BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

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

Complaint No. CC005000000208295

DR. ANITA SURENDRA ZENDE **…COMPLAINANT**

Vs

PARANJAPE SCHEMES CONSTRUCTION LIMITED **...RESPONDENT**

MahaRERA Project Registration No. P52100000029

O R D E R
(15.10.2025)
(*Date of Hearing: 15.05.2025)*

Coram: Shri. Ravindra Deshpande, Member II, MahaRERA

Complainant in person
Rajendra Karve (Representative) for Respondent

1. The Complainant has filed the present complaint on 25.02.2023 seeking withdrawal from the project and for directions against the Respondent, its directors, servants, agents or anyone else claiming through them or under them to refund the monies as per the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the **"said Act"**), paid by the Complainant to the Respondent in respect of the flat as per the statement of claim, to pay interest at the prescribed rate under the said Act or the Rules made therein on the amounts mentioned in the statement of claim for the period commencing from the date of payment till its realization, to pay compensation of Rs. 3,00,000/- (Rupees Three Lakhs Only) towards mental harassment and trauma caused to Complainant and cost of Rs. 50,000/- (Rupees Fifty Thousand Only) for this complaint.

2. In brief, the facts of the present complaint are as follows:

3. The Respondent proposed to develop a residential scheme in Forest Trails Township, called Athashri Valley, superlative senior living with one & two bedroom senior citizen home at Forest Trails, Bhugaon, Pune.

4. Further the **Respondent** applied to PMRDA (Pune Metropolitan Regional Development Authority), Pune. The PMRDA gave permission and sanctions in respect of the building development for the said Athashri B2 project vide number BMU/CR.No963-16-17/Mauje Bhugaon/S. No 36 & others/sector R26/ Dt 23-3-2017. Accordingly, the Respondent started the construction of the said building.

5. After introduction of the said Act, the said respondent applied to MAHARERA for the registration of the said project "Forest Trail Athashri - B2" and accordingly, the project was registered as "Forest Trails Athashri - B2" under MahaRERA Project Registration No. **P52100000029** (hereinafter referred to as the **"said project"**).

6. The Complainant is a senior citizen, residing at Dhule, who wished to settle in Pune and sold her residential property at Dhule and started looking for a residential property for purchase. After sale of residential property in Dhule, the Complainant intended to claim capital gains exemption and decided to buy a new Residential property in Pune. To claim the capital gain exemption, the Complainant was required to buy new residential property within 2 years. Hence, sale proceeds were deposited in a capital gain account.

7. Complainant came to know through advertisement, that the Respondent was a developing the said project exclusively for the senior citizens means the person who being the person of age 55 & above who has purchased or has been permitted by the purchaser/purchasers to reside in the respective unit of the said project. The Complainant visited the Respondent's office for the enquiry of the said project. The Respondent is a well known name in this field. After continuous negotiations, the Respondent offered to sell flat No. B2/B-405 of 1 BHK type admeasuring 46.90 Sq. Mts. for the consideration of Rs. 40,39,882/- (Rupees Forty Lakhs Thirty Nine Thousand Eight Hundred and Eighty Two Only) and the Complainant accepted the offer.

8. On 23.03.2018 both the Complainant and Respondent entered into an Agreement for Sale for the said flat and registered the said agreement with sub registrar Mulshi wide document number 1197/2018 Dt 23/03/2018 (hereinafter referred to as the **"said Agreement"**). At the time of signing of the said Agreement, the Complainant found that the said Agreement was in between Metrics Developer Pvt Ltd as the party of the first

part and the Complainant/allotee being the party of the second part and Athashri Homes Pvt. Ltd. as a party of the third part. The Complainant raised the query about the relation of Matrix Developer & Paranjape Schemes Construction Co. Ltd.; as the RERA registration was obtained in the name of the Paranjape Schemes Construction Co. Ltd. On the said query, the Respondent gave clarification that both the companies were sister concerns and were owned by Paranjape group, hence, there will be no legal problem, and if any problem arises, they will clear at their cost. Relaying upon the version, the Complainant entered in to the said Agreement. As per the said Agreement, the Respondent had agreed to handover the possession of the said flat on 31.07.2021.

9. On the date of the said Agreement, the Complainant paid Rs. 4,52,467/- including GST as a booking amount and Rs. 1,76,400/- towards the registration expenses by cheque in favor of Matrix Development Pvt. Ltd. As and when demanded by the Respondent, the Complainant paid the total amount of Rs. 29,34,722/-.

