BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

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

Coram: Ravindra Deshpande,MEMBER II, MahaRERA

COMPLAINT NO.: CC006000000193253

1.RAMNATH SHANBHAG …COMPLAINANT

Vs

1.CHARMS PRIDE

2.JOHN MATHEW …RESPONDENT/S

MahaRERA Project registration No. P51700010110

FINAL ORDER

(30/01/2025)

Appearance of Complainant/s	Appearance of Respondent/s
Ld. Adv. Nilkanth Gharkar	CA Parag Shah

1. The complainant has filed the present complaint seeking refund along with interest as per section 18(1) of RERA Act and Compensation as per MahaRERA conciliation forum settlement.

2. In short, the facts of the complaint can be narrated as under:

3. It is the case of the complainant that both the parties have entered into an agreement and where the Respondent promised to give possession of flat to the Complainant on or before May 2017 whereas 31st March 2018 was registered on Maha Rera portal as date of completion of project by the Respondent. The Respondent didn't give possession by March 2018 and the Complainant had doubt

that there is some issue going on with the project and the complainant won't get the amenities mentioned in the broacher & flat with OC and drinking water. Thereafter, the Complainant approached the MahaRERA Conciliation Forum. Maha Rera Conciliation forum heard the matter on 10th August 2018, where both the parties settled the matter with Terms and conditions. Wherein the following roznama was passed:

"Both parties have mutually agreed to settle all the disputes before the conciliation forum with following terms and condition.

a) First Party and Second Party has mutually agreed and settled the dispute. Hence Lump sum of Rs. 2,00,000/- (Two Lakh Rupees Only) will be paid by Second Party on or before 31 August 2018 via RTGS to the First Party for delayed possession.

Account Details of First Party

Saving Account Number: 007115000005413 Bank Name: Thane Bharat Sahkari

Bank Ltd. IFSC Code: TBSB0000007

b) The Second Party has also agreed to give possession by 1st November 2018 with

potable water connection and with Occupation Certificate to the First Party. If the

date of possession goes beyond 1 November 2018, Second Party agreed to pay

sum of Rs.19,850/- per month for delayed possession to the First Party till the date

of possession with Occupation Certificate.

c) The Second Party also agreed that after handing over possession to the First

Party with Occupation Certificate it is the responsibility of Second Party to provide

potable water connection."

4. According to the Complainant, the Respondent only fulfilled point 'a' of the agreed terms & conditions of settlement. The respondent has paid Rs. 19,850/- for only 6 months (that too not regularly) and thereafter Neither gave the possession of the flat with OC and water connection as mentioned in settlement nor given Rs. 19,850/- for delayed payments. It is also submitted that till 1st

Jan 2024 interest for delayed possession was not given to the complainant as per settlement i.e. Rs. 19,850 * 57 months = Rs. 11,31,450/- (Eleven Lakhs Thirty-one Thousand Four Hundred and Fifty Rupees).

5. The respondents uploaded their reply and contested the present complaint. The defence case of the respondent is as under:

6. According to the Respondents, the Respondent No. 1 is the promoter and developer of the project named as "CHARMS MEADOWS PHASE 1" located near Asangaon Railway Station (E) – 421601 and in the year 2014, the Complainant has booked a flat no. B-3/201, LILY on the 2nd floor admeasuring 564 sq. ft. carpet area in the said project. Respondent No. 1 is reputed developer and has constructed many other well-known projects by adhering to all the rules and regulations levied upon the developers by the concerned authorities. Respondents submitted that the Commencement Certificate for construction of the said project was received on 17th November 2013 from the Gram Panchayat of Asangaon, Sahapur. On 31st May 2017, both the parties have entered into Agreement for sale for total consideration of Rs. 23,02,685 before the sub registrar of Sahapur. It is submitted that the project was completed in all aspects in the year 2017 itself, still Respondent has registered the project in the MahaRERA after the enactment of RERA Act, 2016 bearing project no. P51700010110. The Respondents submitted that Completion Certificate for the said project was obtained by the Respondent No.1 on 16/06/2017 bearing number 2433/201. It is also submitted that it is mentioned in point no. 13 of the commencement certificate that the Completion Certificate has to be obtained from the Gram Panchayat of Asangaon and thereafter the said project will be deemed as completed in all aspects and same was acknowledged by the Complainant at the time of entering into agreement for sale. The Respondents then started offering possession to all the customers in the project during the year 2017-18. However, the Complainant was reluctant to take possession citing the reason of uninterrupted water supply and started demanding Occupation certificate of Town planning and later approached MahaRERA for the same.

