

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

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

**1. COMPLAINT NO. CC006000000194899**

MRS. T. N. SREEDEVI &  
MR. M. D. SOMAN PILLAI ...COMPLAINANTS  
a/w

**2. COMPLAINT NO. CC006000000194385**

MRS. BAISHAKHI DUTTA &  
MR. SUBRATA DUTTA ...COMPLAINANTS  
a/w

**3. COMPLAINT NO. CC006000000195403**

MR. ANIKET ARVIND GURAO ...COMPLAINANT  
VS  
MISHAL CONSTRUCTION PVT. LTD. ...RESPONDENT

**MAHARERA PROJECT REGISTRATION NO. P51900007494**

**Order**

May 26, 2023

*(Date of hearing as mentioned in para 3 hereinbelow)*

**Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA**  
CA Karthik Iyer for all Complainants at Sr. No. 1 to 3  
None present for the Respondent

1. The Complainants are home buyer 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 "TILAK NAGAR SHRI GURUDUTTA CO-OPERATIVE HOUSING SOCIETY LIMITED" under section 5 of the said Act bearing **MAHARERA Project Registration No. P51900007494** (hereinafter referred to as the "**said Project**"). On the MahaRERA Project registration

webpage the proposed completion date is mentioned as 31.12.2017 and revised completion date is mentioned as 31.12.2018 and extended completion date is mentioned as 31.12.2022.

2. The Complainants are seeking the following reliefs:

SR. NO.	COMPLAINT NO.	RELIEFS
1.	CC006000000194899	<p><i>"Because of the failure to give possession by the said date, the applicants were put to enormous difficulty. There is already a delay of more than 1 year 11 months; hence the allottee is forced to claim the following amount as interest for delay from the Developer, through this forum:</i></p> <p><i>a) Interest from 1st January, 2019 till date of handing over of possession on the amount paid of Rs. 1,08,27,500/- u/s. 18 of the MAHARERA Act, 2016.</i></p> <p><i>b) And that the above interest so awarded, be set off or adjusted against the balance sale consideration amount payable by the Allottee.</i></p> <p><i>c) Order preventing the Developer from demanding, charging and collecting any additional amount, separately, in lieu of Fungible Charges / FSI Premium / Fungible Premium, TDR Charges/ Costs, ASR Premium, etc, being basic Land Cost.</i></p> <p><i>d) Order preventing the Developer from demanding, charging and collecting any additional amount, separately, in lieu of Development charges, other premiums, expenses for erection of transformer, cable laying, betterment charges, costs of installation of water line, water mains, sewerage line, sewerage mains, electric cables, electric sub-station, making and maintain of internal roads, and access to the said property, drainage, layout, expenses of electric meter installation, development charges, other premiums paid/payable to MCGM, Collector, BSD, and all other facilities, being basic Construction Cost.</i></p> <p><i>e) Order preventing the Developer from demanding, charging and collecting any additional amount citing proportionate post possession share of taxes, outgoings, expenses, etc including share money application and entrance fee of the society, legal charges for formation of Society since Housing Society is already in existence and these amounts can be directly paid by the Purchaser to the existing Housing Society.</i></p> <p><i>f) Order the Developer to charge and collect from the Purchaser/Allottee, only Deposits for Water Connection, Deposits for Electric Connection, Pro-rata share of Deposit for Electrical Receiving and Sub-Station, if any, provided in layout, with attachment of proof of incurring the same alongwith calculation of proportionate share of Allottee.</i></p> <p><i>g) Order the Developer to handover possession alongwith 2 (Two) dedicated specified parking space, all amenities and with full Occupation Certificate (OC) on or before 30-06-2021, in order to avoid further inconvenience to the Purchasers."</i></p>
2.	CC006000000194385	<p><i>"a) Interest from 1st January, 2019 till date of handing over of possession on the amount paid of Rs. 90,85,341 /- u/s. 18 of the MAHARERA Act, 2016.</i></p>