10. After last payment dated 01.07.2021, there was no further demand from the **Respondent** against the Agreement cost as the work of the project was stopped. The Complainant was ready to perform his part of contract and had kept the required amount ready, since then in her Capital Gain Account No. 0483104000229753 with IDBI bank Dhule.

11. On 07.10.2022, the Complainant wrote letter to the Respondent regarding the delay in possession and also informed them about the heavy rent paying and also demanded interest on the payments made but there was no positive reply from Respondent.

12. The Complainant finally issued a legal notice to the Respondent through SUDHARMAN LAW LLP on 19.12.2022, stating clearly that Complainant was no more interested to continue with the said Agreement and sought full refund of money paid to the Respondent along with interest which was replied by the Respondent on 06.02.2023, through Advocate Pooja Rathod by stating that the said flat would be ready to in and around July 2023 to hand over to flat owner and if the Complainant wish to keep the said flat, will have to wait till July 2023 and that the Respondent is willing to hand over possession of the said flat in July 2023.

13. Prior to Respondent filed reply, the Complainant has filed her rejoinder and written statement on 26.02.2025, wherein, mainly the Complainant has repeated and reiterated the contents of her complaint, hence the same are not repeated herein for the sake of brevity. The brief facts of the rejoinder and written statement of the Complainant are as follows:-

14. As per the order dated 14.01.2025, the Respondent was granted an opportunity to file their reply to the complaint by 11.02.2025. However, the Respondent failed to submit their reply within the stipulated time and not provided any communication regarding the same since the complaint was initially filed on 25.02.2023. The Respondent, despite being a well-established construction company, continues to advertise the said project and solicit bookings from senior citizens. They have shown no intention to refund the amount paid by the Complainant and have been unresponsive to the complaint. The Complainant believes the Respondent's conduct is not only negligent but also indicates arrogance, which should be addressed by MahaRERA.

15. The Respondent has filed its reply dated 30.01.2025 on the complaint portal on 24.03.2025. The brief facts of the reply of the Respondent are as follows:-

16. The Respondent is carrying on the business of builders and promoters. The Respondent is developing a Township Project by the name 'Forest Trails', at Village Bhugaon, Taluka Mulshi, District Pune. The said project is being developed by the Respondent in different phases, one such Phase is known as 'Athashri B2' i.e. the said project comprising of three multi-storied buildings / wings namely A, B and C consisting of residential flats for the residence of senior citizens.

17. The Complainant approached the Respondent and offered to purchase a residential unit situated on the 4th floor in B2-B building, bearing Flat no. B-405, having Carpet Area of 34.86 square meters, Enclosed Balcony admeasuring 7.60 square meters and Exclusive Terrace admeasuring 4.44 square meters (hereinafter referred to as the **"said flat"**).

18. After the due negotiations, the said flat was agreed to be sold to the Complainant for a total price or consideration of Rs. 40,39,882/- (Rupees Forty Lakhs Thirty-Nine

Thousand Eight Hundred and Eighty-Two Only). Accordingly, the said Agreement came to be executed by and between the Complainant and the Respondent. As per the terms of the said Agreement to Sell, the possession in respect of the Said Flat was agreed to be handed over by the Respondent to the Complainant on or before 31.07.2021.

19. The said Forest Trail Township Project is spread over an area in excess of 71 Hectares and as aforesaid the said project is a part of the said larger project. The said Project got delayed due to various reasons beyond control of Respondent. The original date for completion of the said project was 31.07.2021, however, on account of the pandemic situation which existed from March 2020 right up to March 2022, the Respondent faced several challenges like labor migrations & disruptions in supply of construction material and various funding by financial institutions.

20. Taking all these factual aspects into consideration, the Respondent obtained the extension of validity till 31.07.2023 and further, the Respondent also duly applied to the Regulatory Authority i.e. MahaRERA for extension of the period for completion of the said project and the same was extended till 31.07.2024.

21. Though while deciding complaints filed under the provisions of Section 18 of the said Act, the date for completion of the said project as given in the said Agreement is to be taken into consideration and not the extended date granted by MahaRERA for completion of the said project, the peculiar circumstances governing the said project need to be taken into consideration in the present case. The factors which have led to the inadvertent delay in completing the said project have been considered by MahaRERA for the purpose of extending the period for completion of the said project and therefore the same needs to be taken into consideration for the purpose of deciding the present complaint.

22. For the aforesaid genuine and bonafide reasons, the completion of the said project has got delayed. The Completion Certificate in respect of the B Building / Wing forming part of the said project was obtained on 08.05.2024. Thereafter, the Respondent called upon the Complainant to take possession of the said flat, however the 1 Complainant did not respond to take possession of the said flat and has sought to withdraw from the said

Project. After filing of the present proceedings, the Complainant also refused to attend the Conciliation meeting and amicably resolve the so-called dispute.