7. According to the Respondents, water scarcity at the project location is a known issue at all authority level and same was conveyed to the Complainant by Respondents and which has been also acknowledged by the Complainant by entering into registered Agreement for sale. Respondents have responsibly completed all the possible arrangements after co-ordinating with the authority to get

water to said project members i.e. 13 bores were dug, a pipeline connection from an adjacent source was laid as advised by the Gram Panchayat. All the purchasers except the Complainant have taken the possession in the year 2017-2018 itself and are staying happily with available water sources and never complained about any kind of scarcity. The Complainant was aware of such fact at the time of entering into agreement for sale. Water scarcity at the project location is a very well-known issue and it is the issue from local authorities. The Complainant has filed present complaint and demanded Occupation Certificate from Town Planning Authority and interest till OC is obtained. The Respondents were not aware about the norms that the Occupation Certificate was made mandatory after 2019 and before that the Certificate from the Gram panchayat was also considered as a Completion Certificate and hence the Respondents started making payment after conciliation amounting to Rs. 3,38,950/- This is a huge amount paid by Respondents considering the total value of the flat but later after knowing about the norms of OC, Respondents stopped making payment immediately.

8. According to the Respondents, all the requirements of the members of the society and project are fulfilled & Completed in all aspects through the Gram panchayat Completion Certificate like water connection, electricity etc, then why shall Respondents are being held liable to compensate the complainant and why Respondents need to obtain OC from Town Planning authority. The RERA authority has accepted that project is completed in all aspects by accepting the form 4 i.e. Architect Certificate. The Complainant has not paid Rs. 58,134 of flat cost, Development charges of Rs. 39,120/- and Grill Charges of Rs. 40,000/- against the flat yet. The demand letter for same was sent on 18/06/2017. The Respondents have made various email communication to the Complainant for possession of their flat subject to payment of all the pending charges along with interest for the delay, but the Complainant never responded to the same. The Complainant does not define any violation of the RERA act, 2016 and hence, there is no merit in this case. Respondents requested to direct complainant to make payment of all dues towards the said flat along with interest till date and direct complainant to accept the possession of flat and withdraw this complaint. Respondents also requested compensation for mental torture and cost of complaint.

9. The Complainant has uploaded a rejoinder & written submissions and contended that he had booked a flat in Charms Meadows (Project Registration Number: P51700010110) for the value of

