

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

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

1. COMPLAINT NO. CC006000000197069

1. SHAILESH KANTILAL SHAH &
2. HARSHA SHIALESH SHAH ...COMPLAINANTS
a/w

2. COMPLAINT NO. CC006000000197070

PINAKIN LAXMICHAND SHAH ...COMPLAINANT/S
a/w

3. COMPLAINT NO. CC006000000197072

ANKUR J. SHAH HUF through
Karta ANKUR JITENDRA SHAH ...COMPLAINANT/S
a/w

4. COMPLAINT NO. CC006000000197082

1. SHAILESH KANTILAL SHAH,
2. BHAVNA JAISUKH MEHTA,
3. HARESH KANTILAL SHAH &
4. KAMLESH KANTILAL SHAH ...COMPLAINANTS
a/w

5. COMPLAINT NO. CC006000000197084

1. RAMESH KANTIBHAI PATANI &
2. KIRAN RAMESH PATANI ...COMPLAINANTS
a/w

6. COMPLAINT NO. CC006000000197085

ZENI SHAILESH SHAH ...COMPLAINANT/S
a/w

7. COMPLAINT NO. CC006000000198362

MEENAKSHI NITIN SHAH ...COMPLAINANT/S

VS

SRI HARSH DEVELOPERS ...RESPONDENT/S
(Partnership Firm)

MAHARERA PROJECT REGISTRATION NO. P51900012304

FINAL ORDER

MARCH 03, 2023

(Date of hearing - 11.08.2022 matter was reserved for orders)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA

Advocate Vikramjit Garewal for Complainants

Advocate Nitya Shah Parikh for Respondents

1. The Respondent is the Promoter within the meaning of Section 2 (zk) 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"). The Respondent is registered as the Promoter of the Project namely "LE PALAZZO" under section 5 of the said Act bearing **MAHARERA Project Registration No. P51900012304** (hereinafter referred to as the "said Project"). On the MahaRERA Project registration webpage the proposed completion date (PCD) of the said Project is mentioned as 06.10.2016 and the revised completion date (RCD) is mentioned as 30.04.2019 (*lapsed project*).
2. The Complainants are seeking the following reliefs (*in common*):

SR. NO.	COMPLAINT NO.	COMMON RELIEFS SOUGHT
1. to 7.	CC006000000197069 CC006000000197070 CC006000000197072 CC006000000197082 CC006000000197084 CC006000000197085 CC006000000198362	<i>a) The Respondent be directed to enter into and register an Agreement sale in respect of the said Shop which is in accordance and conformity with the model Agreement provided in the Rules under RERA with the model Agreement provided in the Rules under RERA with the Complainants and also to pay interest in accordance with RERA for the delay in handing over possession of the said shop;</i> <i>b) The Respondent be directed to handover over possession of the said Shop to the Complainants immediately upon obtaining the Occupancy Certificate in respect thereof;</i> <i>c) The Respondent be directed to pay the Complainants compensation in form of damages for the grave loss caused to the Complainants due to Respondent's delay in handing over possession of the said Shop;</i> <i>d) The Respondent be penalized and fined for violating provisions of RERA and MOFA by non - execution of Agreement for Sale even after receiving more than 20% of the consideration;</i> <i>e) In alternative to prayer clause a), b) and c) above, the Respondent be directed to immediately refund the said total consideration and also pay interest in accordance with RERA from date of payment till date of refunding the said total consideration, without any deductions.</i> <i>f) In addition to prayer clause e) above, the Respondent be directed to pay the Complainants compensation in form of damages for the grave loss caused to the Complainants because of the Respondent's failure in handing over possession of the said Shop;</i>

SR. NO.	COMPLAINT NO.	COMMON RELIEFS SOUGHT
		g) Such other costs/ reliefs that this Hon'ble Authority may deem fit and appropriate; and h) The Complainants crave leave to rely upon relevant documents, as and when required.

