BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

MUMBAI

1. Complaint No. CC006000000303010

Alka Rajendra Gaikwad, Rahul Rajendra Gaikwad,
Rajendra Sarjerao Gaikwad ... Complainants

Versus

M/s Damji Hari Infrastructure Private Limited ... Respondent

2. Complaint No. CC006000000303011

Vishnu Prabhu Hande, Savita Vishnu Ande ... Complainants

Versus

M/s Damji Hari Infrastructure Private Limited ... Respondent

3. Complaint No. CC006000000303014

Shrikant Shivaji Bagad, Shobha Yashwant Sonawne (Bagad) ... Complainants

Versus

M/s Damji Hari Infrastructure Private Limited ... Respondent

4. Complaint No. CC006000000303015

Ram Laxminarayan Bhat, Gouri Ram Bhat ... Complainants

Versus

M/s Damji Hari Infrastructure Private Limited ... Respondent

MahaRERA Project Registration No. P51700010181

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

Ld. Adv. Devkhile appeared for the complainants.

None appeared for the respondent.

ORDER

(Friday, 13th December 2024)

(Through Video Conferencing)

1. The complainants above named have filed these 4 separate online complaints

before the MahaRERA on 18-10-2022 (sr. nos. 1 and 2), and on 19-10-2022 (sr. nos. 3 and 4), mainly seeking directions from MahaRERA, to the respondent – promoter, for *refund along with interest and compensation (as per the amendment applications. However, initially, the complainants sought possession of their flats along with interest and compensation)* as prescribed 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 (as mentioned in the table below at para-no.5- hereinafter referred to as the said flats) in the respondent's registered project known as "**PENTAGON ENCLAVE**" bearing MahaRERA registration No. **P51700010181,** located at Shahapur, Asangaon (CT), District Thane. (hereinafter referred to as the said project).

2. These complaints were clubbed together being filed with respect to the said project and were heard by the MahaRERA on several occasions and finally on 24-09-2024 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. On the said dates of hearings, the complainants have appeared and made their respective submissions. However, despite the notices of the said hearings, the respondent remained absent. The MahaRERA heard the submissions of the complainants and also perused the available record.

3. After hearing the arguments of the complainants, the following Roznamas were recorded in these complaints: -

<u>On 02-07-2024:</u>

"The complainants are present. The respondent is absent. The respondent is directed to file its reply to these complaints within a period of 4 weeks i.e. by 30-07-2024. Further 4 weeks' time i.e. till 27-08-2024 is granted to

the complainant to file a rejoinder to the said reply. The details of the flat booked, agreement for sale, date of possession, total consideration and consideration paid are as per the table given below -

Sr. No. *Complaint NO.*	*Flat Details*	*Date of AFS* *Possession Date*	*Total Consideration And Consideration Paid*
CC006000000303010	*flat no. 404*	*16/03/2017(AFS)* *on or before December 2018 (DOP)*	*Rs. 14,04,000/-* *Paid more than 90% of the consideration*
CC006000000303011	*flat no. 507*	*16/03/2017(AFS)* *on or before December 2018 (DOP)*	*Rs. 10,44,388/-* *paid* *Rs. 10,55,877/*
CC006000000303014	*flat no. 405*	*01/06/2017 (AFS)* *on or before December 2018 (DOP)*	*Rs. 15,60,000/-* *paid* *Rs. 13,61,665/-*
CC006000000303015	*flat no. 307*	*08/11/2017 (AFS)* *on or before 31 day of December 2019 (DOP)*	*Rs. 10,80,000/-* *Rs. 08,99,754/-* *(Paid)*

As the dates of possession of December 2018 as per the agreements for sale signed in 2017 is over and the project is still incomplete, the complainants have prayed for refund along with interest and compensation for delay.

The complainants have earlier prayed for possession along with interest and compensation for delay but seek to file amendments in the complaints and now pray for refund along with interest and compensation for delay. The complainants are directed to upload the amendment applications in the complaints immediately. Accordingly, the respondent may file its replies to the amended complaints as per the schedule given above. Accordingly, these matters are adjourned to a suitable date after 27-08-2024 for final arguments by both the sides. List these matters for next hearing on 24-09-2024.

<u>On 24-09-2024:</u>

"The complainants are present. The respondent is absent.

