

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI

Complaint No. CC12401224

Mukesh Bhogibhai Darji

... Complainant

Versus

S.D. Corporation Private Limited

... Respondent

MahaRERA Project Registration No. P51800019658

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

Ld. Adv. Rohit M. Yadav i/b Adv. Bhavin R. Bhatia appeared for the complainants.

Ld. Adv. Kartik Joshi appeared for the respondent.

FINAL ORDER

(Order Pronounced on Wednesday, 15th October 2025)

(Matter reserved for orders on 02-07-2025)

(Through Video Conferencing)

1. The complainant above named has filed this online complaint before the MahaRERA on 24-12-2024 mainly seeking directions from the MahaRERA, to the respondent, to hand over possession; pay compensation; impose penalty on the respondent; pending the hearing and final disposal of the complaint not to create third party rights in the said flat, as prescribed under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA'), in respect of the booking of a Flat No. 1601 on the 16th floor admeasuring 560.80 sq. feet of carpet area (hereinafter referred to as the said flat), in the respondent's registered project known as "**Siennaa Wing B**" bearing MahaRERA registration No. **P51800019658** located at Plot/S.No. 840 A / 1, Taluka Borivali, Dist. Mumbai Suburban (hereinafter referred to as the 'said project').

2. This complaint was heard by MahaRERA on several occasions and the same was heard finally on 02-07-2025 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 the said hearings, and they were also informed to file their written submissions if any. On the said dates of hearing, both the parties appeared as per their appearances recorded in the Roznamas and made their respective submissions. The MahaRERA heard the submissions of both the parties as per their appearances and also perused the available record.

3. After hearing the arguments of both the parties, the following Roznamas were recorded in this complaint:-

i) On 27-02-2025 :

"The complainant is absent. The respondent is present. The prayers of the complainant are not clear. However, according to the respondent, the OC for the project was received in October 2024 and the complainant was issued the PDL and also informed to obtain the possession after paying the remaining consideration amount. The complainant signed a registered agreement for sale in December 2020 in the respondent's project for flat no. B-1601, wherein the date of possession is mentioned as June, 2023. The complainant is directed to upload an application in the complaint regarding the prayers within a period of one week i.e. by 06-03-2025. The respondent may file its reply to the said complaint (as per the application as directed above) within a further period of 4 weeks i.e. by 03-04-2025. The complainant may file a rejoinder to the said reply within a further period of 4 weeks i.e. by 01-05-2025. The matter is adjourned to a suitable date after 01-05-2025 for final arguments by both sides and as a last chance to the complainant. List the matter for next hearing on 15-05-2025."

ii) On 15-05-2025:

"Both the parties are present. The Roznama of 27-02-2025 is very clear and the

complainant has confirmed that the respondent has issued PDL sometime after receipt of OC and before filing of the complaint. However, the possession has not yet been obtained by the complainant on various grounds. The respondent may file its reply to the complaint within a period of 2 weeks i.e. till 29-05-2025. Further 2 weeks' time i.e. till 12-06-2025 is granted to the complainant to file a rejoinder to the said reply of the respondent. Both parties may ensure that the copy of the PDL as well as the communication after the issue of OC/PDL between the complainant and the respondent forms the part of the reply and rejoinder. The matter is adjourned to a suitable date after 12-06-2025 for final arguments by both sides. List the matter for next hearing on 19-06-2025."

iii) On 02-07-2025:

"Both the parties are present. The arguments of both the parties have already been recorded in the previous hearings and the matter was kept for final arguments today. However, the respondent has neither filed any reply to the complaint nor the complainant has filed rejoinder to the said reply. Therefore, the respondent may file its reply to the complaint within a period of one week i.e. by 9-7-2025. Further one week's time i.e. till 16-7-2025 is granted to the complainant to file rejoinder to the reply of the respondent. Admittedly, the OC for the project has been received in October 2024 and the PDL has also been issued to the complainant. However, neither the complainant has paid the final amounts as per PDL nor has obtained possession on the ground that the project is still incomplete. The respondent has contended that the date of possession mentioned in the agreement for sale of December 2020 is June 2023 and that the project was delayed due to covid pandemic. Accordingly, the matter is reserved for orders suitably after 16-7-2025 based on the arguments in the hearing and the reply, rejoinder and written submissions filed in the complaint."