		<p>b) And that the above interest so awarded, be set off or adjusted against the balance sale consideration amount payable by the Allottee.</p> <p>c) Order preventing the Developer from demanding, charging and collecting any additional amount, separately, in lieu of Fungible Charges/FSI Premium/Fungible Premium, TDR Charges/Costs, ASR Premium, etc, being basic Land Cost.</p> <p>d) Order preventing the Developer from demanding, charging and collecting any additional amount, separately, in lieu of Development charges, other premiums, expenses for erection of transformer, cable laying, betterment charges, costs of installation of water line, water mains, sewerage line, sewerage mains, electric cables, electric sub-station, making and maintain of internal roads, and access to the said property, drainage, layout, expenses of electric meter installation, development charges, other premiums paid/payable to MCGM, Collector, BSD, and all other facilities, being basic Construction Cost.</p> <p>e) Order preventing the Developer from demanding, charging and collecting any additional amount citing proportionate post possession share of taxes, outgoings, expenses, etc including share money application and entrance fee of the society, legal charges for formation of Society since Housing Society is already in existence and these amounts can be directly paid by the Purchaser to the existing Housing Society.</p> <p>f) Order the Developer to charge and collect from the Purchaser/Allottee, only Deposits for Water Connection, Deposits for Electric Connection, Pro-rata share of Deposit for Electrical Receiving and Sub-Station, if any, provided in layout, with attachment of proof of incurring the same alongwith calculation of proportionate share of Allottee.</p> <p>g) Order the Developer to handover possession alongwith dedicated specified parking space, all amenities and with full Occupation Certificate (OC) on or before 30-06-2021, in order to avoid further inconvenience to the Purchasers."</p>
3.	CC006000000195403	<p>"Because of the failure to give possession by the said date, the applicants were put to enormous difficulty. There is already a delay of more than 1 year 11 months; hence the allottee is forced to claim the following amount as interest for delay from the Developer, through this forum:</p> <p>a) Interest from 1st January, 2018 till date of handing over of possession on the amount paid of Rs. 64,03,624/- u/s. 18 of the MAHARERA Act, 2016.</p> <p>b) And that the above interest so awarded, be set off or adjusted against the balance sale consideration amount payable by the Allottee.</p> <p>c) Order preventing the Developer from demanding, charging and collecting any additional amount, separately, in lieu of Fungible Charges/FSI Premium/Fungible Premium, TDR Charges/Costs, ASR Premium, etc, being basic Land Cost.</p> <p>d) Order preventing the Developer from demanding, charging and collecting any additional amount, separately, in lieu of Development charges, other premiums, expenses for erection of transformer, cable laying, betterment charges, costs of installation of water line, water mains, sewerage line, sewerage mains, electric cables, electric sub-station, making and maintain of internal roads, and access to the said property, drainage, layout, expenses of electric meter installation, development charges, other premiums</p>

		<p><i>paid/payable to MCGM, Collector, BSD, and all other facilities, being basic Construction Cost.</i></p> <p><i>e) Order preventing the Developer from demanding, charging and collecting any additional amount citing proportionate post possession share of taxes, outgoings, expenses, etc including share money application and entrance fee of the society, legal charges for formation of Society since Housing Society is already in existence and these amounts can be directly paid by the Purchaser to the existing Housing Society.</i></p> <p><i>f) Order the Developer to charge and collect from the Purchaser/Allottee, only Deposits for Water Connection, Deposits for Electric Connection, Pro-rata share of Deposit for Electrical Receiving and Sub-Station, if any, provided in layout, with attachment of proof of incurring the same alongwith calculation of proportionate share of Allottee.</i></p> <p><i>g) Order the Developer to handover possession alongwith 1 (One) Car park space, all amenities and with full Occupation Certificate (OC) on or before 30-06-2021, in order to avoid further inconvenience to the Purchasers."</i></p>
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3. All the complaints were heard by this Authority wherein the following roznama was recorded:

