

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

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

1. **COMPLAINT NO. CC006000000171908**
SHAILESH PANDHARE ...COMPLAINANT
a/w
2. **COMPLAINT NO. CC006000000194103**
SURESH SAWANT ...COMPLAINANT
a/w
3. **COMPLAINT NO. CC006000000195662**
JAYANT PARSHURAM PATANKAR ...COMPLAINANT
a/w
4. **COMPLAINT NO. CC006000000195737**
VINAYAK GOPAL MALVANKAR ...COMPLAINANT
a/w
5. **COMPLAINT NO. CC006000000195738**
MRS. SHWETA NARAYAN PRABHU ...COMPLAINANT
a/w
6. **COMPLAINT NO. CC006000000195740**
SHABANA SHAFI KHAN ...COMPLAINANT
a/w
7. **COMPLAINT NO. CC006000000195741**
RAMLAL SADANAND REDKAR ...COMPLAINANT
a/w
8. **COMPLAINT NO. CC006000000195742**
RAJENDRA KAMBLI ...COMPLAINANT
a/w
9. **COMPLAINT NO. CC006000000195743**
PRATHAMESH KISHOR CHINDARKAR ...COMPLAINANT
a/w
10. **COMPLAINT NO. CC006000000195745**
HARESH RAMAKANT PRABHUZANTYE ...COMPLAINANT
a/w
11. **COMPLAINT NO. CC006000000195751**
GAJANAN VENGURLEKAR ...COMPLAINANT
a/w
12. **COMPLAINT NO. CC006000000195770**

UJJAYANI NARAYAN MANJAREKAR ...COMPLAINANT

a/w

13. COMPLAINT NO. CC006000000195771

SUBHASH NAGESH SWAR ...COMPLAINANT

a/w

14. COMPLAINT NO. CC006000000195823

LAXMIKANT GAWADE ...COMPLAINANT

VS

RAJESH RAGHUVIR MANTRI ...RESPONDENT/S

MAHARERA PROJECT REGISTRATION NO. P52900021376

Order

May 16, 2023

(Date of hearing 11.04.2023 matter was reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA

Representative Parag Inamdar for Complainants at Sr. Nos. 1, 2 and 4 to 14.

Complainant present in person at Sr. No. 3

Authorized Representative Prashant Khanwilkar present for the Respondent

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 Respondent is the Promoter/Developer within the meaning of Section 2(zk) of the said Act. The Respondent is registered as the Promoter of the Project namely "GSR AANANDAM" under Section 5 of the said Act bearing **MAHARERA Project Registration No. P52900021376** (hereinafter referred to as the "said Project"). On the MahaRERA Project registration webpage the proposed completion date is 30.12.2022. The Respondent Promoter has filed for extension vide an application dated 29.12.2022 which is pending for approval of the Authority.
2. The Complainants are seeking the following reliefs:

SR. NO.	COMPLAINT NO.	RELIEFS SOUGHT
1.	CC006000000171908	<i>"(a) This Hon'ble Forum be pleased to direct the Opponent to cancel Agreement to Sale registered at Sr. No. 477 of 2019 dated 8th July 2019. (b) This Hon'ble Court be pleased to direct the Opponents to refund the consideration amount of Rs. 13,02,775/- (Rupees Thirteen Lakhs Two Thousand and Seven Hundred and Seventy Five Only) to the Complainant along with 10 % interest thereof.</i>

		<p>(c) This Hon'ble Court be pleased to direct the Opponents to refund the amount of Rs. 1, 36, 110/- (Rupees One Lakh Thirty Six Thousand One Hundred and Ten Only) paid for stamp duty to the Complainant along with 10 % interest thereof.</p> <p>(d) This Hon'ble Forum be pleased to direct the opponents to execute and register Cancellation Deed at the Cost of Opponents.</p> <p>(e) This Hon'ble Forum be pleased to direct the Opponents to pay Compensation for mental torture Rs. 1,00,000/- (Rupees One Lakh Only).</p> <p>(f) Cost of this Complaint Rs. 25,000/- be received to the Complainant.</p> <p>(g) Any other just and equitable order may kindly be passed in favour of the Complainant."</p>
2.	CC006000000194103	<p>"1. Order defendants to give me the constructed area of 1031 Sq. Ft., as offered by him and accepted by me on 08.07.2019</p> <p>2. Order actual Joint measurement of my flat under the observation of third party expert appointed by this Honorable Court. At builders cost.</p> <p>3. Till the measurements taken. Ask Builder to maintain status quo at flat no 205.</p> <p>3. Once the area finalized it should be calculated @ Rs 3200.00 per Sq Ft, and my extra paid money may be refunded @ 10 Per Annum.</p> <p>4. Direct to Builder to pay me the Compensation for mental torture Rs.2,00,000/-</p> <p>5. Direct builder to produce the readable original sanction plan copy.</p> <p>6. Direct builder to submit the revised sanction plan copy.</p> <p>7. Direct the builder to submit the separate bank account details as per the terms of RERA Certificate and RERA Act</p> <p>8. Suspend the RERA Registration certificate till the compliance of mandatory Provisions of the RERA Act.</p> <p>9. Direct to Builder to pay me Cost of this Complaint Rs. 50,000/-</p> <p>10. Direct builder to pay compensation of Rs.2,00,000.00 for harassment.</p> <p>11. Any other just and equitable order may be passed in favour of complainant."</p>
3.	CC006000000195662	<p>"P-1) Direct the developer Mr. Rajesh R. Mantri to get plan of GSR AANANDAM scheme Shiroda, revised as per the actual construction done at site and get it sanctioned from competent authority.</p> <p>P-2) If the constructed carpet area (actual carpet) of my flat no.102 is less than the agreed area of 524 Sq. ft. as per the sheet (Annexure A), direct the developer to register agreement for sale in my favour as per the actual RERA carpet area and revised cost of flat. Revised cost of flat shall be equal to actual RERA carpet area in Sq ft multiplied by Rs.3053.44 per Sq. ft. Also direct the developer to pay the extra stamp duty for delay in executing the agreement for sale i.e. for execution after 31 December 2020.</p> <p>P-3) Direct the developer to refund my extra money paid to him if any, after calculating the revised cost of my flat in the prayer P-2.</p> <p>P-4) Direct the developer to pay interest at 18% rate for the extra amount collected from me through six installments without completing registration of agreement for sale (by threatening me of 18% interest) plus additional (excess) amount above 10% of the cost of flat, collected during booking. The total extra amount collected by the developer from time to time from me is Rs.11,73,600/-(paid to the developer so far 8 through installments) minus Rs.1,60,000/(for the first installment)- equal to s.10,13,600/- .</p> <p>P-5) Direct the developer to pay me an amount of Rs.2,00,000/- for mental torture and disdainful behavior with me over the last nearly two years, for not executing some part of the work of my flat as per specifications, for not giving me possession of my flat in time, for not giving stage wise time schedule of completion of the project, for preventing me from taking loan against my flat, for not giving me even proper sketch</p>

