

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

1. Complaint No. CC006000000193052

Yogesh Saraf Complainant/s

Versus

Mateshwari Altura Respondent/s

Along With

2. Complaint No. CC006000000193467

Mrs. Bhakti Bhaskar Walve Complainant/s

Versus

Paresh Babulal Patel Respondent/s

Along With

3. Complaint No. CC006000000193483

Sachin Mohan Patil Complainant/s

Versus

Paresh Babulal Patel Respondent/s

Along With

4. Complaint No. CC006000000197297

Paras Raghunath Shinde Complainant/s

Versus

Paresh Patel Respondent/s

MahaRERA Project Registration No. P51700010188

Coram: Dr. Vijay Satbir Singh, Hon'ble Member – I/MahaRERA

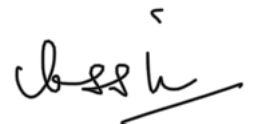
The complainants appeared in person.

CA Ashwin Shah appeared for the respondent.

ORDER

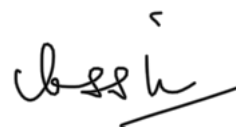
(Monday, 24th January 2022)

(Through Video Conferencing)



1. The complainants above named have filed these 4 separate complaints seeking directions from MahaRERA to the respondent to refund the entire amounts paid by them along with interest / compensation for the delayed possession under the provisions of section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of their respective flats in the respondent's registered project known as "**Mateshwari Altura B and C Wings**" bearing MahaRERA registration No. **P51700010188** located at Dombivali, Dist. Thane.
2. The 3 complaints at sr. no. 1 to 3 were transferred to this Bench from Hon'ble Chairperson, MahaRERA on 14-07-2021 and accordingly the same were clubbed together along with the subsequent complaint at sr. no. 4 and were scheduled for hearing on 02-08-2021, as per the Standard Operating Procedure dated 12/06/2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions, if any. Accordingly, both the parties appeared and made their submissions. During the course of said hearing, the complainants submitted that they are not willing to explore the possibility of an amicable settlement through MahaRERA Conciliation Forum. Hence, they requested to list these complaints for regular hearing.
3. Accordingly, these complaints were scheduled for hearing on 01-09-2021, when both the parties appeared and made their submissions. After hearing the submissions of both the parties, the following roznama was recorded:

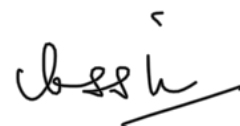
"Both the parties are present. Heard the parties. The respondent has raised preliminary objections that the complainants have not filed these complaints in Form A or B following the Rules. However, the



complainants stated that they are ordinary citizens and not well versed with the provisions of MahaRERA Rules. One of the complainants also refer to an article in Time of India saying that they have done whatever they told and also, they are not aware of these technical issues, which will unnecessary delayed the litigation. The respondent seeks interim order. The same will be passed in these complaints. List the matter on 5-10-2021. The respondent is allowed to file its reply within a period of 10 days from the date of interim order”.

4. The MahaRERA thereafter has perused the record and found that though the complainants have not filed these complaints as per prescribed format, however, they have sought specific reliefs towards refund along with interest and compensation alleging violation of section 18 of the RERA. The MahaRERA further noticed that the complainants have uploaded the crucial document mandated under section 18 of the RERA i.e., agreement for sale. Hence it was felt that passing of the interim order would lead to further delay in deciding these complaints which are filed before the MahaRERA in the month of March 2020.
5. Hence, these complaints were again listed for further hearing on 5-10-2021, when both the parties appeared and made their submissions and thereafter the following roznama was recorded in these complaints –

“Sr. No. 1 - “Both the parties are present. Heard the arguments. The respondent wanted an interim order on the technical issues pointed out by it that the complaint was not filed in proper format. It was clarified that the complainant is ordinary citizen who is not well versed with the process of filing of a complaint. Hence, he cannot be denied justice, only because of it is not in proper form. On request of the respondent, 10 days’ time is granted to it to file its reply. After that one-week time is

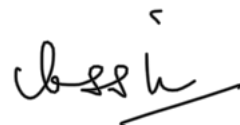


granted to the complainant to file the rejoinder if any. List the matter for hearing on 09/11/2021. The complainant further pointed out that he has taken home loan and paying EMI since 2014 and now he is knocking the door of MahaRERA for justice”

Sr. No. 2. – “Both the parties are present. Heard the arguments. The respondent wanted an interim order on the technical issues pointed out by it that the complaint was not filed in proper format. It was clarified that the complainant is ordinary citizen who is not well versed with the process of filing of a complaint. Hence, he cannot be denied justice, only because of this technical reason that the complaint is not filed in proper form. Hence, on request of the respondent, 10 days’ time is granted to it to file its reply. After that one-week time is granted to the complainant to file the rejoinder if any. List the matter for hearing on 09/11/2021”.

