however, on each scheduled date, the Respondents have remained absent despite the notice of hearing and link for hearing was duly served upon the Respondents. On account of the continuous failures of the Respondents in attending the scheduled hearings, on 09.05.2024, the matter was proceeded ex-parte against the Respondents and an order in that respect was passed on 09.05.2024 in the Roznama.
12. Considering the facts of the complainant following points arise for my determination. My findings thereon recorded as under for the reasons stated below:

REASONS

No.	Points	Findings
1	Whether the complainant is entitled to the reliefs sought?	Affirmative

2	What Order?	As per final order.
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13. Considering the facts, it is necessary to see the provisions of Section 19 of the Real Estate (Regulations and Development) Act, 2016 (hereinafter referred to as the “**said Act**”) which deals with **Rights and duties of allottees**. It reads as:

Section 19

(1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.

(2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.

(3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (l) of sub-section (2) of section 4.

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building,

as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

(5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.

(9) Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same.

(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.

14. From the documentary evidence produced by the Complainant, it is observed that as per the said Agreement, the Respondent agreed to purchase the said flat from the Complainant for a total consideration of Rs. 25,25,000/- . Out of which, the Respondent paid an amount of Rs. 51,000/- as part payment and an amount of Rs. 10,85,250/- and an amount of Rs. 90,900/- as GST charges were paid by the Respondent No. 3 on behalf of the Respondent Nos. 1 and 2. The balance amount of Rs. 13,88,750/- was to be paid by the Respondent Nos. 1 and 2 to the Complainant on the basis of the payment terms agreed in the said Agreement and that the Complainant by sending demand letters, legal notices called upon the Respondent Nos. 1 and 2 to make the said payment of the balance consideration alongwith the interest for delayed payment and pending GST charges. The said contention of the Complainant has remained unchallenged and unshaken, as a result, this Authority has no other option but to proceed on the basis of the registered document submitted before it i.e. the said Agreement and the facts submitted by the Complainant in the present complaint. During the hearing on the last date of hearing i.e. 22.07.2024, the Complainant was given the liberty to upload written submissions and accordingly, the Complainant has uploaded its written notes of arguments on 02.08.2024, vide which, the Complainant has mainly repeated and reiterated the contents of the present complaint.

15. In the case in hand, the parties on 05.06.2018 had executed the said Agreement.

As per the terms of the said Agreement, the date of possession of the said flat was December 2019, the balance consideration amounting to **Rs. 13,88,750/- (Rupees Thirteen Lakhs Eighty-Eight Thousand Seven Hundred Fifty only)** along with GST amount of **Rs.72,801/- (Rupees Seventy Two Thousand Eight Hundred and one only)** was to be paid by the Respondent to the Complainant as per the payment schedule of the said Agreement on completion of slabs mentioned therein. On completion of slabs as mentioned in the payment schedule last Demand Letter was issued by the Complainant to the Respondent on 18.12.2020, calling upon the Respondent Nos. 1 and 2 to pay the balance consideration amount of **Rs. 13,88,750/- (Rupees Thirteen Lakhs Eighty-Eight Thousand Seven Hundred Fifty only)** along with GST amount of **Rs.72,801/- (Rupees Seventy-Two Thousand Eight Hundred and one only)**, however, the Respondent Nos. 1 and 2 have failed to make payments as per the completed slabs till date and has failed to come before MahaRERA proving otherwise. As per the documents submitted before MahaRERA, the Respondent Nos. 1 and 2 have paid an amount of Rs. 11,36,250/- (Rupees Eleven Lakhs Thirty-Six Thousand Two Hundred and Fifty Only) to the Respondents towards the consideration of the said flat and has failed to pay the balance consideration as per the payment schedule, the abovesaid contention remains unchallenged and unshaken on record, therefore, MahaRERA has no reason to disbelieve the same.

16. In view of the aforesaid explicit provision of Section 19(6) of the said Act, MahaRERA is of the view that the Respondent Nos. 1 and 2 being allottees are liable to make payment in accordance with the terms and conditions of the said Agreement failing which the promoter Complainant is entitled to terminate the

said Agreement as per the provision of section 11 (5) of the RERA. In this case, the Respondent Nos. 1 and 2 have neither contested the complaint nor appeared for even a single hearing date, which shows the inability of the Respondent Nos. 1 and 2 to make the payment of the balance consideration in accordance with the terms and conditions of the said Agreement. Hence, MahaRERA is of the view that the Complainant promoter is entitled to seek reliefs under the provisions of section 11(5) of the said Act thereby invoking the cancelation clause as stipulated under the said Agreement.

17. Considering the provisions of Section 19(6) of the said Act, the Allottees, in the present case, i.e. the Respondent Nos. 1 and 2 are required to be directed to pay the balance consideration of the said flat alongwith interest thereon from the 18.12.2020 till the entire payment thereof.
18. On payment of the balance amount and the interest as stated in the forgoing paragraph, the Complainant shall execute Conveyance Deed in favour of the Respondent No. 1 and 2.
19. In the event if the Respondent Nos. 1 and 2 fail to make payment of the balance consideration and the interest amount awarded in paragraph No. 17 within the prescribed time stipulated therein, the Complainant shall proceed further for taking steps for getting the said Agreement cancelled and to refund the earnest money paid by the Respondent to the Complainant after deducting dues as per the said Agreement. Accordingly, I answer point No. 1 in the affirmative and hence, I proceed to pass the following order:-

ORDER

1. The Complaint is allowed as follows:-

- a) The Respondent Nos. 1 and 2 are directed to make payment of the balance consideration of the said flat alongwith interest thereon at the rate of State Bank of India's Highest Marginal Cost of Lending Rate (MCLR) plus 2% as per the provisions of Rule 18 of the Maharashtra Real Estate (Regulation and Development)(Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 from 18.12.2020 till the entire payment thereof within 30 days from this order.
- b) If the Respondent Nos. 1 and 2 fail to make payment of the balance consideration and the interest amount as directed in the forgoing paragraph, the Complainant is at liberty to start the process of cancellation of the said Agreement in accordance with the clause 4.2 of the said Agreement by refunding the earnest amount after deducting the liquidated damages in terms of the said Agreement. The Respondent Nos. 1 and 2 are also directed to co-operate with the Complainant by signing the Cancellation Deed.
- c) The Respondent Nos. 1 and 2 are also directed to pay the cost Rs.20,000/- to the Complainant towards expenses of this complaint.

RAVINDRA
PADMAKARAO
DESHPANDE

Digitally signed by
RAVINDRA PADMAKARAO
DESHPANDE
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(Ravindra Deshpande)
Member II, MahaRERA

Date : 11.02.2025