		<p>plan and carpet area calculations of flat, for collecting excess installments with a threat of 18% interest for not performing agreement for sale, for creating complications and headache by doing illegal construction etc.</p> <p>P-6) Direct the developer to pay me cost of complaint of Rs.50,000/-</p> <p>P-7) Direct the developer to give possession of my flat no. 102, at the earliest.</p> <p>P-8) Direct the developer to obtained occupancy certificate from appropriate authority before offering possession and execution of sale deed in my favour.</p> <p>P-9) Request to penalize the developer for;</p> <p>(a) Demanding money from the purchaser by giving wrong information about the progress the work.</p> <p>(b) Not performing registration of 'agreement for sale', in time.</p> <p>(c) Illegal construction done and</p> <p>(d) Giving advertisement, starting construction, collecting booking amount and installments from the purchaser before registration of the firm with RERA and before doing registration of agreement for sale, thus violations of rules and irregularities as per RERA by the developer.</p> <p>P-10) Any other just and equitable orders may kindly be passed in favour of the complainant."</p>
4.	CC006000000195737	<p>"1. Direct the Respondent to obtain the Completion/Occupation Certificate immediately from Town Planning Authority.</p> <p>2. Direct the Respondent to give the possession within one month.</p> <p>3. Direct the Respondent to pay the amount mentioned in claim sheet along with the interest @18% till the realization.</p> <p>4. Direct developer to execute new Agreement to sale with area and a amount corrections as his cost."</p>
5.	CC006000000195738	<p>"1. Direct developer to get plan revised as per the actual construction done at site. cost.</p> <p>2. If the constructed area is less than the agreed area as per the signed sheet (ANNEXURE A) Direct developer to make the correction and register the revised Agreement to Sale at his</p> <p>3. After ascertaining actual carpet area constructed at site direct him to register the corrected agreement to sale at the cost of Developer.</p> <p>4. Direct the developer to submit the Annual Certificate of C.A. and submit the quarterly updates as per RERA act. And give the copy to me.</p> <p>5. Direct the developer to submit the list of sold flats, shops and unsold flats and shops.</p> <p>6. Direct the developer to submit on affidavit that the shop sold to me is shown in RERA Registration application form.</p> <p>7. Direct the developer to obtain the Occupancy Certificate from appropriate Authority Before offering possession and then execute sale deed in my favor.</p> <p>8. Direct the developer to form a society of flat/shop purchasers immediately.</p> <p>9. Direct the developer to produce the original plan copy which is sanctioned on 27.05.2019</p> <p>10. Direct the developer to refund my extra money Rs. 6,31,480.00 along with the interest @ 18% from the date of receipt till the date of Realization.</p> <p>11. Direct Developer to pay me an Amount of Rs.2,00,000.00 for the mental torture.</p> <p>13. Direct developer to pay me cost of complaint of Rs. 50,000.00.</p> <p>14. Any other just and equitable orders may kindly be passed in favour."</p>
6.	CC006000000195740	<p>"1. Direct developer to get plan revised as per the actual construction done at site.</p> <p>2. If the constructed area is less than the agreed area as per the signed sheet (ANNEXURE A) Direct developer to make the correction and register the revised Agreement to Sale at his Cost.</p> <p>3. After ascertaining actual carpet area constructed at site finalized direct him to register the corrected agreement to sale at the cost of Developer.</p>