23. According to the Complainant, she has paid part of the agreed consideration amount i.e. an amount of Rs. 28,27,076/- [including statutory amount GST Input credited to the tune of Rs.2,05,836/-] to the Respondent through installments since March 2018 to November 2021 and has not paid the balance consideration amount of Rs. 12,12,806/- excluding taxes & other charges to the Respondent. The Complainant is entitled to seek cancellation of the said Agreement, however the said cancellation is voluntary and not on account of any lapse or negligence on the part of the Respondent. The delay caused in completing the said project is also not attributable to the Respondent as elaborated in the preceding paragraphs. Therefore, the Complainant is not entitled to claim interest amounting to Rs. 12,38,673/- for an unspecified period of time. Similarly, the Respondent cannot be held to be liable for the so-called rent amount of Rs. 2,10,000/- from the period 01.08.2021 to 28.02.2023, nor is the Respondent liable to pay compensation of Rs. 3,00,000/- and cost of Complaint of Rs. 50,000/- to the Complainant as stated in the Statement of Claim annexed to the Complaint.

24. The Respondent is ready and willing to cancel the said Agreement as sought by the Complainant. However, the said cancellation process has to be in terms of Clause 16 of the said Agreement i.e. the Respondent is willing to refund the consideration amount received from the Complainant by deducting an amount of Rs. 1,00,000/- after the execution and registration of the Deed of Cancellation in respect of the said Agreement and requested to dismiss the complaint filed by the Complainant.

25. The matter was listed for hearing 15.05.2025, on which date, the Complainant appeared in person and the Respondent was represented by a representative. It was submitted by the Complainant that he has uploaded the rejoinder and written arguments on the MahaRERA website on 26.02.2025 and that the Complainant wanted to exit from the project as there is delay to handover the project. It was also submitted that the Complainant is a senior citizen and wants refund of the amount along with the interest. The legal officer representing the Respondent requested two weeks' time to upload the

written arguments on the MahaRERA website. Considering the same, time till 29.05.2025 was granted to the Respondent to upload the written arguments and thereafter, the matter was directed to be reserved for order.

26. Pursuant to the direction of the Authority, the Respondent uploaded its written submissions on 28.05.2025, wherein, the Respondent has repeated and reiterated the contents of its reply, hence the same are not repeated herein.

27. Considering the rival contentions of the parties, the following points arise for my determination. My findings thereon are recorded as under for the reasons stated below:-

REASONS

Sr. No.	Points	Findings
1.	Whether the Complainant is entitled to the reliefs as sought in the complaint?	Yes. Partly
2.	What order?	As per final Order

28. At the very outset, it is necessary to mention here that it is admitted fact that the Complainant is an Allottee and the Respondent is Promoter as per Section 2(d) and z(k) of the said Act. It is also not in dispute that an Agreement for Sale executed between the parties on 23.03.2018 and that the promoter Respondent was required to handover the possession of the said flat to the Complainant on or before 31.07.2021 and the Respondent failed to do the same. Hence, the present complaint has been filed by the Complainant seeking refund of the amount paid by her. Whereas, it is the contention of the Respondent that the project was delayed on account of the factors which were beyond the control of the Respondent i.e. Covid Pandemic for which even MahaRERA has granted extension to the validity of the said project and that the building in which the said flat situates received the OC on 08.05.2024. After which, the Respondent offered possession to the Complainant and requested the Complainant to take the possession of the said flat by making payment of the balance consideration, which was denied by the Complainant. As a result, as per the contention of the Respondent since the contract is

not terminated by the Respondent they are not liable to pay interest to the Complainant for the reason that the possession of the said flat could not be handed over to the Complainant by the date mentioned in the said Agreement as the same was beyond the control of the Respondent and also showed their willingness and readiness to refund the amount received by them by deducting an amount of Rs. 1,00,000/- as per clause 16 of the said Agreement towards the liquidated damages.

29. In my opinion, the stand of the Respondent that they are entitled to deduct the so called liquidated damages by virtue of clause 16 of the said Agreement at the time of refunding the consideration amount to the Complainant does not arise in any event. Since at the very outset, the said clause 16 the said Agreement will be application only in the case on Complainant 's failing to make due payments of installment, which in the present case is not the case. Secondly, the Complainant in her complaint had stated in her Statement of Claim that an amount of Rs. 29,34,722/- (Rs. Twenty-Nine Lakhs Thirty-Four Thousand Seven Hundred and Twenty-Two Only) has been paid by the Complainant to the Respondent against the agreement value. The said fact has not been negated by the Respondent in its reply. Further, it was also stated by the Complainant in her complaint that after the last payment dated 01.07.2021, there was no further demand from the Complainant against the agreement cost as the work of the said project was stopped, which contention has not been negated by the Respondent, hence, it cannot be justified as to how the Complainant has failed to make payment of the outstanding installment.

