BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Complaint No. CC12501196

Deraiya Realtors Private Limited ... Complainant

Versus

1. Mr. Abhijit Ramesh Kekane
2. Mrs. Kalpana Ramesh Kekane ... Respondents

MahaRERA Project Registration No. P51800023015

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

Ld. Adv. Sanjeev Singh appeared for the complainant.

None appeared for the respondents.

FINAL ORDER

(Order Pronounced on Tuesday, 2nd December 2025)

(Matter reserved for orders on 24-09-2025)

(Hearing Through Hybrid Mode)

1. The complainant above named has filed this online complaint before the MahaRERA on 10-04-2025 mainly seeking directions from the MahaRERA, to declare the agreement as cancelled; execute a deed of cancellation and hand over original agreement to the complainant; or in the alternative pass an order declare that the complainant is entitled to market, advertise for sale and /or to sell the said flat and create third party in respect of the said flat; direct respondent to pay penalty to the complainant, 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. 202, adm. 664 sq.ft. RERA carpet area on 2nd floor in Wing-A, by the respondent allottees (hereinafter referred to as "the said flat") in the complainant's registered project known as "**NEHRU NAGAR GURUPRASAD CO-OPERATIVE HOUSING SOCIETY LIMITED**" bearing MahaRERA registration No. **P51800023015** located at CTS NO 12 PART, SURVEY NOS 229 AND 267, Taluka

Kurla, 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 24-09-2025 as per Circular no. 49 dated 12-09-2025 issued by MahaRERA for hearing of complaints through Hybrid Mode. Both the parties have been issued prior intimation of this hearing, and they were also informed to file their written submissions if any. On the said dates of hearing, the complainant appeared as per its appearances recorded in the Roznamas and made its submissions. However, despite notice, the respondents remained absent. The MahaRERA heard the submissions of the complainant as per their appearances and also perused the available record.

3. After hearing the arguments of the complainant, the following Roznamas were recorded in this complaint:–

i) **<u>On 13-05-2025 :</u>**

"First Hearing Matter"

"The complainant is present. The respondent is absent. The complainant desires that this matter be fixed for hearing on merits. Therefore, this matter is to be fixed for hearing on merits strictly as per seniority."

ii) **<u>On 24-09-2025:</u>**

"The complainant-promoter is present. The respondent-allottees are absent. According to the complainant, the complaint has been filed because the respondent-allottees are defaulters and have paid only 10% of the consideration amount as per the agreement for sale of March 2021. According to the complainant-promoter, 15 demand notices have been issued in 2021 and 2022 subsequent to signing of the agreement and pre-termination notice has also been issued on 17-08-2022. Further, the complainant-promoter issued a final termination notice on 17-03-2025 after which this complaint has been filed in April 2025. The respondent-allottees are not replying to any of the demand notices or the pretermination notice and have chosen to remain absent in the hearing today also despite receipt of notice. Therefore, the respondent-allottees are given one last chance to file reply to the complaint along with written submissions within a period of one week i.e. by 01-10-2025. The

complainant may file a rejoinder to the reply of the respondent within a further period of one week i.e. by 08-10-2025 even if the respondent-allottees do not file any reply/written submissions. In case the respondent-allottees do not file any reply/written submissions, MahaRERA will be constrained to decide this matter ex-parte against the respondent on merits. The complainant contends that all the notices mentioned during the hearing are part of the complaint. Accordingly, the matter is reserved for orders suitably after 08-10-2025 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. It is the case of the complainant that MHADA is the original owner of the land admeasuring 1334.32 sq. mtrs., together with then existing Building No. 40 of Nehru Nagar Guruprasad CHS Ltd. By an Indenture of Lease dated 01-07-1997, MHADA demised the said property in favour of the society, and by a Deed of Sale dated 01-07-1997, MHADA conveyed Building No. 40 to the society. Thereafter, by a Development Agreement dated 06-11-2009, read with a Supplementary Agreement dated 03-12-2010, the society granted development rights in respect of the said property to M/s. Amogh Sawant, who, along with his proprietorship firm M/s. Adit Enterprises, undertook redevelopment. The respondents purchased a flat in the proposed redevelopment project and paid Rs. 66 lakhs to M/s. Adit Enterprises. As M/s. Amogh Sawant failed to perform his obligations, the society, by notice dated 16-03-2015, terminated the development agreement and all ancillary documents. Subsequently, by a registered Development Agreement dated 14-03-2017, the society granted redevelopment rights to the complainant. The complainant has stated that, during the redevelopment, respondents approached them claiming adjustment of the Rs. 66 lakhs paid to the earlier developer. Although neither the complainant nor the society was a party to that transaction, in order to ensure smooth progress of the redevelopment, a mutual settlement was entered into. It was agreed that all documents executed between the respondents and the earlier developer stood