		<p>4. Direct the developer to submit the Annual Certificate of C.A. and submit the quarterly updates as per RERA act.</p> <p>5. Direct the developer to submit the list of sold flats, shops and unsold flats and shops.</p> <p>6. Direct the developer to submit on affidavit that the shop sold to me is shown in RERA Registration application form.</p> <p>7. Direct the developer to obtain the Occupancy Certificate from appropriate Authority, Before offering possession and execute corrected agreement for sale deed in my favor. At his own cost and then only, execute the final sale deed</p> <p>8. Direct the developer to form a society of flat/shop purchasers immediately.</p> <p>9. Direct the developer to produce the original plan copy which is Sanctioned on 27.05.201</p> <p>10. Direct the developer to file an affidavit that, the Shop No 12, which he sold me was approved in sanction plan dated 27.05.2019</p> <p>11. Direct the developer to refund my extra money Rs. 7,53,500.00 along with the interest 18% from the date of receipt till the date of Realization.</p> <p>12. Direct Developer to pay me an Amount of Rs.2,00,000.00 for the mental torture.</p> <p>13. Direct developer to pay me cost of complaint of Rs. 50,000.00.</p> <p>14. Any other just and equitable orders may kindly be passed in favour of complainant."</p>
7.	CC006000000195741	<p>"1. Direct developer to get plan revised as per the actual construction done at site.</p> <p>2. If the constructed area is less than the agreed area as per the signed sheet (ANNEXURE A) Direct developer to make the correction and register the revised Agreement to Sale at his cost.</p> <p>3. After ascertaining actual carpet area constructed at site finalized direct him to register the corrected agreement to sale at the cost of Developer.</p> <p>4. Direct the developer to submit the Annual Certificate of C.A. and submit the quarterly updates as per RERA act.</p> <p>5. Direct the developer to submit the list of sold flats, shops and unsold flats and shops.</p> <p>6. Direct the developer to submit on affidavit that the shop sold to me is shown in RERA Registration application form.</p> <p>7. Direct the developer to obtain the Occupancy Certificate from appropriate Authority Before offering possession and after execute sale deed in my favor.</p> <p>8. Direct the developer to form a society of flat/shop purchasers immediately.</p> <p>9. Direct the developer to produce the original plan copy which is Sanctioned on 27.05.2019</p> <p>10. Direct the developer to file an affidavit that, the Shop No 15, which he sold me was approved in sanction plan dated 27.05.2019</p> <p>11. Direct the developer to refund my extra money Rs. 7,53,500.00 along with the interest @ 18% from the date of receipt till the date of Realization.</p> <p>12. Direct Developer to pay me an Amount of Rs.2,00,000.00 as compensation for the mental torture.</p> <p>13. Direct developer to pay me cost of complaint of Rs. 50,000.00.</p> <p>14. Any other just and equitable orders may kindly be passed in favour of complainant."</p>
8.	CC006000000195742	<p>"1. Direct developer to get plan revised as per the actual construction done at site.</p> <p>2. If the constructed area is less than the agreed area as per the sheet (ANNEXUREA) Direct developer to make the correction and register the revised Agreement to Sale at his cost.</p> <p>3. After ascertaining actual carpet area constructed at site gets finalized direct him to register the Agreement to sale after the sanction.</p>

		<p>4. Direct the developer to submit the Annual Certificate of C.A, and submit the quarterly updates as per RERA act.</p> <p>5. Direct the developer to submit the list of sold flats, shops and unsold flats and shops.</p> <p>6. Direct the developer to submit on affidavit that the shop sold to me is shown in RERA Registration application form.</p> <p>7. Direct the developer to obtain the Occupancy Certificate from appropriate Authority Before offering possession and execute sale deed in my favor.</p> <p>8. Direct the developer to form a society of flat/shop purchasers immediately.</p> <p>9. Direct the developer to produce the original plan copy which is sanctioned on 27.05.2019</p> <p>10. Direct the developer to file an affidavit that, the Shop No 7, which he sold me was approved in sanction plan dated 27.05.2019</p> <p>11. Direct the developer to refund my extra money after calculating the exact carpet area at site along with the interest @ 18% from the date of receipt till the date of Realization.</p> <p>12. Direct Developer to pay an Amount of Rs.2,00,000.00 for the mental torture.</p> <p>13. Direct developer to pay me cost of complaint of Rs. 50,000.00.</p> <p>14. Any other just and equitable orders may kindly be passed in favour of complainant.</p> <p>15. Direct the developer to refund me Rs. 4,00,000. 00 with interest @18 till realization. As the height of shop is not as per sanction plan submitted to rera, and as he agreed to give the discount of Rs. 4,00,000.00. Hence”</p>
9.	CC006000000195743	<p>“1. Direct developer to get plan revised as per the actual construction done at site.</p> <p>2. If the constructed area is less than the agreed area as per the signed sheet (ANNEXURE A) Direct developer to make the correction and register the revised Agreement to Sale at his Cost in my favour.</p> <p>3. After ascertaining actual carpet area constructed at site get finalized, direct developer to register the corrected agreement to sale at the cost of Developer.</p> <p>4. Direct the developer to submit the Annual Certificate of C.A. and submit the quarterly updates as per RERA act. And give us the copy of the same.</p> <p>5. Direct the developer to submit the list of sold flats, shops and unsold flats and shops.</p> <p>6. Direct the developer to submit on affidavit that the shop sold tome is shown in RERA Registration application form</p> <p>7. Direct the developer to obtain the Occupancy Certificate from appropriate Authority Before offering possession and execute sale deed in my favor immediately.</p> <p>8. Direct the developer to form a society of flat/shop purchasers immediately.</p> <p>9. Direct the developer to produce the original plan copy which is sanctioned on 27.05.2019</p> <p>10. Direct the developer to remove portion of sunk visible in my shop, otherwise give me extra compensation of Rs. 5,00,000 .00 along with interest @ of 18% before the execution of final sale deed</p> <p>11. Direct the developer to refund my extra money Rs. 8,58,000. 00 along with the interest @ 18% from the date of receipt till the date of Realization.</p> <p>12. Direct Developer to pay an Amount of Rs.2,00, 000.00 for the mental torture.</p> <p>13. Direct developer to pay me cost of complaint of Rs. 50,000.00.</p> <p>14. Any other just and equitable orders may kindly be passed in favour of complainant.”</p>
10.	CC006000000195745	<p>“1. Direct developer to get plan revised as per the actual construction done at site.</p>