Rs.23,02,685/- in 2014 based on the advertisement by Charms Pride group and was allotted flat B-3/201 in building Lily. The Complainant has duly made payments towards the flat between 31st October 2014 and 7th July 2017 amounting to Rs.24,89,415/- including registration and stamp duty, as and when directed by the respondents via demand drafts sent by post. Since the respondents failed to give possession of the flat by May 2017 as stated in clause 11 of the Sale Agreement, the Complainant has approached the MahaRERA conciliation forum on 10th August 2018. The forum directed the respondents to pay a lump sum of Rs.2,00,000/- and a monthly compensation of Rs.19,850/- for delayed possession beyond 1st November 2018 till the date of possession with OC as agreed by the respondents. In line with this, the respondents till date have paid a total of Rs.3,38,950/- consisting of the initial lump sum compensation and 7 inconsistent monthly payments. The Complainant highlighted that the purpose of filing this complaint is the violation of the MahaRERA Conciliation forum settlement, by the respondents by discontinuing the compensation before intimation of the Occupation Certificate. Mr. Soudagar, MahaRERA Conciliator 1 had recognized this non-compliance by the respondents and directed to report the same. The respondents claim in point 14 of their reply, that they stopped payments after realizing that OC is mandatory after 2019. But till September 2019 there was no communication regarding the possession of the flat via post as stated in clause 34 of the Sale Agreement nor via email. If such was the case, then the respondents should have at least intimated the Complainant and the MahaRERA conciliation forum. As the payments were abruptly stopped without any communication, the Complainant contacted Charms Pride group on multiple occasions through calls and WhatsApp. Each time Respondents given an excuse for the delay and were assured that the payments would be made soon. The respondents claim to have sent the demand letter for pending dues in point 17 of their reply. The same has not been received by the Complainant nor is the letter present in the Annexure G submitted by the respondents. The last demand letter was received via post on 20th June 2017. Since the Complainant did not receive intimation regarding the OC nor received the delayed payments that were being assured, then Complainant sent an email on 22nd February 2020, to which the respondents replied with the status of OC and the outstanding dues towards the flat on 12th March 2020. This is the first communication regarding the OC as claimed otherwise by the respondents in point 18 of their reply by providing only a part of the email conversation. The respondents have clearly acknowledged in their email that they did not have OC from any authority when the Complainant approached MahaRERA forum but

portray their unawareness and shock in point 13 of their reply. The Complainant requested that the OC received for the project be shared and settlement dues pending by the respondents till the date of first intimation as stated above in point 10, be adjusted in the amount to be paid from the Complainant, so that Complainant could take immediate possession of the flat. There was no reply from the respondents, nor was the OC provided. The Complainant have even visited the respondents' Hiranandani and Cadbury offices in Thane to settle the same and take possession. Each time the respondents were unable to produce the OC. If the respondents are claiming to be unaware of the norms during settlement and realized, it later then why did they assure to pay the delayed dues when complainant contacted them over the period of September 2019 to February 2020. The respondents also, in their email on 12th March 2020, acknowledge the fact that as per MahaRERA settlement, dues are yet to be paid. The Complainant has been eagerly waiting for possession of the flat since 2017 and have contacted and followed up with the respondents on numerous occasions through multiple modes. Apart from mail communication, there have been no emails as repeatedly being claimed by respondents throughout their reply. The respondent is delaying the whole process by not communicating clearly and by not appearing for Hearing 1 and 2. Respondent has replied with incomplete facts along with submitting incorrect attachments to misguide this Authority. This speaks to the intent of the respondent to evade paying compensation directed by the MahaRERA Conciliation forum. The respondents claim in point 12 of their reply that there are no complaints from other purchasers of the project and are living happily. This is far from reality where the current occupants are facing multiple issues such as water scarcity, no proper roads, electricity bills unpaid by respondents, etc. and have made multiple complaints regarding them to the respondents. The respondents have not yet provided or developed the amenities as advertised during the sale of the flat and as mentioned in the agreement. As on 13th January 2024, the clubhouse, gym, garden, township roads etc. are not in completed state. The advertised township of 13 buildings, currently has only 2 buildings without proper roads and security. The respondents have violated section 12 of RERA Act by incorrect or false advertisement. The respondents state in point 5 of their reply that the commencement certificate is issued by the Gram panchayat, and it is in accordance with the order appeal number provided from Collector. If the respondents claim to already have the OC before 2019, then why have they submitted an application for the Collector Completion Certificate on 16 June 2023.

