

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

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

1. COMPLAINT NO. CC005000000043742

PIYUSH KEDAR,
KUMAR MANE,
SUMIT THAKKAR

...COMPLAINANTS

a/w

2. COMPLAINT NO. CC005000000064581

MR. PRAVIN PATHARE

...COMPLAINANT

VS

BHOOMI DEVELOPERS a/w
SURESH SHIRUDE RAVENDRA WANI
(Partners of Bhoomi Developers)

...RESPONDENTS

MAHARERA PROJECT REGISTRATION NO. P52100012564

Order

April 06, 2023

*(Date of hearing as mentioned in para No.3 hereinbelow
where the matters were reserved for orders)*

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA

Both the Complainants present in person

None present for the Respondents

1. The Complainants are home buyers and Allottees within the meaning of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "**said Act**") of Real Estate Regulatory Authority (hereinafter referred to as the "**RERA**") and the Respondents are the Promoters/Developers within the meaning of Section 2 (zk) of the said Act. The Respondents are registered as the Promoters of the Project namely "**BHOOMI ORION**" under section 5 of the said Act bearing **MAHARERA Project Registration No. P52100012564** (hereinafter referred to as the "**said Project**"). On the MahaRERA Project registration webpage the proposed completion date is mentioned 30.09.2018, the revised completion date is

mentioned as 31.12.2018 and the extended date of completion is mentioned as 31.12.2019. The said Project has lapsed, no extension application filed till date.

2. The Complainants are seeking the following reliefs:

SR. NO.	COMPLAINT NO.	RELIEFS SOUGHT
1.	CC00500000043742	<i>"in accordance with Section 7 and 8 of RERA, we seek to remove Bhoomi Developers registration. Society formed after that can complete the remaining construction work. "</i>
2.	CC00500000064581	<i>"Refund of INR 7049091 paid up as 95% of the amount towards flat no 304. Attached are bank statements, payment receipts given by builder and rent agreement"</i>

3. The complaints were heard on the following dates wherein the following roznamas were recorded by this Authority:

SR. NO.	COMPLAINT NO.	DATE	ROZNAMA RECORDED
1.	CC00500000043742	19.09.2022	<i>"In view of the continuous absence of the Respondent the matter was proceeded ex-parte. An agreement for sale was signed in March 2017 and possession was promised in March 2019. Complainant has not yet received possession. Complainant has paid Rs. 52 lakhs against the total consideration of Rs. 55 lakhs. Complainant desires early possession together with OC. Matter reserved for orders."</i>
2.	CC00500000064581	11.08.2022	<i>"The Respondent is absent once again. The Respondent was absent on last date namely 30.06.2022. Parties are at liberty to file written submission, if any, by 22.08.2022, Subsequent to which, matter shall be reserved for orders."</i>

4. The brief facts as submitted by the Complainants in both the complaints are tabulated for ease of reference hereinbelow:

SR. NO.	COMPLAINT NOS. / DATE OF FILING	FLAT NO. / WING NO.	DATE OF AFS ¹	POSSESSION AS PER AFS	TOTAL CONSIDERATION (Rs.)
1.	CC00500000043742 07.12.2019	A - 104	06.03.2017	- <i>Incomplete copy of AFS uploaded</i>	50,83,000
2.	CC00500000064581 03.09.2020	A- 304	09.03.2017	24 months from date of AFS (i.e 09.03.2019)	50,83,000