		<p>2. If the constructed area is less than the agreed area as per the signed sheet (ANNEXURE A) Direct developer to make the correction and register the revised Agreement to Sale at his Cost.</p> <p>3. After ascertaining actual carpet area constructed at site finalized direct him to register the corrected agreement to sale at the cost of Developer.</p> <p>4. Direct the developer to submit the Annual Certificate of C.A. and submit the quarterly updates as per RERA act.</p> <p>5. Direct the developer to submit the list of sold flats, shops and unsold flats and shops.</p> <p>6. Direct the developer to submit on affidavit that the shop sold to me is shown in RERA Registration application form.</p> <p>7. Direct the developer to obtain the Occupancy Certificate from appropriate Authority Before offering possession and execute sale deed in my favor.</p> <p>8. Direct the developer to form a society of flat/shop purchasers immediately.</p> <p>9. Direct the developer to produce the original plan copy which is Sanctioned on 27.05.2019</p> <p>10. Direct the developer to file an affidavit that, the Shop No 15, which he sold me was approved in sanction plan dated 27.05.2019</p> <p>11. Direct the developer to refund my extra money Rs. 7,53,500. 00 along with the interest @ 18% from the date of receipt till the date of Realization.</p> <p>12. Direct Developer to refund an Amount of Rs.2,00,000.00 for the mental torture.</p> <p>13. Direct developer to pay me cst of complaint of Rs. 50,000.00.</p> <p>14. Any other just and equitable orders may kindly be passed in favour of complainant."</p>
11.	CC006000000195751	<p>"1. Direct developer to get plan revised as per the actual construction done at site,</p> <p>2. If the constructed area is less than the agreed area as per the signed sheet (ANNEXURE A) Direct developer to make the correction and register the revised Agreement to Sale at his cost.</p> <p>3. After ascertaining actual carpet area constructed at site finalized direct him to register the corrected agreement to sale at the cost of Developer.</p> <p>4. Direct the developer to submit the Annual Certificate of CA. and submit the quarterly updates as per RERA act</p> <p>5. Direct the developer to submit the list of sold flats, Shops and unsold flats and shops.</p> <p>6. Direct the developer to submit on affidavit that the shop sold to me is shown in RERA Registration application form.</p> <p>7. Direct the developer to obtain the Occupancy Certificate from appropriate Authority Before offering possession and execute sale deed in my favor.</p> <p>8. Direct the developer to form a society of flat/shop purchasers immediately.</p> <p>9. Direct the developer to produce the original plan copy which is Sanctioned on 27.05.2019</p> <p>10. Direct the developer to file an affidavit that, the Shop No 15, which he sold me was approved in sanction plan dated 27.05.2019</p> <p>11. Direct the developer to refund my extra money Rs. 5,25,518.00 along with the interest @ 18% from the date of receipt till the date of Realization.</p> <p>12. Direct Developer to refund an Amount of Rs.2,00,000. 00 for the mental torture.</p> <p>13. Direct developer to pay me cst of complaint of Rs. 50,000.00.</p> <p>14. Any other just and equitable orders may kindly be passed in favour of complainant."</p>
12.	CC006000000195770	<p>"1. Direct developer to get plan revised as per the actual construction done at site.</p> <p>2. If the constructed area is less than the agreed area as per the signed sheet (ANNEXURE A) Direct developer to make the correction and register the revised Agreement to Sale at his Own cost.</p>