4. Despite directions in the aforesaid hearing, both the parties have not uploaded any reply/rejoinder/written submissions on record. Hence, the MahaRERA has perused the available record.
5. The complainant has filed the present detailed complaint in hard copy through

dispatch on 28-03-2025, stating that the respondent is the promoter in respect of the said project. Pursuant to negotiations between the parties, the complainant agreed to purchase Flat No. 1601, admeasuring 560.80 sq. ft. of carpet area (i.e., 52.10 sq. mtrs.) on the 16th habitable floor (corresponding to the 12th floor as per the plans sanctioned by MHADA), along with one car parking space in the building known as "Siennaa Wing B" (hereinafter referred to as "the said flat"), forming part of the project known as "Siennaa," developed on the said project land. The parties executed a registered Agreement for Sale dated 23-12-2020 for a total consideration of Rs. 1,26,98,219/-. The complainant has made substantial payments amounting to approximately 95% of the total consideration, i.e., Rs. 1,25,28,462.63/-, inclusive of stamp duty, GST, MVAT, and other statutory levies, including stamp duty of Rs. 2,54,000/- and registration charges of Rs. 32,680/-, along with other miscellaneous expenses. The complainant submits that, while executing the said agreement post the Covid-19 pandemic, the respondent assured the revised date of possession as 30-06-2023, by extending the original date of possession from 30-12-2022, as recorded in Clause 9 of the said agreement. The said flat was jointly purchased with the complainant's late mother, Smt. Kamlaben Bhogibhai Darji, who expired on 21-04-2022. Upon her demise, the complainant, Mr. Bhogibhai Popatlal Darji, and Ms. Pallavi Ashish Rathod, being the only legal heirs, executed a registered *Deed of Release* dated 18-07-2023, thereby releasing all their respective rights, title, and interest in favour of the complainant. The complainant has addressed various emails to the respondent seeking compensation for the delay in possession and has stated that he has paid all instalments promptly as and when demanded in respect of the said flat. The complainant has, therefore, prayed for directions against the respondent to:

- i) Hand over possession of the said Flat No. 1601 on the 16th Floor along with car parking after completing the construction of the said building in all respects;
- ii) Pay compensation in the form of interest aggregating to Rs. 15,81,014/- for the delay in handing over possession within the stipulated period;
- iii) Take appropriate action against the respondent and impose penalty/fine and other consequential measures for various unfair trade practices and violations of the

provisions of the Real Estate (Regulation and Development) Act, 2016; and iv) Grant compensation and costs. Pending the hearing and final disposal of the present complaint, the complainant has further prayed for an interim direction restraining the respondent from creating any third-party rights in respect of the said Flat No. 1601.

6. The complainant has also filed an application for change of title on 12-08-2025, seeking modification of the prayers in the complaint. By the said application, which has been filed separately before MahaRERA, the complainant has prayed to amend the caption of the complaint from “Orders” to “Directions” and to list the complaint accordingly.
7. The respondent has not filed any reply to the complaint. However, the respondent, during the course of hearing has stated that as per the agreement for sale dated 23-12-2020 , the possession was to be handed over to the complainant on or before 30-06-2023. However, the project got delayed mainly due to the covid-19 pandemic. However, it has completed the said project and obtained OC for the same on 17-10-2024. Accordingly, it has offered possession of the said flat to the complainant immediately. However, the complainant has failed to obtain possession of the said flat by paying the outstanding dues. Hence, it has prayed for dismissal of this complaint.
8. The MahaRERA has examined the submissions advanced by both parties and has also perused the record available on file. The complainant, being an allottee of the said project, has filed the present complaint primarily seeking interest and compensation under the provisions of Section 18 of the RERA. The complainant has contended that, under the agreement for sale dated 23-12-2020, the respondent had agreed to hand over possession of the said flat to him on or before 30-06-2023. However, the respondent has failed to handover possession of the said flat to him on the said agreed date of possession. Hence, he has filed this complaint seeking reliefs

under section 18 of the RERA towards the possession of the said flat along with interest and compensation on account of the said delay.

9. The complainant in the online complaint has failed to cite any specific reliefs, which he is seeking in this complaint. However, in the complaint filed by him in hard copy, he has mentioned the aforesaid reliefs, which he is seeking in this complaint.
10. The respondent has assailed the aforesaid claims of the complainant, mainly on the ground that the present complaint is filed after OC is obtained and also after the possession delivery letter is issued to the complainant. Hence, the respondent has prayed for dismissal of this complaint.
11. Be that as it may, on bare perusal of the aforesaid submissions made by both the parties, the following observations are noteworthy in this complaint:
 - a) As far as the substantive issue of interest and compensation sought by the complainants, under section 18 of the RERA, the MahaRERA has noticed that admittedly, this complaint is filed on 24-12-2024 seeking the said reliefs. The respondent although has not submitted a copy of PDL issued to the complainant after obtaining OC on 17-10-2024, by filing any reply, the complainant during the course of hearing has admitted the fact that the respondent has issued the PDL to him.
 - b) Hence, before dealing with the facts of this complaint, it is pertinent to examine the term “possession” as contemplated under section 18 of the RERA, which reads as under:

“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, – (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes

to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

- c) 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, they are 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 promoter is liable to refund the amount paid by the allottee along with the interest.
- d) Likewise, in the present case, the complainant alleging the violation of the aforesaid provisions of section 18 of the RERA, has approached the MahaRERA mainly seeking interest and compensation on account of the delay. However, in the present case on bare perusal of the submissions made by the complainant in this complaint and the supporting documents submitted along with his complaint, it appears that the respondent has executed the registered agreement for sale with the complainant 23-12-2020 and has agreed to handover possession of the said flat to him on 30-06-2023. Admittedly on the said date, the possession was not handed over to the complainant. However, subsequently, the respondent has completed the said project and obtained OC for the same on 17-10-2024 and it has also offered possession of the said flat to the complainant admittedly(however, the date if not specified by both the parties). However, the complainant has not obtained possession of the said flat offered to him and has filed this complaint before the MahaRERA on 24-12-2024 seeking reliefs under section 18 of the RERA. Admittedly, the complainant has filed this complaint after OC dated 17-10-2024 and also after offer of possession.