SR. NO.	COMPLAINT NO.	DATE OF HEARING	ROZNAMA RECORDED
1.	CC006000000194899	20.10.2022	<p><i>"Matter was proceeded ex-parte. In May 2014, a booking was made, agreement for sale was executed on 03.09.2016. Total consideration was 1.13 crores, out of which 96% namely 1.08 crore is paid. Date of possession in agreement was given as 31.12.2018. RERA completion date was initially shown as 2017 and was further extended to 2022.</i></p> <p><i>In view of above, the Complainant seeks interest for delay under section 18, plus cost and further also seeks directives to the builder not to collect charges not stipulated in the agreement like fungible charges, premium charges etc. The contention of the complainant is that these are ultra vires of the MOFA and RERA Act.</i></p> <p><i>Parties are at liberty to file written submissions, if any, by 15.11.2022. Subsequent to which, matter will be reserved for orders."</i></p>
2.	CC006000000194385	03.11.2022	<p><i>"It is seen from the last roznama dated 24.08.2022 that Complainant remained absent then also. Matter proceeded ex-parte. Complainant avers that the flat was booked in April, 2016 for a total consideration of Rs. 96.51 lakhs. Agreement for sale was executed on 28.07.2016 as per which date of possession was 31.12.2018. Complainant has paid 94% of the amount by March, 2018. The present RERA date of completion is shown as December, 2022. The Complainant also states that Respondent has raised additional demands for fungible FSI which is not in the agreement and beyond the total consideration agreed upon.</i></p>

			<p>1. The Complainant now seeks interest from 01.01.2019 upto date of possession together with cost.</p> <p>2. Complainant seeks possession with OC and parking and seeks that the amount that are payable by the developer should be offset against the amounts payable by him.</p> <p>Parties at liberty to file written submissions, if any, by the 25.11.2022 subsequent to which the matter will be reserved for orders."</p>
3.	CC006000000195403		<p>"It is seen from the last roznama dated 24.08.2022 that Complainant remained absent then also. Matter proceeded ex-parte. Complainant avers that the flat was booked in October, 2011 for a total consideration of Rs. 68.5 lakhs. Agreement for sale was executed on 06.07.2015 as per which date of possession was 31.12.2017. Complainant has paid 93.5% of the amount by January, 2018. The present RERA date of completion is shown as December, 2022. The Complainant also states that Respondent has raised additional demands for fungible FSI which is not in the agreement and beyond the total consideration agreed upon.</p> <p>1. The Complainant now seeks interest from 01.01.2018 upto date of possession together with cost.</p> <p>2. Complainant seeks possession with OC and parking and seeks that the amount that are payable by the developer should be offset against the amounts payable by him.</p> <p>Parties at liberty to file written submissions, if any, by the 25.11.2022 subsequent to which the matter will be reserved for orders."</p>

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

SR. NO.	COMPLAINT NOS.	FLAT NO. /WING	DATE OF AFS <sup>1</sup>	POSSESION DATE (AFS)	TOTAL CONSIDERATION (RS.)
1.	CC006000000194899	1102/A	03.09.2016	31.12.2018	1,13,00,000
2.	CC006000000194385	1004/A	28.07.2016	31.12.2018	96,51,000
3.	CC006000000195403	1501/A	06.07.2015	31.12.2017	68,50,000

5. The Respondent has not filed any replies or any submissions with regard to all complaints, despite time being given to the Respondent the Respondent has chosen to remain absent in the hearings of the captioned complaints. Thus, this Authority has proceeded ex-parte in the captioned complaint.

<sup>1</sup> AFS – agreement for sale (*abbreviation applicable throughout the order*)

6. From the facts and the submissions, the only issue that needs to be considered is *Whether the Complainants are entitled for interest for delay in handover of possession under Section 18 of the said Act?*

7. 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 Promoter (*Respondent herein*) fails 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 Allottees (*the Complainants herein*) chooses to stay in the said Project they are entitled to claim interest for every month of delay, till the handing over of the possession, from the Promoter (*Respondent herein*) at such rate as may be prescribed.