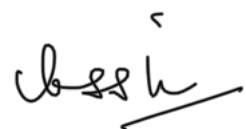
Sr. No. 3 - “Both the parties are present. Heard the arguments. The respondent wanted an interim order on the technical issues pointed out by it that the complaint was not filed in proper format. It was clarified that the complainant is ordinary citizen who is not well versed with the process of filing of a complaint. Hence, he cannot be denied justice, only because of this technical reason that the complaint is not filed in proper form. Hence, on request of the respondent, 10 days’ time is granted to it to file its reply. After that one-week time is granted to the complainant to file the rejoinder if any. List the matter for hearing on 09/11/2021”.

Sr. No. 4 - “Both the parties are present. Heard the arguments. The respondent wanted an interim order on the technical issues pointed out by it that the complaint was not filed in proper format. It was clarified



that the complainant is ordinary citizen who is not well versed with the process of filing of a complaint. Hence, he cannot be denied justice, only because of this technical reason that the complaint is not filed in proper form. Hence, on request of the respondent, 10 days' time is granted to it to file its reply. After that one-week time is granted to the complainant to file the rejoinder if any. List the matter for hearing on 09/11/2021.””

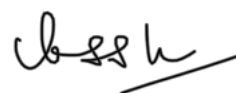
6. Pursuant to the said directions both the parties have filed their respective written submissions on record of MahaRERA. In the present case, the respondent has raised preliminary issue of maintainability of these complaint by raising the technical defects in these complainants. To which the complainants have filed their respective replies.
7. Thereafter these complaints were heard finally on 9-11-2021. The MahaRERA heard the arguments advanced by both the parties and also perused the available record.
8. It is the case of the complainants that they are allottees of this project registered by the respondent promoter. They have stated that they have entered into registered agreements for sale with respect to their flats on various dates from 2014 till 2018 and have paid substantial amounts to the respondent promoter. As per the said agreements, the respondent promoter was liable to handover possession of their flats between the year 2016 till 2019. However, they have not been handed over possession of their flats. The complainants have provided the following information in their complaints in support of their claim.

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Names of the complainants	Flat Numbers, Consideration, & Amounts	Date of registered AFS	Date of possession in AFS	Relief sought
Yogesh Saraf	C-306 Rs. 32,11,000/-	26-09-2014	31-12-2016	Refund with interest/compensatio
Bhakti Bhaskar Walve	605 Rs. 43,00,000/-	30-06-2015	31-12-2016	Refund with interest/compensatio
Sachin Mohan Patil	B-1006 Not mentioned	7-08-2018	31-03-2019 + 6 months grace	Refund with interest/compensatio
Paras Raghunath Shinde	805 Rs. 40,00,000/-	5-10-2018	31-01-2019	Refund with interest/compensatio

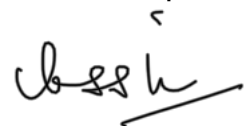
9. The complainants have stated that though they have paid substantial amounts as stated herein-above, the respondent promoter has failed and neglected to handover possession of their flats and the respondent has not obtained occupancy certificate for this project thus violating the provisions of section 18 of the RERA and hence the complainants are entitled to seek relief of refund along with interest and compensation for the delayed possession under the said section. The complainants further stated that they have bought their flats by availing the home loan and the respondent though has agreed to pay the Pre EMI to the Bank has failed to pay the same, due to which they suffered mental as well as monetary loss.

10. Further the complainant at Sr.No. 1 has submitted that since the possession was not handed over to him on the agreed date of possession, he filed Conciliation Request No. CR005000000021721 before the



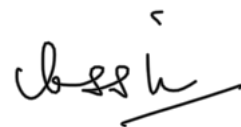
MahaRERA. In the said proceeding, the matter was settled between the parties and the respondent agreed to pay monthly rent of Rs. 6000/- p. m. Accordingly, he paid the said amount to him till the month of October 2019, but thereafter he failed to pay the same. Hence, he has filed this complaint in the year 2020 seeking withdrawal from this project due to further non-performance on the part of the respondent.