		<p>3. After ascertaining actual carpet area constructed at site finalized direct him to register the corrected agreement to sale at the cost of Developer.</p> <p>4. Direct the developer to submit the Annual Certificate of C.A, and submit the quarterly updates as per RERA act. And give me the copy of the</p> <p>5. Direct the developer to submit the list of sold flats, shops with area and amount received and unsold flats and shops.</p> <p>6. Direct the developer to submit on affidavit that the shop sold to me is shown in RERA Registration application form.</p> <p>7. Direct the developer to obtain the Occupancy Certificate from appropriate Authority Before offering possession and after that execute sale deed in my favor.</p> <p>8. Direct the developer to form a society of flat/shop purchasers immediately.</p> <p>9. Direct the developer to produce the original plan copy which is Sanctioned on 27.05.2019</p> <p>10. Direct the developer to refund my extra money Rs. 5,03,685.00 along with the interest @ 18% from the date of receipt till the date of Realization.</p> <p>12. Direct Developer to refund an Amount of Rs.2,00,000.00 against the compensation for mental torture.</p> <p>13. Direct developer to pay me cst of complaint of Rs. 50,000.00.</p> <p>14. Any other just and equitable orders may kindly be passed in favour of complainant."</p>
13.	CC006000000195771	<p>"1. Direct developer to get plan revised as per the actual construction done at site.</p> <p>2. If the constructed area is less than the agreed area as per the signed sheet (ANNEXURE A) Direct developer to make the correction and register the revised Agreement to Sale at his Cost.</p> <p>3. After ascertaining actual carpet area constructed at site finalized direct him to register the corrected agreement to sale at the cost of Developer.</p> <p>4. Direct the developer to submit the Annual Certificate of C.A. and submit the quarterly updates as per RERA act.</p> <p>5. Direct the developer to submit the list of sold flats, shops and unsold flats and shops.</p> <p>6. Direct the developer to submit on affidavit that the shop sold to me is shown in RERA Registration application form.</p> <p>7. Direct the developer to obtain the Occupancy Certificate from appropriate Authority Before offering possession and execute sale deed in my favor.</p> <p>8. Direct the developer to form a society of flat/shop purchasers immediately.</p> <p>9. Direct the developer to produce the original plan copy which is Sanctioned on 27.05.2019</p> <p>10. Direct the developer to file an affidavit that, the Shop No 15, which he sold me was approved in sanction plan dated 27.05.2019</p> <p>11. Direct the developer to refund my extra money Rs. 8,77,800. 00 along with the interest @ 18% from the date of receipt till the date of Realization.</p> <p>12. Direct Developer to pay to me an Amount of Rs.2,00,000.00 for the mental torture.</p> <p>13. Direct developer to pay me cost of complaint Rs. 50,000.00.</p> <p>14. Any other just and equitable orders may kindly be passed in favour of complainant."</p>
14.	CC006000000195823	<p>"1. Direct developer to get plan revised as per the actual construction done at site.</p> <p>2. If the constructed area is less than the agreed area as per the signed sheet (ANNEXURE A) Direct developer to make the correction and register the revised Agreement to Sale at his Cost.</p> <p>3. After ascertaining actual carpet area constructed at site gets finalized direct him to register The corrected agreement to sale at the cost of Developer.</p>

		<p>4. Direct the developer to submit the Annual Certificate of C.A. and submit the quarterly updates as per RERA act.</p> <p>5. Direct the developer to submit the list of sold flats, shops and unsold flats and shops.</p> <p>6. Direct the developer to submit on affidavit that the shop sold to me is shown in RERA Registration application form.</p> <p>7. Direct the developer to obtain the Occupancy Certificate from appropriate Authority Before offering possession and execute sale deed in my favor.</p> <p>8. Direct the developer to form a society of flat/shop purchasers immediately.</p> <p>9. Direct the developer to produce the original plan copy which is Sanctioned on 27.05.2019</p> <p>10. Direct the developer to refund my extra money Rs. 12,34,475.00 along with the interest @ 18% from the date of receipt till the date of Realization.</p> <p>11. Direct Developer to pay me an Amount of Rs.2,00,000.00 for the mental torture.</p> <p>12. Direct developer to pay me cost of complaint of Rs. 50,000.00.</p> <p>13. Any other just and equitable orders may kindly be passed in favour of complainant.</p> <p>14. Direct the developer to produce the certificates of Architect for the completion of project and Completion of various stages such as Basement, Plinth and slabs”</p>
--	--	---

3. The complaint was heard by the Authority on 04.10.2022 wherein the following roznama was recorded by this Authority:

“Physical hearing matter

All Parties present.

Two Parties were issued notices.

The Complainant states that in the first instance on a plain sheet of paper a certain area was promised. Subsequently, when the time to execute the sale deed was there, the sale deed showed a different area which is nearly half of the area originally shown. The price that was indicated at the first instance however remained same when the sale agreement was executed. The contentions of the Complainant are that, the sale deed was obtained in hurried manner and the buyers did not understand the implication. They further contend that it is just not possible that each buyer agreed to nearly half the area for the original price.

The Complainant also points out that subsequently the developer raised the demand against each of the buyers indicating the extra area that he has constructed and seeking further claims. Most of the buyers were under the impression that extra area has been constructed paid up the extra amount. Subsequently, the Complainant appointed an architect at his cost to measure the areas and the same has been submitted by the Complainant, the actual area at the site falls short of the area promised and for which payment was taken.

The Complainant also points out that in Complaint at Sr. No. 15 (of the tabular chart provided by the Complainant) i.e., Sr. No. 9 herein, bearing Complaint No. CC006000000195738 shows that a toilet has been provided within the shop as part of the area sold to him and the same toilet is for public use.

The Complainant also points out that a portion was marked as society office in the sanctioned plan and the same was also shown on the approved plan and was claimed free of FSI. They now find that number 15 an additional number has been given to this space earmarked for society office and the same has been sold to the Complainant at Sr. No. 11 (of the tabular chart provided by the Complainant) i.e., Sr. No. 3 herein, bearing Complaint No. CC006000000195741.

The Complainant at Sr. No. 3 (of the tabular chart provided by the Complainant) i.e., Sr. No. 34 herein, bearing Complaint No. CC006000000171908 during the course of hearing has requested for changing his prayers from that of exiting the project to staying in the project and other reliefs as sought by the other Complainants.

The advocate for the Complainant seeks the following ad-interim reliefs.