3. All the complaints were heard by this Authority on 11.08.2022 wherein the following common roznamas was passed:

SR. NO.	COMPLAINT NO.	ROZNAMA PASSED
1. to 7.	CC006000000197069 CC006000000197070 CC006000000197072 CC006000000197082 CC006000000197084 CC006000000197085 CC006000000198362	<i>"The Complainant avers that the total consideration was paid part through cheque and part through cash. The Complainant now seeks execution of Agreement for sale. The Complainant avers that he has an allotment letter and he has paid part consideration, the unit is identified and hence Agreement for sale should be executed. The Complainant has not received possession even when the OC has been received. The Respondent avers that Complainants are unsecured creditors who gave loans in 2009 for which they were promised interest and they are not allottees. Being unsecured creditors, the Complainants also never raised the issue of Agreement for sale right from 2010 to 2021. The Respondent claims to have paid interest up to 2014 for which TDS Receipts are also available. The delay in the project took place in view of delays from MHADA, DCPR and certain issues with financial institutions. The Respondent denies having received any cash payment. The Respondent reiterates that the allotment letters were given only in 2012 onwards as they desired a security towards their investment and interest was being paid. The Respondent further avers that the Complainants are investors and not allottees and hence this is a civil matter beyond the purview of RERA. Parties are at liberty to file written submissions, if any, by 22.08.2022."</i>

4. The brief facts as submitted by the Complainants in their respective complaints are as follows:

- a. The above complaints at Sr. Nos. 1 to 3 have been filed before RERA on 25.05.2021, at Sr. Nos. 4 to 6 have been filed on 26.05.2021 and complaints at Sr. No. 7 has been filed on 18.09.2021.
- b. The Complainants at Sr. No.1 were allotted Shop No.10 vide an allotment letter dated 11.02.2014 wherein the total consideration was mentioned as Rs.10,00,000/-. This allotment letter was to be read along with a Memorandum of Understanding (MOU) dated 11.02.2013 wherein detail terms and conditions were mentioned (*Note: copy of MOU not uploaded*). That since the area allotted for the aforesaid shop was increased due to changes in the policy the amount of consideration was also increased and

pursuant to the same, the Complainants at Sr. No.1 have made 100% payment of Rs.1,70,00,000/- to the Respondent towards the aforesaid allotment.

- c. The Complainant at Sr. No.2 was allotted Shop No.13 vide an allotment letter dated 13.01.2012 wherein the total consideration was mentioned as Rs.42,50,000/-. This allotment letter was to be read along with a MOU dated 13.01.2012 wherein detail terms and conditions were mentioned (*Note: copy of MOU not uploaded*). That since the area allotted for the aforesaid shop was increased due to changes in the policy the amount of consideration was also increased and pursuant to the same, Complainant at Sr. No.2 has made 100% payment of Rs.87,50,000/- to the Respondent towards the aforesaid allotment.
- d. The Complainant at Sr. No.3 was allotted Shop No.108 vide an allotment letter dated 01.11.2012 wherein the total consideration was mentioned as Rs.12,50,000/-. This allotment letter was to be read along with a MOU dated 01.11.2012 wherein detail terms and conditions were mentioned (*Note: copy of MOU not uploaded*). That since the area allotted for the aforesaid shop was increased due to changes in the policy the amount of consideration was also increased and pursuant to the same, Complainant at Sr. No.3 has made 100% payment of Rs.75,00,000/- to the Respondent towards the aforesaid allotment.
- e. The Complainants at Sr. No.4 was allotted Shop No.316 vide an allotment letter dated 01.04.2013 wherein the total consideration was mentioned as Rs.22,00,000/-. This allotment letter was to be read along with a MOU dated 01.04.2013 wherein detail terms and conditions were mentioned (*Note: copy of MOU not uploaded*). That the Complainants at Sr. No.4 have made 100% payment of Rs.1,45,00,000/- to the Respondent towards the allotment of the aforesaid shop. That since the area allotted for the aforesaid shop was increased due to changes in the policy the amount of consideration was also increased and pursuant to the same, Complainants at Sr. No.4 have made 100% payment of Rs.1,45,00,000/- to the Respondent towards the aforesaid allotment.
- f. The Complainants at Sr. No.5 was allotted Shop No.15 vide an allotment letter dated 01.10.2010 wherein the total consideration was mentioned as Rs.1,06,00,000/-. This allotment letter was to be read along with a MOU dated 01.10.2011 wherein detail