8. Thus, from the documents uploaded by the Respondent on the said Project registration webpage, it is clear that the said Project is not yet completed. Hence, there is a delay on part of the Respondent with regard to the handover of possession with Occupation Certificate (OC) as per the date promised to the Complainants herein under the respective agreements for sale. In view thereof

the Complainants are entitled to remedy under Section 18 of the said Act. Hence the answer to the **issue at para No. 6** is answered **in affirmative**.

9. 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 Respondent to the Complainants under their respective agreements becomes relevant. The date from which the interest for delay in handover of possession shall be made applicable is listed hereinbelow in the table for ease of reference against each Complainant:

SR. NO.	COMPLAINT NOS.	DATE OF AFS <sup>2</sup>	POSSESSION DATE (AFS)	INTEREST IS APPLICABLE FROM
1.	CC006000000194899	03.09.2016	31.12.2018	01.01.2019
2.	CC006000000194385	28.07.2016	31.12.2018	01.01.2019
3.	CC006000000195403	06.07.2015	31.12.2017	01.01.2018

10. It is also noted that while perusing the MahaRERA Project registration webpage the said Project is lapsed as completion certificate / occupation certificate is not uploaded by the Respondent. The Respondent has taken no steps to seek extension of the same till date. The Respondent has violated the provisions of the said Act and hence is liable to pay penalty under section 61 of the said Act.
11. Further, the Authority notes that the Complainants are seeking possession of the flats purchased by them in the said Project. Thus, the issue of completion of the said Project becomes critical. However, the Authority notes with concern that the Respondent has also not appeared before the Authority and that the Respondent has not sought any extension nor has 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;

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<sup>2</sup> AFS – agreement for sale (*abbreviation applicable throughout the order*)

- b. To submit a list of works pending as per the sanctioned plans of the Competent Authority and also to submit a list of items pending completion as on date. The said lists to be served upon the Respondent and the Authority within 30 days of the formation of the AOA;
  - c. To submit a proposed plan to the Authority with a copy to the Respondent 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.
12. Further since the said Project has lapsed and the Respondent has taken no steps till date to seek any extension, this Authority shall keep the said Project registration in **abeyance** and the Respondent 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.
13. The Complainant Allottees have also raised the issue of various charges (*listed in the complaints*) on which they seek directives to the Respondent Promoter to not collect the same. The Promoter is hereby directed not to collect monies beyond what is stipulated in the agreement for sale. In the converse the Complainant Allottees must also ensure that they diligently pay the sums that are due from them. The Allottees to note that withholding payments due would further jeopardise the completion of the said Project.



## FINAL ORDER

- A. All the complaints are allowed and the Complainants at Sr. Nos. 1 & 2 are entitled to seek interest for delay in handover of possession from **01.01.2019** and the Complainant at Sr. No. 3 is entitled to seek interest for delay in handover of possession from **01.01.2018** till the handover of possession with OC. 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*. Further, the total interest accrued shall be set off against any dues required to be paid by the Complainants at the time of possession and in case any net amount payable remains the same shall be paid in one instalment together with the handover of possession to the Complainant herein.
- B. Further, with regard to the payment of interest, it is to be noted that the Respondent shall be entitled to claim 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. The said period shall be deducted from the total period of interest payable in each complaint.
- C. The way forward enumerated in para Nos.12 & 13 shall be complied with by all the Parties to ensure completion of the said Project.
- D. The Secretary, MahaRERA to put the said Project registration number in **abeyance** and block access to the said Project registration number, take 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, this order should be displayed.
- E. The Respondent 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 further orders.
- F. No order as to costs.

**(Ajoy Mehta)**  
**Chairperson, MahaRERA**