- 1. The area offered be now measured by an independent architect appointed by the Authority.*
- 2. No third-party rights to be created till the final outcome of the case.*
- 3. No alteration should be permitted till such time.*

The Complainant seeks early possession together with OC for the project.

The Respondent is present and has heard the arguments of the Complainant. Respondent seeks time to present his case.

In view of the large no of people involved and looking at the distance of the location from Mumbai and the seriousness of the issue, this Authority passes the following interim orders:-

- 1. The area of each of the Complainant's premises shall be measured by an independent qualified architect. The architect will compare all the areas mentioned in various documents and the area actually measured on the ground and convert them to the common definition of RERA carpet area as defined in the Act. This should be done to enable ease of comparison.*
- 2. The developer shall create no third-party rights through any means or instruments whatsoever till further orders.*
- 3. The developer shall not make any alterations in the said property.*

Needless to say, all Parties including the developer shall co-operate and provide every assistance to the architect appointed by the Authority for carrying out the measurement. The architect shall give a seven-day notice about the date of his measurement to all Parties including the developer. Parties will be permitted to either remain present personally or through their representative during the course of measurement. The architect shall measure and submit his report to the Authority within 45 days of this order.

Shri. Sanjay Deshmukh (IAS retired) will monitor the progress of measurement and also after engaging with the Parties submit a report on this project. He shall act as an amicus curiae to the Authority.

The next date of hearing shall be fixed subsequent to the receipt of the report of the architect and the report of the amicus curiae."

4. Pursuant to the above directions an Architect was to be appointed by MahaRERA and that Shri Sanjay Deshmukh (IAS retired) was appointed as amicus curiae by MahaRERA to monitor the progress of measurement and after engaging with the Parties submit a report on the same. In view thereof a report dated 14.03.2023 along with the architect report dated 07.12.2022 was placed before the Authority for appropriate decisions (hereinafter referred to as the “**said amicus curiae report**” and the “**said architect report**” respectively). Thus, the complaints were once again heard on 11.04.2023 (listed at Sr. No. 21 to 34) wherein the following roznama was recorded by this Authority:

“Sr. No. 23:

Both Parties are present.

Both parties have received the copies of the Architect Report. Complainant states that he was given a sheet indicating the areas of the premises promised to him. Accordingly, he paid certain amounts. Further, the Respondent asked more amounts which he has paid and for which, he has receipts. The Complainant also claims that the draft Sale deed was sent to him which was not executed.

The Respondent claims that he has complied with all RERA regulations. The Respondent further claims that there is no legal binding agreement between him and the Complainant. The monies paid by the Complainant are for purposes not known to him.

The Complainant seeks reliefs in terms of directive to sign Agreement for Sale and the monies that have been taken from him before signing Agreement for Sale, interest should be paid on that money.

Parties are at liberty to file written submissions, if any, along with copies of all docs that they have relied upon on or before 25.04.2023. Subsequent to which, the matter will be reserved for orders.

Sr. No. 21, 22 and 24 to 34:

All Parties are present.

All parties confirm that they have received the copies of the Architect Report.

Mr. Inamdar representing the Complainants states that in the case of Sr. No. 28, The Agreement for Sale is yet to be signed.

For all other parties, he states, that the building is illegal. A basement and 4th floor has been constructed illegally. The Promoter is making no effort to get OC for the project. They have paid extra money and seek refund of the same. He further states that the ceiling is low and that makes the premises difficult to use. They also seek compensation for the same.

The Respondent claims that the height provided by them is in the reports and they are ready for any re-measurement. He further states that he has received CC for the basement and the additional 4th floor. The plans have been got approved as per the UDCPR. The Respondent-Promoter states that his RERA Registration number is valid till June 2023 and that he has sought further extension.

The Complainant avers that the 4th floor and basement permissions and consents were not sought from the allottees.

The Respondent however re-iterates that he has taken consent of all those allottees who have a registered Agreement for Sale with them as the same is mentioned in the Agreement for Sale.

Parties are at liberty to file written submissions and documents on which they rely, on or before 25.04.2023 subsequent to which, the matter will be reserved for orders."

5. From the said amicus curiae report and the said architect report the following is observed by the Authority:
 - a. It is firstly observed that while the Respondent Promoter has not exceeded the permissible FSI as per the sanctioned plan but on the other hand there are serious irregularities seen in the execution of the sanctioned plan.
 - b. The town planner of Sindhudurg vide a letter No. 436 dated 25.02.2019 has approved the building only for ground plus 1 to 3 upper floors. However onsite the Architect appointed by MahaRERA has observed that the Respondent Promoter has constructed a basement and a ground plus 1 to 4 upper floors.
 - c. The Respondent Promoter has gone further without any approval and has made 5 offices in the basement. It is also observed from the said architect report that the sanctioned plan showed a society office whereas the Respondent Promoter has on the plan indicated the premises as being for sale and has shown the same as shop No. 13.
 - d. With the above observation of the Architect, it is clear that the Respondent Promoter has gone beyond the sanctioned plan and constructed illegal extensions with impunity. The building as it stands today cannot get an occupation certificate (OC) till such time the Respondent Promoter is able to obtain sanction for the construction beyond and in violation of the sanctioned plans.
 - e. Besides the above it is also noted that in almost every shop offered for sale a certain area of common open space has been enclosed. This is a serious deviation. It is also

seen that in all shops the height provided is less than the height mentioned in the sanctioned plan. The sanctioned plan has given a shop height of 2.85 meters and the height of the actual shop is found to be 2.67 meters on the site. It is also observed that the shop allotted to the Complainant No. 5 herein (Mrs. Shweta Narayan Prabhu) apart from the deviations a meter room and ladies' public toilet has also been enclosed in the said individual shop.