11. The complainant no. 2 has stated that she has been suffering since the year 2016. As a layperson, she is not aware of the law and hence she filed this complaint. Further, she has joint account with other co-purchaser and hence there is no issue about filing of the compliant by single co-purchaser. She has lost faith in the respondent. The complainant further stated that since the respondent has registered this project with MahaRERA, the complaint is maintainable before the MahaRERA.
12. The complainant at Sr. No. 3 has stated that he has booked the said flat 3 years back and till date he has paid an amount of Rs. 45,00,000/- to the respondent. This flat is booked with his mother, whose name is first in the agreement for sale. However, she is illiterate and hence he has uploaded her consent to file this complaint on her behalf. He further stated that the respondent has failed to handover possession of his flat in the year 2019, hence a meeting was convened with 8 to 9 allottees of this project, when the respondent has given in writing that from October 2019, he will pay the EMIs to the bank, if he failed to handover possession of their flats on or before September, 2019.
13. The complainant at Sr. No. 4 has stated that he booked the said flat 3 years back and till date he has paid an amount of Rs. 25,00,000/- in cash and the receipts for the same are uploaded along with this complaint. He has taken home loan of Rs. 15,00,000/- and till date he has paid Rs.



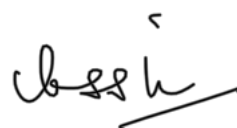
40,00,000/- to the respondent. He further stated that the said flat was jointly purchased by him along with his parents and due to their health issue, he has filed this complaint in his own name and the consent of the other co-purchasers is also submitted on record of MahaRERA.

14. In view of these facts, the complainants prayed to allow these complaints and grant refund along with interest and compensation for the delayed possession under section 18 of the RERA.
15. The respondent on the other hand has refuted the claims of the complainants by raising the general objections in these complaints. The respondent has stated that the extension is granted by the MahaRERA Suo-moto due to force majeure reasons of pandemic and he has not applied for any extension. Further, these complaints were not filed in proper format as prescribed under Rule 6 of Maharashtra Real Estate (Regulation and Development) ((Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017. These are not complete as no facts/ plea/ grounds / reliefs which are necessary are not properly stated in these complaints and hence the same are vague complaints.
16. Further there are other co-purchasers in the agreements for sale; however the said co-purchasers are not joined as complainants in these complaints. Hence if the money is to be refunded, the technical problem would arise as to whom the money is to be refunded.
17. Moreover, no receipts are provided by the complainant at Sr. No. 1 for the payment made by him and also nothing is mentioned about the compensation he has received from the respondent. He is withholding the said money which he should first release to the respondent and then can

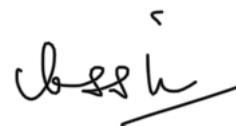


claim such relief under section 18 of the RERA as he cannot ride on two horses at the same time. Since the conciliation arrived at is failed between the parties, the same has nothing to do with the present proceedings. However, due to covid-19 pandemic further money could not be paid to the complainant as agreed before the conciliation.

18. As far as the newspaper articles published in 'Times of India' as relied upon by the complainant at Sr. No. 2, the respondent has stated that the said article is published in the month of January 2021 which has given stepwise details about filing of this complaint. The 'Times of India' has no jurisdiction to deal with the issue of filing of complaints before MahaRERA. Hence, on such vague complaint, the respondent is not liable to file the reply.
19. As far as complaint at S. No. 3, the respondent has stated that if the co-purchaser is illiterate, there is provision under the MahaRERA (General) Regulation ,2017 to file complaint in Marathi and MahaRERA has taken care of all such issues and hence the complainant cannot take undue advantage of his own wrong.
20. As far as complaint at Sr. No. 4, the respondent has raised similar arguments as stated for other complainants.
21. The respondent has also submitted that the transaction between the complainants at Sr. No. nos. 1 and 2 was done prior to RERA coming into force and he has relied upon the order passed by MahaRERA in case of Rajesh Balamwar v/s Modela Textile, wherein the MahaRERA has held that the transaction is done much prior to RERA and hence no relief was granted in favour of the said complainant.



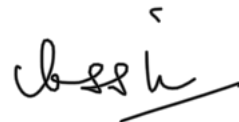
22. In view of these facts, the respondent has therefore stated that since he is not provided with the complete set of complaints, he was not able to file the detailed reply in these complaints on merits. Hence, he prayed for dismissal of these complaints.
23. The MahaRERA has examined the submissions made by both the parties and also perused the available record. By filing these complaints, the complainants have approached MahaRERA seeking refund along with interest and compensation alleging the violation of section 18 of the RERA by the respondent as the possession has not been handed over to them on the agreed date of possession mentioned in the agreements for sale signed between them and the respondent.
24. The said claim agitated by the complainants has been denied by the respondent by raising the preliminary issue of maintainability of these complaints, mainly on the grounds that these complaints are not filed in proper format and no facts/ grounds/reliefs has been pleaded by the complainants and even the co-purchasers have not been joined as party to these complaints.
25. As far as these technical issues with regard to the complaint filed by the complainants, the complainants have clarified that as laymen they were not aware of the procedure for filing of the complaints before the MahaRERA and hence they could not file the same as per Rule 6 as cited by the respondent. The complainants further contended that they have obtained consent from the other co-purchasers for filing of these complaints in their names.
26. In this regard, the MahaRERA has perused the online complaints filed by the complainants along with the documents attached therewith. In all 3

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complaints the complainants have mainly sought refund of their money and have also uploaded the copies of agreements for sale. The supportive documents make it clear that the said relief is claimed by the complainants under section 18 of the RERA documents. The respondent being promoter of this MahaRERA registered project should have been aware of the basic information about his allottees and their status. By raising such technicalities, the respondent cannot shy away from the responsibility cast upon him under the provisions of RERA. Once he has signed the agreement for sale with the allottee, he is bound by the same, even though it is executed prior to RERA or after RERA.