In fact, the respondent has never appeared before the MahaRERA on both the previous hearings on 05-12-2022 and 02-07-2024. The respondent has also not filed any replies to these complaints despite directions although the project registration is valid. The arguments of the complainants and the details of the booking have already been recorded in the previous hearings. Therefore, the respondent is given one last chance to file its reply to the complaints along with written arguments within a period of one week i.e. by 01-10-2024. The complainants have already filed their written arguments. Therefore, they may file their rejoinder to the reply of the respondent within a further period of one week i.e. by 08-10-2024, even if the respondent does not file any reply / written arguments. In case the respondent does not file any reply / written arguments, the MahaRERA will be constrained to decide these matters ex-parte against the respondent on merits. Accordingly, these matters are reserved for orders suitably after 08-10-2024 based on the arguments of the complainants as well as the reply, rejoinder, written arguments and the documents uploaded in the complaints."

4. Despite specific directions given by the MahaRERA, the respondent has not

uploaded or filed its replies in these complaints on the record of the MahaRERA. Hence, the MahaRERA has perused the available records.

5. The complainants by filing these online complaints have prayed for refund along with interest and compensation as per their amendment applications. The information provided by them in their respective online complaints is as follows -

Complaint No. **Name of the Complainant**	**Flat Details** **Total Consideration** **Consideration Paid**	**Date of Agreement for Sale** **Date of Possession as per AFS**
CC006000000303010	flat no. 404 Rs. 14,04,000/- Rs. 14,23,209/- (including taxes)	16-03-2017 on or before December 2018
CC006000000303011	flat no. 507 Rs. 10,44,388/- Rs. 10,55,877/- (including taxes)	16-03-2017 on or before December 2018
CC006000000303014	flat no. 405 Rs. 15,60,000/- Rs.13,61,665/- (excluding stamp duty, registration charges, VAT)	01-06-2017 on or before December 2018
CC006000000303015	flat no. 307 Rs. 10,80,000/- Rs. 08,99,754 /- (excluding stamp duty, registration charges, VAT)	08-11-2017 31-12-2019

6. It is the case of the complainants that, after coming across the advertisement of the said project, they visited the site office (on or about 2015) of the said project for enquiry regarding the project. The respondent had not registered the project under RERA at the beginning of the said scheme, however it got

registered subsequently after commencement of the RERA in the year 2017. Being convinced by the representation of the respondent, the complainants purchased their respective said flats in the respondent's said project. The complainants submitted that at the time of approaching the respondent for purchasing a residential flat, they had clearly expressed their intention to invest in such scheme which had various amenities, the complainants were in search of a kind of 'house' to have a calm and peaceful routine. It's of no use for the complainants, if there are no amenities as assured by the respondent. Accordingly, the respondent fully convinced the complainants as to how the said project is the right choice for the complainants. Therefore, complainants have completely relied on the assurances, promises and goodwill of the respondent. Accordingly, the agreements for sale were executed between the complainants and the respondent, for which the complainants have also paid substantial amounts to the respondent.

7. The complainants at sr. no. 3 additionally submitted that they had opted for option of subvention scheme + Furniture and the agreed consideration of flat i.e. Rs. 15,60,000/- was inclusive of the said scheme charges. Under this scheme, the complainants paid Rs. 15,400 of the property value as the down-payment. The remaining money was serviced by the bank directly to the developer in instalments. In return, the developer was to pay the interest incurred for the remaining amount till the construction completes. Under the said scheme the complainant has already paid an interest of Rs. 4,68,573/-. The complainants submitted that out of said amount, adjustment done as per respondent's ledger statement was Rs. 1,92,272 taxes + Rs. 88,002 against flat cost i.e., Rs. 2,80,274/-. Hence the respondent still has to pay an amount of Rs. 1,88,299/- which was paid by the complainants towards the interest to the bank. Furthermore, all the complainants relied upon clause 4 of the said agreements which specifically mentioned that time is the essence of this

agreement. However, the complainants have not been provided with the official possession of the said apartment even today and work of some phases and almost all the amenities were still pending. The respondent has not even constructed and completed 15% amenities as promised and mentioned in the brochure and in the said agreements for sale. After execution of the agreements the respondent continuously ignored to handover the possession of the said flats and failed to complete the amenities as assured. The complainants have also done much follow up with the respondent, questioning about the delay in completing the said project including construction of amenities, through telephonic communication and by visiting the site which was futile. After several reminders and requests, respondent has still failed to handover possession of the said flat.