- f. On perusal of the above it is clear that the Respondent Promoter has violated the sanctity of the sanctioned plan and has sought to deviate from almost every aspect of the same.
6. With the above given circumstances, the issue now remains *whether a valid Promoter-Allottee relationship can exist with respect to a building which has violated the sanctioned plan and what remedy is available to the Allottee under the said Act?*
7. The Promoter-Allottee relationship is cemented through the execution of an agreement for sale which definition is provided under Section 2(c) of the said Act which is reproduced hereinbelow for ease of reference:
Section 2(c): *agreement for sale means an agreement entered into between the promoter and the allottee;*
8. Prior to an execution of an agreement for sale, a Promoter is required to register the project with MahaRERA, this aspect is dealt with under Section 3(1) of the said Act which is reproduced hereinbelow for ease for reference:
Section 3: Prior registration of real estate project with Real Estate Regulatory Authority:
(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Thus, an essential pre-condition for an agreement for sale is the registration of the real estate project under RERA.

9. Further, the Section 4 of the said Act provides the manner and requirements for application for registration of any real estate project which is reproduced hereinbelow for ease for reference:

Section 4: Application for registration of real estate projects:

(1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority.

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: –

(a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority), and the particulars of registration, and the names and photographs of the promoter;

(b) a brief detail of the projects launched by him, in the past five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending;

(c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;

(d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;

(e) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;

(f) the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;

(g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;

(h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas apartment with the apartment, if any;

(i) the number and areas of garage for sale in the project;

(j) the names and addresses of his real estate agents, if any, for the proposed project;

(k) the names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;

(l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: –

(A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;

(B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;

(C) *the time period within which he undertakes to complete the project or phase thereof, as the case may be;*

(D) *that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose: Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project: Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project: Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.*

Explanation – For the purpose of this clause, the term "schedule bank" means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934;

(E) *that he shall take all the pending approvals on time, from the competent authorities;*

(F) *that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and*

(m) such other information and documents as may be prescribed.

(3) *The Authority shall operationalise a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment.*

It is very clear that one of the essential ingredients for application for registration is mentioned in Section 4(d) namely the sanctioned plans, the layout plan, the specifications of the proposed project as sanctioned by the Competent Authority. This thus, forms the very basis on which the Parties execute the agreement for sale. The Promoter offers to deliver to the Allottee a premises in keeping with the sanctioned plan which is provided at the time of registration of the said Project under Section 4(d) of the said Act. The Promoter in turn receives a consideration from the Allottee towards the above offer. In this case the premises as constructed deviates from the sanctioned plans as submitted under Section 4(d). Thus, the Respondent Promoter herein has flouted the very basis of the Promoter-Allottee agreement.

10. From the above observations it is very clear that as things stand today the Respondent Promoter has failed to build the promised structure as per the sanctioned plans. Thus, the issue which now arises is *whether there is a breach of contract or not and the reliefs to be given in the same.* In this regard the Authority notes

that adjudicating on issue of breach of contract is not within the scope of the said Act. The affected Parties would have to approach the appropriate forum for making out a case of breach of contract and the remedies sought accordingly.

11. Further it is pertinent to note that the relationship of the Respondent Promoter and that of the Complainants herein is thus of a Promoter-Allottee in spite of the fact that the Respondent Promoter has violated the very agreements between them. In the forum of MahaRERA this relationship is very clear and exists but under the said Act this Authority is restrained from interfering in matters pertaining to the violation of the sanctioned plans. Further this Authority does not have the mandate to adjudicate upon matters relating to non-performance of the contract beyond what is stipulated in the said legislation. The Authority will thus hold itself from dealing with the regularisation of deviations from the sanctioned plans and also from passing orders on performance of the contract per se. However, as on date the said Project remains incomplete as OC for the same has not been obtained by the Respondent Promoter. In such a situation the reliefs sought by the Complainants needs to be dealt with case by case.

12. Moving ahead the following facts in each complaint are noteworthy (*extracted from the said architect report*):

SR. NO.	COMPLAINT NOS.	SHOP(S) or FLAT(F) NOS./ floor	DATE OF AFS ¹	POSSESSION DATE AS PER SYNOPSIS OF EACH COMPLAINANTS	TOTAL CONSIDERATION AS PER AFS (INR)
1.	CC006000000171908	3(S)/grd ²	08.07.2019	December 2021	20,18,500
2.	CC006000000194103	205(F)/1 st	11.07.2019	December 2021	32,99,200
3.	CC006000000195662	102(F)/1 st	NO AFS	-	-
4.	CC006000000195737	11(S)/grd	20.07.2019	December 2021	10,36,000
5.	CC006000000195738	2(S)/grd	16.07.2019	December 2021	20,18,500
6.	CC006000000195740	12(S)/grd	20.07.2019	December 2021	11,00,000
7.	CC006000000195741	15(S)/grd	20.07.2019	December 2021	11,75,000
8.	CC006000000195742	7(S)/grd	NO AFS	December 2021	-
9.	CC006000000195743	4(S)/grd	23.12.2020	December 2021	15,00,000
10.	CC006000000195745	8(S)/grd	17.07.2019	December 2021	16,50,000
11.	CC006000000195751	10(S)/grd	08.11.2019	-	13,50,000
12.	CC006000000195770	103(F)/1 st	08.11.2019	December 2021	20,16,850