27. The respondent has stated that the complaint is not filed under Rule 6 of the Maharashtra Real Estate (Regulation and Development) ((Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017. However, there is no provision under RERA which provides for any prescribed form of filing of the complaint before the Authority. Moreover, section 31 of the RERA clearly provides that any aggrieved person can file complaint with MahaRERA for violation of any of the provision of the RERA.
28. Even if the preliminary issues of maintainability of these complaints cited by the respondent is accepted for the moment, in that event also the MahaRERA has jurisdiction to regulate its own procedure. In this regard, the MahaRERA has perused the provision of section 38 of the RERA, which reads as under:

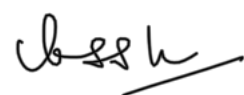
38. (1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.



(2) The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.

(3) Where an issue is raised relating to agreement, action, omission, practice, or procedure that—(a) has an appreciable prevention, restriction, or distortion of competition in connection with the development of a real estate project; or (b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely, then the Authority, may Suo motu, make reference in respect of such issue to the Competition Commission of India.”

29. The aforesaid provision of section 38 (2) provides that the MahaRERA has power to regulate its own procedure in compliance of principles of natural justice. Hence, if such power could be exercised by MahaRERA in that event, the MahaRERA has power to consider these complaints Suo moto on merits without considering the technical issues raised by the respondent.
30. In view of the aforesaid explicit provision under RERA, the MahaRERA do not find any merits in the preliminary issues raised by the respondent with regard to maintainability of these complaints. Hence, the same stands rejected.
31. Considering the claims of the complainants on merits, the MahaRERA has noticed that the complainants have submitted the registered agreements for sale on record of MahaRERA showing the fact that the agreed date of possession mentioned in the agreements for sale is over and still the



possession has not been handed over to the complainants.

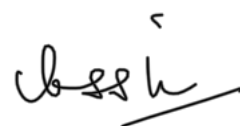
32. The respondent though filed the reply raising technical issues has not cited any valid reasons of delay in handing over possession of the flats to the complainants, though the complaints at sr. nos. 1 to 3 have been filed in the year 2020. Still the respondent kept silent on these complaints and not even bothered to file its reply on merits though the basic reliefs sought by the complainants are for refund. Hence, the MahaRERA cannot wait for an unreasonable period for reply of the respondent and keep the complainants allottees in such suffering situation when the respondent himself has admitted the proposed date of completion of this project as 31-12-2016 as disclosed on MahaRERA webpage.

33. In this regard, it is necessary to peruse the provision of 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, —

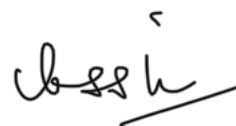
(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(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 allottee, 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:



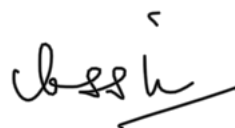
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”

34. The aforesaid explicit provisions under section 18 of the RERA clearly, provides that on failure of the promoter to handover possession of the flat to the allottee on the agreed date of possession mentioned in the agreement for sale, on demand of the allottee, if the allottee is willing to withdraw from the project, the promoter is liable to refund the entire amount to the allottee along with interest as prescribed under the provisions of RERA and the relevant Rules made there under.
35. Likewise, in the present case, since the respondent has failed to handover possession of the flat to the complainants on the agreed date of possession mentioned in the agreements for sale, the complainants are entitled to seek refund under section 18 of the RERA.
36. In view of above facts and discussion, the respondent is directed to refund the entire amount paid by the complainants towards the consideration of their respective 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 RERA and the Rules made there under from the date of payment till the actual realisation of the said amount to the complainants.
37. 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 and 18th May 2020 issued by the MahaRERA and the Notification/Order which may be issued in this regard from time to time.

38. As far as claim of compensation sought by the complainants no cogent documentary proof of mental agony has been produced on record of MahaRERA. Hence the same stands rejected.
39. With the above directions, all 4 complaints stand disposed of.
40. The certified copy of this order will be digitally signed by the concerned legal assistant of the MahaRERA. It is permitted to forward the parties a copy of this order by e-mail.



(Dr. Vijay Satbir Singh)

Member – 1/MahaRERA