8. The complainants submitted that the new extension dated 15-10-2021 granted to the respondent by the RERA was showing the completion date of the said project as December 2022. Therefore, the complainants seek compensation on the amounts paid by them. The complainants at sr. no. 4 additionally submitted that the respondent by its demand notice dated 01-03-2022 demanded an amount of Rs. 1,20,695/- for completion of plumbing work to which the complainant gave reply to said notice through its advocate, dated 14-03-2022, wherein the complainant strongly took objection for the default on the part of the respondent in handing over possession of said flat in the stipulated time. Therefore, in view of the said submissions and being aggrieved by the actions of the respondent, the complainants have filed these separate online complaints before the MahaRERA seeking interest for delayed possession till actual payment or realization thereof, compensation for mental agony and legal cost. The complainants at sr. no. 3 additionally prayed for interest on Rs. 1,88,299/- which was paid by the complainants towards the interest to the bank which was to be paid by the respondent.

9. The complainants have uploaded their amendment applications on 02-07-2024 on the record of the MahaRERA, seeking amendment in their prayers. They have amended their prayer seeking refund of the entire amounts paid by them along with interest till the actual realization of the said amounts, for compensation for mental agony and legal cost.

10. The complainants have also uploaded their written submissions on 30-07-2024 on the record of the MahaRERA, wherein the complainants have reiterated the submissions and averments as mentioned in their complaints. Additionally, they have also relied upon the judgment passed by the MahaRERA in the matter of Taher Saifuddin Sehorewala and another's vs. Damji Hari Infrastructure Pvt. Ltd. The facts in Tahir Sehorewala's case were similar to the present case, as the subject flat in the case of Tahir Sehorewala's case was in the same project and the agreement for sale was executed on 17-06-2017. In Paragraph 7 of the said judgment, the MahaRERA observed that, at the time of agreement they were assured possession of the flat by December 2018, At the time of filing of the complaint, the revised proposed date of completion was 31-12-2022, which as on date stood extended to 31-12-2023 and the further extended date of completion is 31-12-2024. Therefore, from the documents on record, it is evident that the said project is inordinately delayed, and complainants should not suffer for the delay solely attributable to the respondent. It has been almost eight years but the said project is still nowhere near completion, as the extended date of completion as set out by the respondent is 31-12-2024. Furthermore, in the case of Arifur Rahman Khan vs DLF Southern Homes Pvt. Ltd, the Hon'ble Supreme Court held that there is no embargo on awarding compensation beyond the rate stipulated in the apartment buyer's agreement where handing over the possession of the flat has been delayed. Hence the interest at the rate of 24% should be applied in

the present cases as well.

11. In the present case, the MahaRERA has observed that the complainants have filed these online complaints before MahaRERA on 18-10-2022 (sr.nos. 1 and 2) and on 19-10-2022(sr.nos. 3 and 4) mainly seeking refund along with interest and compensation for the delay (amended prayers). However, till date the respondent has not bothered to upload its replies in these complaints, though these complaints were visible to the respondent in its project login. Even as per the SOP dated 12-06-2020, the respondent was liable to upload its replies in digital form in these complaints. However, till date the respondent has not complied with the said direction. Furthermore, though the notices for virtual hearings have been duly served upon it, however the respondent failed to appear for the said hearings. Further, on the last date of hearing held on 24-09-2024, one week's time was granted to it to file its replies as a last chance. However, despite specific directions being issued, it has failed to upload any reply/written submission on record of MahaRERA. It shows that the respondent is not willing to contest these complaints. Hence, the MahaRERA has no other alternative but to proceed with the matter ex-parte against the respondent on merits.

12. The MahaRERA has examined the submissions made by the complainants herein and has also perused the available record. The complainants who are the allottees of the said project registered by the respondent, by filing these complaints under Section 31 of the RERA, have approached the MahaRERA mainly seeking reliefs under sections 18 of the RERA towards handover of possession along with interest and compensation (original prayers).

13. However, during the course of hearing held on 2-07-2024, the complainants sought to amend the prayer clause of their respective complaints from

"**possession along with interest and compensation"** to "**refund along with interest and compensation"**. Hence, during the course of hearing held on 2-07-2024, the respondent was directed to file its reply to the said amendment application filed by the complainants. However, despite specific direction given to the respondent, it has failed to file any reply to the same. Hence, the MahaRERA has no other alternative but to allow the said amendment application filed by these complainants, since both the reliefs sought by them fall within the ambit of section 18 of the RERA. Thereby, in these complaints, now the MahaRERA has to decide the substantive issue of refund along with interest and compensation sought by these complaints under section 18 of the RERA, on account of the delay.