terms and conditions were mentioned (*Note: copy of MOU not uploaded*). That the Complainant at Sr. No.5 has made 100% payment of Rs.2,57,00,000/- to the Respondent towards the allotment of the aforesaid shop. That since the area allotted for the aforesaid shop was increased due to changes in the policy the amount of consideration was also increased and pursuant to the same, Complainants at Sr. No.5 have made 100% payment of Rs.2,57,00,000/- to the Respondent towards the aforesaid allotment.

- g. The Complainant at Sr. No.6 was allotted Shop No.01 vide an allotment letter dated 01.01.2014 wherein the total consideration was mentioned as Rs.1,50,00,000/-. This allotment letter was to be read along with a MOU dated 01.04.2014 wherein detail terms and conditions were mentioned (*Note: copy of MOU not uploaded*). That since the area allotted for the aforesaid shop was increased due to changes in the policy the amount of consideration was also increased and pursuant to the same, Complainant at Sr. No.6 have made 100% payment of Rs.3,75,00,000/- to the Respondent towards the aforesaid allotment.
- h. The Complainant at Sr. No.7 was allotted Shop No.311/312 for a total consideration of Rs.1,60,00,000/- which amounts are paid fully to the Respondent. (*Note: no allotment letter nor any MOU on record uploaded*).
- i. That the Respondent had agreed to execute and register formal agreement for sale in respect of the shops allotted in favour of the Complainants has failed to do the same till date.
- j. Further, several meetings and discussions with the Respondent's partner Mr. Vijay C. Kamdar were held for calling upon them to execute and register the agreement for sale in respect of the shops and to handover possession of the same.
- k. That the area of the allotted shops mentioned above had changed which resulted in increase of the total consideration amounts as agreed in the allotment letters.
- l. The Complainants herein are thus, seeking execution of agreement for sale, possession of their respective allotted shops along with interest and compensation for delay in possession.

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

- a. That the Complainants at Sr. No. 1 have invested Rs. 3,00,000/-, the Complainant at Sr. No. 2 has invested Rs.7,50,000/-, the Complainant at Sr. No. 3 has invested Rs.9,00,000/ -, the Complainants at Sr. No. 4 have invested Rs. 15,00,000/ -, the Complainant at Sr. No. 5 has invested Rs.77,50,000/-, the Complainant at Sr. No. 6 has invested Rs.7,50,000/ - and the Complainant at Sr. No. 7 has invested Rs.1,60,00,000/- till date.
 - b. That the Complainants are unsecured creditors/investors who had given loan to the Respondent for the said project and the Respondent have been paying interest to the Complainants. Interest from 2009 till 2014 was paid to the Complainants (*TDS certificate uploaded*). However, since 2015 the interest is not paid to the Complainants towards the amounts invested by them.
 - c. That the ground for delay in payment of interest on the amounts invested are because of many complexities i.e. firstly the said project is a part of redevelopment project whereby the Respondent was to first complete rehab buildings and only then start work of the said project. secondly, many litigations with rehab tenants for vacating premises also caused delays in starting construction work of rehab buildings. Many amendments took place in plans on account of new DC rules and thus new permissions / approvals were to be taken from MCGM which also caused delays. Events such as demonetization, Covid-19 pandemic, GST implementation are also amongst force majeure events which resulted in delay in construction activities of the said Project.
 - d. Issues pertaining to loans taken and payments of EMIs due to Financial Institutes became critical as the delays in construction activities of the said Project set in.
 - e. That part OC in the year 2010 for the rehab building was obtained. The Complainants were aware about the same but never approached the Respondent for taking possession of the said shops or for executing agreement for sale.
6. From the facts and the submissions made by the Parties hereinabove, the issue that needs to be considered is *Whether the Complainants are entitled to seek any remedy under Sections 13 & 18 of the said Act?*