10. The Complainant has filed written notes of arguments and contended that as per the Consent Agreement dated 10thAugust, 2018, it becomes a prerequisite now for the Respondents to provide a valid Occupation Certificate and a potable water connection for the Complainant to comply with his obligations and accept a peaceful possession of the premises. Thus, bogus stance by the Respondents of providing a generic tax receipt from gram panchayat and pressing it as an Occupation Certificate must be viewed strictly. Complainant submits that in no manner whatsoever, such generic tax receipt from gram panchayat can be equated with Occupation Certificate. Complainant seeks to draw this Hon'ble Authority's attention to paragraph 14 and paragraph 17 of the Respondent's reply. In the said paragraph 14, the Respondent is accepting its casual approach in the instant project, wherein it mentions that it was unaware of relevant regulations that valid occupation certificates are mandatory for project completions. Further, in paragraph 17, it falsely mentions that it has been demanding balance payments from the Complainant since 2017, however, they have annexed an email copy of such demand only as early as 12/3/2020, that is post execution of the Consent Agreement. Complainant requests this Hon'ble Authority to take serious views of such negligence and malpractices by the Respondents. Thus, Complainant seeks refund of the entire invested amount along with stamp duty and government charges borne by the Complainant. Complainant submits that he is entitled for interest on the said amount, calculated at 21% p.a., the same interest amount mentioned for dues in the registered agreement between the parties on page 12, clause 8 of the registered document. "Schedule B", wherein the payments released by the Complainant are mentioned date and slot wise, and appropriate interest amount is calculated in its adjacent tabular column. Complainant submits that the said Schedule B is based on same computation mentioned by the Complainant in its rejoinder with title "Payment Proof with Receipt Number". The Complainant is using the same data for effective computation of interest dues upto July, 2024. Complainant states that he raised the issue of withdrawal from the project and refund of the entire amount at the earliest instance as rightly mentioned by the Complainant in 'Form A' filed before this Hon'ble Authority. Also, it is the very crux of the issue since Respondent has failed to deliver possession with Occupation Certificate, potable water connection in lieu of the Consent Agreement.

11. The Respondent has filed written notes of arguments and contended that the Complainant had pending dues towards the consideration of the Apartment, which is failed to pay as per the terms in

the Agreement for sale. The Respondent has offered to the transfer the possession of the apartment to the complainant. The Complainant refused to accept the possession of the apartment as well as failed to pay the pending dues towards the consideration of the apartment even after multiple reminders. It is also contended that OC for the project was received from Asangaon Gram Panchayat on 16th June 2017 bearing number 2433/201. The Occupancy Certificate was issued by the authorities as stated and directed in the Commencement Certificate. The Occupancy Certificate for the project was approved by the ADTP on 16th October 2023. The same authority verified that the project was complete, and the earlier Occupancy Certificate was also correct and valid. The Respondents had received all the necessary approvals and permissions in respect to the project. Therefore, dismissed the complaint.

12. Heard both the parties, Complainant submitted that he had booked the flat in the month of May 2014 and paid Rs. 1 Lakh on 21/10/2014. Total consideration of the flat was Rs. 23,02,685/-. He purchased the flat B wing-204 between 31/10/2014 to 07/06/2017 he paid Rs. 24,89,415/- including registration and stamp duty. According to Complainant he has paid Rs. 96634/- towards stamp duty, there was conciliation on 10/08/2022 and Respondent was directed to pay Rs. 19850/- per month till receiving the possession of the flat. It is submitted that amount paid by the Complainant to Respondent be refunded with interest as per section 18 (1) of RERA Act. The Respondent submitted that this complaint was filed for delayed possession and Compensation. The complainant is now asking for a refund without amending the complaint. It is also submitted that CC was received on 17/11/2013. The flat was purchased in the year 2014. The agreement was executed on 31/05/2017. The Project was completed in the year 2017 and Occupation Certificate from gram panchayat was received on 16/06/2017. It is submitted that point no. 14 of Commencement certificate states that CC should be received from gram panchayat. OC norm for obtaining from township was amended in the year 2019. Form no. 4 is already submitted and accepted by MahaRERA. Hence, technically OC is received, and project is completed. However, the complainant has not taken possession. It is submitted that amount of RS. 2,57,254/- is due towards the flat cost, the development cost, the maintenance and green charges. It is also submitted that the Complainant has claimed issue relating to water scarcity. This issue was already clarified in the clause no. 32 of the AFS. The complainant should pay the balance amount and take the possession without any contest.