cancelled and would not bind the complainant or the society. Under the settlement, the complainant agreed to sell Flat No. 202 for a consideration of Rs. 1,15,00,000/-, of which Rs. 63,75,000/- would be adjusted as an ex-gratia concession towards the earlier payment. Respondents were required to pay the balance Rs. 51,25,000/- to the complainant. Pursuant thereto, the parties executed a registered Agreement for Sale dated 31-03-2021. Under the agreement, respondents were required to pay Rs. 20,50,000/- at the time of execution but paid only Rs. 5,12,500/-, and thereafter failed to pay any portion of the remaining Rs. 46,12,500/-, despite repeated demands. The complainant has further stated that the respondents had originally booked the flat without car parking from the earlier developer, and no car parking was ever agreed upon even during settlement. Clause 2.1 of the agreement clearly records that the flat is allotted without car parking, which was clarified in reply to respondents' email. The complainant has stated that construction of the building is complete, the occupation certificate has been obtained, and possession has been handed over to other flat purchasers. As the respondents failed to pay the balance consideration and take possession, the complainant issued a termination notice dated 17-02-2025, cancelling the agreement for sale. Accordingly, the complainant has prayed for: (i) a declaration that the agreement is cancelled;(ii) a direction to execute a Deed of Cancellation and return the original agreement;(iii) in the alternative, permission to market, advertise, and/or sell the flat and create third-party rights; and(iv) imposition of penalty on the respondents

6. In the present case, the MahaRERA has observed that the complainant-promoter has filed this online complaint before MahaRERA on 10-04-2025. However, till date the respondent-allottees have not bothered to file their reply to the complaint. Furthermore, though the link for virtual hearings on 13-05-2025 and 25-09-2025 have been duly served upon the respondents on their email address viz abhijeet.k17385@gmail.com" . However, the respondent-allottees have failed to appear for the said virtual hearings. Further, on the last date of hearing held on 25-09-2025, one week's time was granted to them to file their reply as a last chance. However, despite specific directions being issued, they have as failed to file any reply/written submission on record of MahaRERA. It shows that the respondent-

allottees are not willing to contest this complaint filed by the complainant-promoter. Hence, the MahaRERA has no other alternative but to proceed with this matter ex-parte against the respondent-allottees on merits.

7. The MahaRERA has examined the submissions made by the complainant-promoter and also perused the available record. In the present case by filing this complaint, the complainant (i.e. the promoter herein) has approached MahaRERA mainly seeking reliefs under sections 19(6), 19(7) and 11(5) of the RERA viz for directions to the respondent- allottees to pay the outstanding dues as per the registered agreement for sale dated 31-03-2021 along with interest or to come forward for execution of cancellation deed by permitting it to cancel the said agreement for sale dated31-03-2021 executed with the respondent-allottees. The complainant-promoter has mainly contended that the respondent allottees have not paid the outstanding dues as per the stage of the construction mentioned in the said agreement for sale. and have paid only an amount of Rs. 5,12,500/-, out of the total consideration amount of Rs. 51,25,000/-. It has also contended that despite sending several demand letters as per the stage of the construction in the said project; it has also issued its notice to the respondents on various dates between the year 2021-2022 as mentioned in the aforesaid para-no. 5 above and called upon the respondents to make the timely payments. However, the respondent allottees have failed to make the said payments to it. Hence, it has filed this complaint seeking reliefs as sought for in the complaint.