14. The complainants have contended that as per the said agreements for sale signed with them on various dates (as mentioned in the aforesaid table at para-no.5), as per the said agreements for sale, the respondent has agreed to handover possession of the said flats to them on or before 31-12-2018 (in sr. nos. 1, 2 and 3) and on 31-12-2019(sr. no. 4). However, it has failed to do so. Hence, they have filed these complaints seeking reliefs under section 18 of the RERA. The complainants (as applicable) have also sought for direction to the respondent to pay the bank interest under the subvention scheme.

15. The respondent – promoter, as stated hereinabove, has neither appeared for the hearings held in these complaints nor has filed any reply to these complaints denying the aforesaid claims agitated by the complainants. Hence, all these contentions raised by the complainants as far as the execution of the said agreements for sale, dates of possession mentioned therein as well as the amounts paid by them in their respective complaints remain unchallenged and undisputed.

16. As far as the substantive claim of the complainants herein agitated in these complaints, the MahaRERA, has noticed that the complainants are seeking reliefs towards refund of entire amount, interest and compensation on account of delay. They have claimed that as per the agreements for sale dated 16-03-2017 (sr.nos. 1 and 2), 1-06-2017(sr.no.3) and 8-11-2017 (sr.no.4), the respondent promoter has agreed to handover possession of the said flats to them on or before 31-12-2018 (sr. nos. 1, 2 and 3) and on 31-12-2019(sr.no.4).

17. Hence, before dealing with the facts of these complaints, it is pertinent to examine the term "possession" as contemplated under section 18 of the RERA: - ***"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.

18. From the plain reading of section 18, it is very clear that, if the promoter fails to handover possession as per the terms of the agreement for sale or as the case may be, by the specified date therein, the allottee has a choice either to withdraw from the said project or to stay with the project. In case the allottee

chooses to stay in the project and take possession, he is entitled to claim interest for the delayed period of possession on the actual amount paid by him for every month of delay. Further, in case the allottee chooses to withdraw from the project, the respondent is liable to refund the amount paid by the complainant along with the interest.

19. Likewise, in the present case, the complainants herein are willing to exit from the said project and hence, are seeking refund of entire amount, interest and compensation hence, they have filed these complaints under section 18 of the RERA.

20. However, in the present case, as stated hereinabove, the respondent promoter, has failed to justify the delay in handing possession of the said flats to the complainants by filing reply to these complaints. However, even if the justification for the delay which has occurred in the project, is accepted by the MahaRERA hypothetically, the MahaRERA has noticed that the said agreements for sale was signed with the complainants at sr. nos.1 and 2 under the MOFA regime. Further, the respondent promoter is entitled to seek only 6 months extension as per the provisions of section 8(b) of MOFA in the date of possession mentioned in the said agreements for sale notwithstanding the fact that it is not mentioned in the agreements for sale, as it is provided under the said Act (MOFA). Considering the said 6 months period, as per the MOFA, the date of possession in the complaints at sr. nos. 1 and 2 gets extended by 6 months further i.e. from 31-12-2018 till 30-06-2019. Even on that extended date of possession the project was incomplete and the possession of the said flats was not handed over to the complainants at sr. nos.1 and 2. However, in complaints at sr. nos. 3 and 4 , the said agreements for sale were signed under the RERA regime , hence no such grace period as mentioned under MOFA is mentioned. Hence, in the said complaints at sr. nos. 3 and 4,

the respondent is not entitled to seek any grace period. However, on the extended date of possession on account of the MOFA (in sr. nos. 1 and 2) and the agreed date of possession (in complaints at sr. nos. 3 and 4), the respondent has failed to handover possession of the said flat to the complainants. It shows that the respondent has violated the provisions of section 18 of the RERA and hence, the complainants are entitled to seek reliefs towards refund along with interest under section 18 of the RERA.