5. The brief submissions of the Complainants are as follows:

¹ AFS - agreement for sale

- a. The Complainant @Sr. No.1 had purchased flat No. 104 on the 1st floor of A wing of the said Project vide an agreement for sale dated 06.03.2017 according to which the date of possession was mentioned as March 2019 (*Note: incomplete copy of agreement uploaded, possession clause not found*). This complaint was filed on 07.12.2019 by the Complainant @Sr. No.1.
 - b. The Complainant @Sr. No.2 had purchased flat No. 304 on the 3rd floor of A wing of the said Project vide an agreement for sale dated 09.03.2017 according to which the date of possession was mentioned 24 months from date of execution of these presents (*i.e. 09.03.2019*). This complaint was filed on 03.09.2020 by the Complainant @Sr. No.2.
 - c. That the Respondents have been misguiding and giving false promises. The construction is stalled. The Complainants are under immense pressure and stress of dual financial burden arising due to rents and loan EMI's.
 - d. Thus, the Complainant @ Sr. No. 1 seeks early possession of the said flat with OC and desires that the registration of the said Project be revoked and the Society be allowed to be formed and complete the remaining construction work whereas the Complainant @ Sr. No. 2 seeks refund along with interest and compensation.
6. It is observed that the Respondents were absent and the matter has been proceeded ex-parte. Further, no submissions have been made by the Respondents in spite of time being given by the Authority to file written submissions in the captioned complaints.
7. From the facts and the submissions, the only issue that needs to be considered is *Whether the Complainants are entitled for refund/possession of the apartment along with interest and compensation, under section 18 of the said Act and / or any other order?*
8. In order to answer the issue hereinabove, it is pertinent to examine “**possession**” as contemplated under section 18 of the said Act:
- “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."

From the plain reading of Section 18 it is very clear that if the Promoters (*Respondents herein*) fail to handover possession as per the terms of the agreement for sale by the specified date therein, the Allottees (*the Complainants herein*) have a choice either to withdraw from the said Project or stay with the Project. Further, in case the Allottee (*the Complainant at Sr. No. 1 herein*) chooses to stay in the said Project he is entitled to claim interest for every month of delay, till the handing over of the possession, from the Promoters (*Respondents herein*) at such rate as may be prescribed and in case the Allottee (*the Complainant at Sr. No. 2 herein*) chooses to withdraw from the said Project, then he is entitled to claim interest from the Promoters (*Respondents herein*) at such rate as may be prescribed.

9. Thus, it is clear that the said Project is not yet completed and the same is evident from the documents uploaded by the Respondents on the said Project registration webpage. Hence, there is a delay on part of the Respondents with regard to the handover of possession with Occupation Certificate (OC). In view thereof the Complainants are entitled to remedy under section 18 of the said Act.
10. In this context it is important to note that in order to ascertain the delay in handover of possession, the specific date of possession as promised by the Respondents to the Complainants under their respective agreements becomes relevant. In view thereof, it is observed that the Complainant at Sr. No.1 has not uploaded relevant portions of the agreement for sale. In this case in the absence of documents indicating the promised date of possession, the Authority shall rely on the proposed date of

completion as submitted by the Respondents while seeking registration of the said Project i.e. 30.09.2018. Thus, the date of handover of possession for the Complainant at Sr. No. 1 shall be 30.09.2018. However, with regard to the specific date of possession as promised by the Respondents to the Complainant at Sr. No. 2 it is clear from the said agreement that the flat was promised to be handed over to him by 09.03.2019. Hence the calculation of interest on account of delay in handover of possession for the Complainant at Sr. No.1 shall be from 01.10.2018 till handover of possession and that for the Complainant at Sr. No.2 shall be from 10.03.2019 till the amounts paid by him are refunded by the Respondents.

11. It is also noted that while perusing the MahaRERA Project registration webpage the said Project is lapsed and the Respondents have taken no steps to seek extension of the same till date. The Respondents have violated the provisions of the said Act and hence is liable to pay penalty under section 61 of the said Act to MahaRERA office which shall be levied at the time of grant of extension if any.
12. Further, the Authority notes that the Complainant at Sr. No.1 is seeking possession of the flat purchased by him in the said Project. Thus, the issue of completion of the said Project becomes critical. However, the Authority notes with concern that as the Respondents have not appeared before the Authority and that the Respondents have also sought no extension nor taken any steps towards the same till date. This leaves the Authority with a critical question as to how will the said Project reach completion? In this regard the Authority lays down the following road map which the Allottees of the said Project including the Complainants herein shall follow so that the said Project attains completion:
 - a. To form an Association of Allottees (AOA) within a period of 30 days from the date of this order;
 - b. To submit a list of items pending completion to the Respondents and the Authority in the said Project within 30 days of the formation of the AOA;