13. Considering the rival contentions of the parties, 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 for relief sought?	Partly Affirmative, The Complainant is entitled for refund Along with interest
2	What order?	As per final order

Reasons as to point nos. 1 to 2

As to Point no.1

15. It is seen that initially in the original complaint, the Complainant was seeking possession with OC & portable water connection along with interest or refund of whole amount invested including Stamp duty & Registration, Service tax along with interest. However, during the course of proceeding the Complainant opted for second prayer of refund along with interest from the date of payment as per section 18(1) of RERA Act and compensation as per the MahaRERA conciliation forum settlement. The Respondent raised objection and submitted that complainant is asking refund without amending the complaint. In my opinion relief of refund along with interest from the date of payment as per section 18(1) of RERA Act can be considered because it was mentioned in the original complaint by the Complainant.

16. The Complainant contended that as per the Consent Agreement dated 10thAugust, 2018, Respondents failed to provide a valid Occupation Certificate and a potable water connection. Therefore, the complainant is seeking refund along with interest as per section 18(1) of RERA Act and Compensation as per MahaRERA conciliation forum settlement. The Respondent contended that Complainant refused to accept the possession of the apartment as well as failed to pay the pending dues towards the consideration of the apartment even after multiple reminders. It is also contended that OC for the project was received from Asangaon Gram Panchayat on 16th June 2017 bearing

number 2433/201. The Occupancy Certificate was issued by the authorities as stated and directed in the Commencement Certificate. The Occupancy Certificate for the project was approved by the ADTP on 16th October 2023. The same authority verified that the project was complete, and the earlier Occupancy Certificate was also correct and valid. The Respondents had received all the necessary approvals and permissions in respect to the project.

17. I have gone through Exhibit A uploaded by the Respondent as Occupancy Certificate, but it is clearly seen that it is a Tax receipt provided by gram panchayat dated 16th June 2017. It is also seen that the Respondent applied for OC on 16/06/2023 and application for OC is attached by the Respondent as Annexure C. It is evident that OC is not obtained by the Respondent till date and therefore, complainant wants to withdraw from the project and seeking refund of paid amount along with interest. It is seen that the complainant has paid Rs. 23,02,685/- to the respondent towards consideration of the amount of suit flat and paid Rs.1,38,230/- towards stamp duty & registration charges. In my opinion, the respondent is require to refund the amount paid by the complainant towards consideration of the suit flat B-3/201 in building lily of Charms Meadows (excluding the amount paid towards taxes and other charges such as stamp duty, registration fees and such other amount paid to the statutory authorities). It is not on dispute that as per earlier settlement between the parties dated 10.08.2018 before conciliation forum the Respondent has paid Rs. 2,00,000/- initially and thereafter Rs. 1,38,950/- in total Rs. 3,38,950/- to the complainant. Therefore, while calculating interest on refund the said amount is required to be considered. Hence, I answer point no. 1 as the partly affirmative.

18. This authority has already directed the respondent to refund the paid amount along with interest. Therefore, in my opinion, the Complainant is not entitled for any further compensation. It is seen that the Respondent has failed to give possession of suit flat with OC till date and which constraints complainant to file present complaint. Therefore, it is necessary for the Respondent to pay the cost of the complaint. Hence, I proceed to pass following order:

O R D E R

1. The complaint is allowed as follows:

2. The complainant is allowed to withdraw from the project "Charms Meadows".

3. The respondent is directed to refund the amount of Rs. 23,02,685/- along with interest at the rate State Bank of India's Highest Marginal Cost of Lending Rate (MCLR) plus 2% p.a as per Section 18 of Real Estate (Regulations and Development) Act, 2016 and Rule 18 of the Maharashtra Real Estate (Regulations and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of interest and Disclosures on website), Rules 2017 from 01.08.2017 till actual realisation of the refund amount.

4. The earlier settlement amount of Rs. 3,38,950/- paid by the Respondent should be considered while calculating interest.

5. The respondent is directed to pay Rs.20,000/- to the complainant towards costs of the complaint.

RAVINDRA PADMAKARAO DESHPANDE

Digitally signed by RAVINDRA PADMAKARAO DESHPANDE
Date: 2025.01.30 17:12:50 +05'30'

Ravindra Deshpande
MEMBER II, MahaRERA

Date: 30.01.2025