- e) It shows that in the present case, on the date of filing of this complaint i.e. 24-12-2024, the complainant's flat was complete with an occupancy certificate. The possession of the said flat had already been offered to the complainant. The complainant has filed this complaint seeking relief towards interest and compensation for delayed possession of the said flat only on 24-12-2024, which was after completion of the flat and after offer of possession of the said flat.
- f) In this regard, the MahaRERA is of the view that to ascertain violation of section 18 of the RERA, there are mainly two criteria which are necessary to be examined viz. i) whether the promoter has failed to complete the said project or unable to give possession of the flat in accordance with the terms and conditions of the agreement for sale and ii) by the date specified in the said agreement. Hence, the cause of action as enumerated under section 18 of the RERA was not surviving on the date of filing of this complaint. Hence, the MahaRERA is not inclined to consider the claim of the complainant for interest and compensation for violation of section 18 of the RERA. If the complainant would have approached the MahaRERA seeking relief under section 18 of the RERA, when the cause of action was surviving for him in that event, the said claim of the complainant for interest could have been considered by the MahaRERA on merits.
- g) Moreover, it is pertinent to note that the claim of interest for delay or compensation for delay in possession under section 18 of the RERA only triggers when the promoter fails to complete the project or is unable to give possession as per the date specified in the agreement for sale. However, in this case, the complaint was filed after the receipt of OC for the said unit and also after offering possession of the said flat to the complainant. Thus, section 18 of the RERA is not left open to claim violation at any later point of time during the lifetime of the said project. The very essence of the said provisions of section 18 of the RERA is that the violation is evident on the date of filing of the complaint and not something that comes to notice at an unforeseeable date in the future. Hence, the MahaRERA prima facie feels that this complaint is not maintainable to seek reliefs under section 18 of the RERA.

h) Furthermore, it is pertinent to note that there are a number of orders passed by the Hon'ble Appellate Tribunal whereby the claim under section 18 of the RERA raised by the allottees has been entertained even after OC is obtained for the project. Such orders have been passed in the following matters viz:-

- i) Order dated 13-1-2021 passed in Appeal No. AT006000000021407 (Suryakant Jadhav and Anr vs Bellissimo Hi-Rise Builders Pvt. Ltd and Ors),
- ii) Order dated 5-05-2021 passed in Appeal No. AT006000000010452 (Rekha Sinha vs L & T.
- iii) Order dated 6-02-2023 passed in Appeal No. ATO06000000053302 (Neera Gupta vs L &T).

i) However, it seems that the aforesaid judgements /orders passed by the Hon'ble Appellate Tribunal have been stayed by the Hon'ble Bombay High Court in Second Appeals filed in the same. The said details are as under: -

- i) Order dated 23-11-2021 passed in Second Appeal No. 298 of 2021 (M/s. Macrotech Developers Ltd vs Mr. Suryakant Jadhav and Ors).
- ii) Order dated 08-07-2021 passed in Second Appeal (St) No. 12744 of 2021 (L& T Ltd vs Rekha Sinha). In the said appeal the Hon'ble Bombay High Court has admitted the said second appeal and framed the issue that "Whether, MahaRERA/ Appellate Tribunal retains jurisdiction under section 31 of the RERA in particular to enforce section 18 of the RERA in respect of a building after construction has been completed and OC received?
- iii) Order dated 15-01-2024 passed in Second Appeal (St) No. 29 of 2024 (L & T Ltd vs Neera Gupta). In the said matter also the same direction has been issued by the Hon'ble High Court as per sr. no. (ii) above.
- j) In view of these facts, in the present case, the MahaRERA cannot accept the contentions of the complainant that he can seek interest and compensation even after the OC has been received for the said project and after possession of the said flat is offered.
- k) Furthermore, by not obtaining possession of the said flat offered to him with OC dated 17-10-2024, the complainant has violated the provisions of section 19(10)

of the RERA. Hence, he is not entitled to seek any equity from MahaRERA.

- 1) In view of the aforesaid observations, MahaRERA does not find any merit in this complaint filed for seeking reliefs under Section 18 of the RERA. However, in compliance with the principles of natural justice, the respondent is directed to hand over possession of the said flat to the complainant, subject to payment of the outstanding dues towards the consideration of the said flat. It is further made clear by MahaRERA that the complainant shall not be liable to pay any interest on account of delay in making the said payments, since this complaint has been pending for adjudication before MahaRERA from 24-12-2024.

12. With these observations and directions, the present complaint stands disposed of.