8. The complainant – promoter, although has claimed that it has served the copy of this complaint on the respondent allottees , it has not uploaded the service affidavit on record of MahaRERA. (through as email) and on 12-11-2024 through RPAD. Further, the complainant has submitted the service affidavit on record of MahaRERA on 28-11-2024. However, the notices for the said hearings have been duly served upon the respondents on their registered email addresses provided by the complainant. However, despite service of the hearing notices, the respondents have failed to appear for the hearings thereby citing valid reasons for non-payment of the outstanding dues. Hence, all these contentions raised by the complainant in this complaint against the respondent allottees remain undisputed and unchallenged.

9. Be that as it may, in the present case, admittedly, there is registered agreement for sale dated 31-03-2021 duly signed by both the parties whereby the respondent-allottees have agreed to make the balance consideration towards the said flat booked by them in the said project. However, despite receiving several demand letters issued by the complainant-promoter, the respondent allottees have failed to make the balance payment and they have paid only a meager amount of Rs.5,12,500/- (as per the online complaint) to the complainant out of the total consideration amount of Rs. 51,25,000/-. Hence, the present complaint seems to have been filed by the complainant promoter.

10. In this regard, the provision of section 19(6) of the RERA is required to be perused, which reads as under :

"19(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any."

11. It is also necessary to peruse the relevant provisions of section 19(7) of the RERA. The said provisions read as under:-

"19(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6)".

12. In view of the aforesaid explicit provisions of the RERA, the MahaRERA is of the view that the respondents being the allottees of the said project are liable to make payments in accordance with the terms and condition of the agreement for sale dated 31-03-2021 as provided under section 19(6) of the RERA. However, in case of any delay in making the outstanding payments, the allottees are liable to pay interest for the delayed payment. Also, in that event, the promoter is entitled to terminate the

agreement for sale signed with the allottee as per the provision of section 11 (5) of the RERA.

13. Admittedly, in this case, as stated hereinabove, the respondent allottees have neither appeared for the hearings held in this complaint nor have filed any reply to this complaint, citing any justified reason for non-payment of the outstanding dues and till date they have only paid meager amount towards the said booking (10%). However, in compliance of the principles of natural justice, the MahaRERA feels that one last opportunity needs to be granted to the respondent allottees to comply with the aforesaid statutory obligations cast upon them under the aforesaid provisions of sections 19(6) and 19(7) of the RERA.

14. In view of these facts, since the respondent-allottees violated the relevant provisions of section 19(6) of the RERA, they are liable to pay interest for the said delayed period of payment as provided under section 19(7) of the RERA.

15. In view of these facts, the following order is passed:-

    a. The present complaint is hereby allowed.
    b. In compliance of principles of natural justice, last opportunity is granted to the respondent-allottees to make necessary payment to the complainant towards the booking of the said flat as per the terms and conditions of the agreement for sale dated 31-03-2021 along with the applicable interest for the delayed period of payment at the rate prescribed under RERA and the relevant rules made thereunder i.e. Marginal Cost Lending Rate (MCLR) of SBI plus 2% within a period of 7 days month from the date of this order.
    c. With regard to the payment of interest by the respondent-allottees (as directed in aforesaid para-no. (b) above) to the complainant- promoter, the MahaRERA further directs that the respondent allottees are 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 (as applicable).

d. Failing to comply with the aforesaid directions at (b) above by the respondent-allottees, the complainant would be entitled to terminate the said agreement for sale dated 31-03-2021 in accordance with the terms and conditions of the said agreement for sale as per the provisions of section 11(5) of the RERA by exercising the forfeiture clause as mentioned in the said agreement for sale.

e. The said respondent allottees shall also be liable to execute and sign the registered cancellation deed for cancellation of the said agreement for sale dated 31-03-2021 within a period of 15 days once they are called upon by the complainant-promoter. Failing which appropriate penal action would be taken against the said respondent allottees under section 67 of the RERA, if such non-compliance is brought to the notice of the MahaRERA by the complainant.

16. With these directions, the present complaint stands disposed of.

MAHESH DINKAR PATHAK
Digitally signed by MAHESH DINKAR PATHAK
Date: 2025.12.02 13:43:04 +05'30'

(Mahesh Pathak)

Member – 1/MahaRERA