30. It is also seen from the pleadings of the parties that the Complainant is seeking refund of the entire amount paid by her towards the purchase of the said flat together with interest thereon including all other amount including GST, Registration Charges etc. To decide the issue of refund with interest, it is imperative that the relevant section 18 of the said Act is perused, which is in respect of "return of amount of compensation". Sub-section (1) states that:

> *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 to sell or, as the case may be, duly completed by the date specified therein; or***

(b) not relevant.

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:*

~~31.~~ Thus it is seen that as per Section 18 of said Act, if promoter fails to complete the project or to give possession as per agreed terms and conditions mentioned in the Agreement for Sale, there is an option to an allottee for withdrawal from the project and to claim refund of the total amount paid to the promoter alongwith interest and compensation. In the present case, as per the said Agreement, the Respondent was required to handover the possession of the said flat to the Complainant on or before 31.07.2021. Admittedly, the Respondent has failed to do so and on account of the failure of the Respondent to adhere to the date of possession as mentioned in the said Agreement, the Complainant has opted to withdraw from the project. Hence, the Respondent is liable to refund the amount paid by the Complainant to the Respondent.

32. In this behalf, this Authority would like to draw reference to the Newtech Judgment passed by Hon'ble Supreme Court. In the Newtech Judgment, the Hon'ble Supreme Court has clarified in paragraph Nos. 25 and 78 that that if the Promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement, then, Allottee's right under the Act to seek refund/claim interest for delay is unconditional and absolute, regardless of unforeseen events or stay orders of the Court/Tribunal. The relevant paragraph No. 25 is reproduced herein below for ready reference: -

"…25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the

amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed… "

33. Paragraph No. 78 of the said judgment is as follows: -

"…78. This Court while interpreting Section 18 of the Act, in Imperia Structures Ltd. Vs. Anil Patni and Another 5 held that Section 18 confers an unqualified right upon an allottee to get refund of the amount deposited with the promoter and interest at the prescribed rate, if the promoter fails to complete or is unable to give possession of an apartment as per the date specified in the home buyer's agreement in para 25 held as under:

"25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment."…"

34. Whilst coming to the conclusion that the Complainant is entitled to refund and interest, this Authority has observed that the Complainant is agitating that the Complainant be also awarded with rent paid by her from 01.08.2021 to 28.02.2023 at the rate of Rs. 10,000/- for 21 months amounting in total Rs. 2,10,000/- and also compensation of Rs. 3,00,000/-. The Complainant has also sought for the refund of the GST amount, registration amount etc. from the Respondent. However, as per Section 18 of the said Act, this Authority can direct the Respondent to refund the amount paid the Respondent

towards the said flat only. As a result, this Authority cannot pass any order under Section 18 of the said Act directing the Respondent to refund any other amount save and except the payment received by the Respondent from the Complainant towards the purchase price of the said flat. Since the Respondent has failed to adhere to the timelines given under the said Agreement for handing over the said flat, the Complainant is entitled to interest on the amount paid by him towards the purchase price of the said flat and also cost of the present complaint. Hence, I answer the point No. 1 in partly affirmative and proceed to pass the following order:

O R D E R

1. The complaint is allowed as follows:

2. The Complainant is allowed to withdraw from the said project.

3. The Respondent is directed to refund the amount paid to it towards consideration of the suit flat i.e. an amount of Rs. 29,34,722/- (Rupees Twenty Nine Lakhs Thirty Four Thousand Seven Hundred and Twenty-Two Only) with interest from 01.08.2021 at the prescribed rate as per 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 till the amounts are realized within 30 days from the date of this Order.

4. The Complainant is also directed to cancel the said Agreement upon the receipt of refund of the amount mentioned in the forgoing paragraph.

5. The Respondent shall bear the cost of cancellation of Agreement.

6. The Respondent shall pay Rs. 20,000/- as cost of this complaint to the Complainant.

RAVINDRA PADMAKARAO DESHPANDE

Digitally signed by RAVINDRA PADMAKARAO DESHPANDE
Date: 2025.10.15 17:19:57 +05'30'

(Ravindra Deshpande)
Member II, MahaRERA

Date : 15.10.2025