¹ AFS- Agreement for Sale

² Grd - ground floor

SR. NO.	COMPLAINT NOS.	SHOP(S) or FLAT(F) NOS. / floor	DATE OF AFS ¹	POSSESSION DATE AS PER SYNOPSIS OF EACH COMPLAINANTS	TOTAL CONSIDERATION AS PER AFS (INR)
13.	CC006000000195771	6(S)/grd	15.07.2019	December 2021	16,18,500
14.	CC006000000195823	5(S)/grd	08.07.2019	December 2021	20,18,500

13. With regard to the relief sought by the Complainant at Sr. No. 1 the Authority is clear that the Respondent has thus not fulfilled the promise to handover the shop No. 3 on ground floor as per the date committed in the agreement for sale which is December 2021, the Respondent has violated the provisions of Section 18 of the said Act too and thus, the Complainant at Sr. No. 1 is entitled to claim reliefs under Section 18. The Complainant at Sr. No. 1 has sought to exit the said Project and is claiming refund of the amounts paid together with interest, this relief is granted to the Complainant at Sr. No. 1 and the complaint is allowed to this extent. The Respondent is directed to refund the amounts paid by the Complainant at Sr. No. 1 towards the consideration (*excluding amounts paid towards taxes and other charges such as stamp duty, registration fees and such other amounts paid to statutory authorities*) of shop No.3 along with interest from **01.01.2022**. It is also important to note here that the interest cannot be made applicable from the date of payment/ deposit because the Allottees who decide to stay in the said Project despite the delay are entitled to interest for the delay that takes place from the specific date of possession mentioned in the agreements for sale. Further it is also pertinent to note that the Authority cannot make withdrawal more lucrative than continuing with the said Project and thereby jeopardise or further delay the project completion for those who have chosen to stay in the said Project. Further, with regard to the payment of interest to the Complainant at Sr. No.1, it is observed that while the Respondent Promoter is entitled to claim the 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, however the Authority would deny this benefit to the Respondent Promoter. The reason for this being that the benefit of moratorium offered due to the disruption due to Covid-19 pandemic was for projects that were proceeding as per the sanctioned plan. A benefit or privilege is always extended to entities which operate within the

four walls of the law. It would be a serious disservice if privileges were extended to those who violate the law. This would only send a wrong message that delays that take place due to entities straying away from what was mandated would be pardoned. The Allottees cannot be penalised for misadventures of the Promoters. The Authority disallows the benefit of moratorium to the Respondent Promoter and interest shall also be payable for this period. The refund together with interest shall be paid within 90 days of this order. The Allottee (*Complainant at Sr. No. 1*) shall simultaneously execute the cancellation deed.

14. The remaining Complainants have primarily sought reliefs as; to regularise the plans as per construction done, obtain OC for the said Project, handover possession and refund of extra amounts paid towards the shop / flat carpet area along with interest from the date of payments made. Further in case of Complainants at Sr. Nos. 3 & 11, an additional relief seeking execution of agreements for sale has been sought.
15. In this regard, it is pertinent to note that the Authority can only direct the Respondent to take steps to regularise the construction done by him and obtain OC from the Competent Authority before **31.12.2023** (*date sought for extension of the said Project vide the extension application pending before the Authority*).
16. Further upon regularisation of the construction done by the Respondent, he is directed to adjust the excess amounts if any received from the Complainants herein towards the difference in the carpet area of the shop / flat against the balance payments, if any outstanding of Complainants at sr. Nos. 2 to 14 on handover of possession and to refund any excess amount thereafter within a period of 30 days from the handover of possession or **31.01.2024** whichever is earlier. Here the Respondent is also directed to execute a supplementary agreement with each of the Complainants whose carpet areas of the shop / flat have being revised upon the regularisation of construction done in the said Project. The benefit of moratorium shall not be available to the Respondent Promoter for the reasons as laid out in para No.13 hereinabove.

17. Further, the Respondent is also directed to execute agreements for sale for shops purchased by the Complainants at Sr. Nos. 3 & 11 herein within a period of 30 days from the date of regularisation by the Planning Authority. The Complainants at Sr. Nos. 3 & 11 shall be entitled for interest from the first date of completion mentioned by the Respondent on the MahaERA Project registration webpage i.e. 31.10.2013. Needless to say, that the Respondent Promoter will not have the benefit of moratorium for reasons mentioned in para No. 13.
18. Further, with regard to claiming compensation on account of mental torture, the Parties are at liberty to approach the Adjudicating Officer for the same.
19. Thus, the **issue at para No. 6** hereinabove is dealt **accordingly** and the complaints are **disposed of** as per the directions mentioned hereinabove.
20. The registration of the said Project shall be kept in **abeyance** till the regularisation of the construction by the Planning Authority to prevent further sales. The Respondent Promoter shall not advertise, market, book, sell or offer for sale, or invite person/s to purchase in any manner any apartment in the said Project till the same is regularised. This shall also be mentioned on the MahaRERA Project registration webpage.
21. No order as to cost.

(Ajoy Mehta)
Chairperson, MahaRERA