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

22. As far as the relief sought by the complainants (as applicable) above towards the refund of the Pre-EMI's, the MahaRERA is of the view that the MahaRERA has no jurisdiction to try and entertain the disputes arising out of the tri-partite agreements signed by the parties under the subvention scheme. However, it is for the appropriate civil court to deal with such issues. Further, there are number of orders issued by the MahaRERA in various complaints filed by the allottees of different projects seeking reliefs under such tripartite agreement which have been rejected. Hence, in this case also the MahaRERA cannot take any divergent view and grant reliefs sought by the complainants. Moreso, the

said issue has also been dealt with by the Hon'ble Appellate Tribunal in its order dated 10-08-2022 passed in Appeal No. AT006000000010870 (Vinay Singh vs Kapstone Constructions Pvt Ltd). In the said Appeal, the allottee therein sought reliefs (under the tri-partite agreement signed under the subvention scheme) towards the directions to the promoter to pay the Pre-EMIs. In the said Appeal, the Hon'ble Tribunal has held that "***the said reliefs does not fall within the ambit of RERA, 2016. The Authority as well as the Adjudicating Officer have no competence to entertain , hear and decide the complaint containing such relief. The Authority as well as Adjudicating Officer have inherent lack of jurisdiction to hear and decide the said complaint , as it is contractual dispute***." Hence, the MahaRERA is not inclined to grant any reliefs to the said complainants with respect of the refund of the Pre-EMI as sought by them under the said Tri-partite agreement.

23. In addition to this, it is pertinent to note that the MahaRERA by issuing various orders, has declared the covid-19 pandemic period as force majeure factor which is beyond the control of the promoter. Accordingly, the one-year grace period is given to all the promoters which have registered their projects with MahaRERA. Furthermore, it is pertinent to note that the Hon'ble Bombay High Court by considering the lockdown restriction issued by the Central as well as the State Government on account of the said Covid-19 pandemic has issued various orders in Suo Moto PIL No. 1 of 2021 thereby extending the interim orders passed by it in various matters. Even, the Hon'ble Supreme Court of India by taking cognizance of the said epidemic has also passed various orders in Suo Moto Writ Petition (Civil) No. 3 of 2020 and has extended the limitation period from 15-03-2020 till 28-02-2022, thereby the said period was excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all the judicial or quasi-judicial proceedings. No doubt the said pandemic affected all sectors of the society

including the real estate sector. Keeping the same in mind, the MahaRERA has taken such a general decision by issuing said orders in the interest of all the projects registered with the MahaRERA. Hence, the promoter in this case, is also entitled to seek benefit of the said covid-19 pandemic while making the payments towards the interest amount. The said general decisions cannot be changed for this project nor any exception can be made considering the above.

24. In the present case, it is pertinent to note that there are various orders passed by the MahaRERA deferring such refund /payment of interest till date of completion of the project i.e. till the date of occupancy certificate is obtained. Such directions are issued by the MahaRERA mainly keeping the interest of the project and to ensure timely completion of the project. No doubt the main intention of the RERA legislation is not only to regulate but to ensure the development which will happen only when the project gets completed in a time bound manner. The diversion of funds during the implementation of the project would definitely affect the cash flow in the project and the possibility that the project may get further delayed. The same may result into further delay in possession of the flats to the homebuyers who seek possession of their flats. The provisions of sections 37 read with sections 11, 14 and 34 of the RERA empowers the MahaRERA to issue such direction to achieve the aim and object of the RERA. Hence, issuing such directions, may definitely not amount to the dilution of any other provisions of the RERA.

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

a) All these four complaints are partly allowed.

b) The claim of the compensation sought by these complainants stands rejected in view of the observations made in the aforesaid para-no. 21.

c) The claim of the complainants (as applicable) sought towards refund of the Pre-EMI's under the tri-partite agreement signed under the

subventions scheme stands rejected in view of the observations made in the aforesaid para-no. 22.

d) 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 realization of the said money to these complainants.

e) Needless to state here that the actual amount as provided under section 18 of the RERA means the amount paid by the complainants towards the consideration of the said flats only, excluding the stamp duty, registration charges and taxes etc. paid to the government.

f) However, in view of the mitigating circumstances beyond the control of the respondent promoter and also to ensure that the said project is not jeopardized due to the outflow of finances and is completed keeping in mind the interest of the other buyers of the said project at large, it is directed that the amounts of interest/refund along with interest shall be paid by the respondent promoter to the complainants after obtaining the full occupancy certificate.

g) The complainants are also directed to execute the cancellation deeds on receipt of payment of refund from the respondent-promoter.

h) With regard to the payment of interest to the complainant- allottees, 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.

26. With these directions, all four complaints stand disposed of.

(Mahesh Pathak)
Member – 1/MahaRERA