- c. To submit a proposed plan to the Authority with a copy to the Respondents to ensure the completion of the list of pending items in the said Project within 30 days of submitting the list of items pending completion.
 - d. In order to facilitate the above-mentioned steps, the Authority shall appoint Mr. Sanjay Deshmukh, IAS (Rtd.) from MahaRERA (Chief Consultant, Stressed Projects) to ensure that the steps are taken in a time bound manner and any hurdle in taking such steps may be dealt by seeking proper guidance from the Authority.
 - e. The AOA to render all co-operation to ensure an early completion of the said Project. Hence the answer to the **issue at para No. 7** is answered **accordingly**.
13. Further since the said Project is lapsed and the Respondents have taken no steps till date to seek any extension, this Authority shall keep the said Project registration in **abeyance** and the Respondents shall not be entitled to advertise, market, book, sell or offer for sale, or invite person/s to purchase in any manner any apartment in the said Project till they obtain extension from MahaRERA.

FINAL ORDER

- A. The complaint at Sr. No.1 is allowed to seek interest for delay in handover of possession from **01.10.2018** till handover of possession. The Complainant at Sr. No.2 shall be refunded the amounts paid by him. The interest on the amounts paid shall be from **10.03.2019** till the amounts paid by him are refunded by the Respondents. The rate of interest shall be as prescribed *under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules 2017*.
- B. In the case of Complainant at Sr. No. 1 the interest shall be payable from 01.10.2018 till the date of hand over of possession. The total interest accrued shall be set off against any dues required to be paid by the Complainant at Sr. No.1. Thereafter the net amount payable, if any shall be paid in one instalment together with the handover of possession.

- C. In the case of Complainant at Sr. No. 2 the total interest accrued up to 30.04.2023 shall be payable by the Respondents in three equal instalments starting from 01.05.2023 onwards. Further the interest from 01.05.2023 shall be paid on monthly basis by the 5th of every month starting from May 2023 till the amounts paid by the Complainant at Sr. No. 2 are refunded.
- D. Further, the Respondents are duty bound to cancel the agreement for sale of the Complainant at Sr. No. 2 upon the refund of the amounts with interest. Needless to say, that in case the Complainant at Sr. No. 2 has taken any housing / mortgage loan which has created lien on the flat purchased by him, he shall be duty bound to settle the dues of the Financial Institution first, for releasing the flat from the mortgage / lien so that it is free from any encumbrances.
- E. It is directed that the amounts of refund and the interest thereupon shall be paid by the Respondents to the Complainant at Sr. No.2 upon the OC being received but in no case later than 31.12.2023 for the said Project in 3 equal monthly instalments thereafter immediately. Needless to say, in case the Respondent so desires to pay the same earlier the period of interest calculation shall be from the date mentioned in para No.A of the final order up to the date of realisation of the refund with interest amounts.
- F. Further, with regard to the payment of interest, it is to be noted that the Respondents shall not be entitled to claim any benefit of “*moratorium period*” as mentioned in the Notifications / Orders Nos. 13, 14 and 21 dated 02.04.2020, 18.05.2020 and 06.08.2021 respectively issued by the MahaRERA as the completion date promised was much prior to the Covid-19 pandemic.
- G. The way forward enumerated in para No.12 shall be complied with by all the Parties to ensure completion of the said Project.
- H. The Secretary, MahaRERA to put the said Project registration number in **abeyance**.

- I. The Respondents herein is directed to not advertise, market, book or create any third-party rights by offer for sale, enter into agreement for sale for any apartment in the said Project, till such time.

- J. The Secretary MahaRERA is hereby directed to block access to the said Project registration number, take a stock of and review all returns filed till date and ensure that the same are in safe custody. Further on the website pertaining to the said Project registration number the operative part of this order should be displayed.

- K. No order as to costs.

(Ajoy Mehta)
Chairperson, MahaRERA