7. In order to answer the above issue, the following observations are noteworthy
- a. That this Authority is unable to appreciate as to what made the Complainants herein file their complaints only in 2021 in spite of the evident fact that the allotments were of the year 2010 to 2014 i.e. pre-RERA period.
 - b. That the Complainants till 2021, did not feel any need to file any complaint before RERA which came in force in 2017 nor did they ever file any civil complaint before civil court for the default of the Respondent as vehemently submitted by the Complainant herein.
 - c. That the only document for the Complainants at Sr. Nos. 1 to 6 is the letter of allotment towards the shops allotted to each and the payments made by each which mentions the consideration amounts before the changes and increase in the same was done. That the Complainant at Sr. No. 7 does not even have any such allotment letter towards the shop allotted and the payments made. It is also noted that the allotment letters speak of terms and conditions entered between Parties vide MOUs which are also not uploaded. None of the documents submitted points to any date of completion that was promised or agreed upon by the Parties herein.
 - d. This Authority is unable to appreciate how the Complainants have made 100% payments of crores of rupees without signing or executing proper documents / agreements between them and the Respondent. The Authority also notes that the Respondent has only acknowledged receipt of the amounts paid under the allotment letters in their submissions. However, the Authority has perused the receipts uploaded by each Complainants in their respective complaints towards the 100% payments of the increased consideration amounts for each shop allotted to each Complainants as mentioned in para No.4 hereinabove.
 - e. It is also observed that the Respondent has in all complaints in their replies and submissions stated that the Complainants are investors / secured creditors but he is unable to show case any such contact or documents to prove the same. The only document available in these complaints are the allotment letters for the Complainants at Sr. Nos. 1 to 6 which on the plain reading purportedly indicates a Promoter and an Allottee relationship. However, in case of the Complainant at Sr. No. 7 it is observed that since 100% payments have been made without any contract

/ agreement it is difficult to infer the purpose and the relationship therein. None of the Party at Sr. No. 7 has uploaded any contract / document on record to prove the same or otherwise. Thus, this Authority shall refrain from passing any direction in this regard.

- f. From the above observations this Authority expresses displeasure of the actions of the Parties but in spite of the same, the Authority shall go ahead to examine the captioned complaints on merits. In this regard to examine whether the Complainants herein can seek remedy under Section 18, it is imperative to examine Section 18 reproduced hereinbelow for ease of reference:

“Section 18 - Return of amount and compensation:

(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.”

- g. 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 agreements for sale or as the case may be by the specified date therein, the Allotees have a choice either to withdraw from the said Project or stay with the said project. Further, in case the Allotees chooses to withdraw from the said project, they shall claim refund of the amount paid by them together with interest at such rate as may be prescribed and in case the Allotees chooses to stay in the said project, they shall be paid interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

- h. In the present complaints before this Authority the Complainants are clearly desirous of staying in the said Project and are seeking reliefs under section 13 & 18

of the said Act. But at the same time there is no specific date of possession committed by the respondent to them. Thus, it is not possible to ascertain the delay in handover of possession. The Complainants herein are seeking adjudication of reliefs sought under Section 13 & 18 of the said Act.

- i. Thus, in the first instance it is important to examine Section 13 which is reproduced hereinbelow for ease of reference:

“Section 13 - No deposit or advance to be taken by Promoter without first entering into agreement for sale:

(1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

(2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.”

- j. On perusal of above section, it is clear that a sum of more than 10% cannot be accepted without first entering into a written agreement. In all the captioned complaints it is seen that a major portion of the sum towards consideration has been received before the advent of RERA when the mandated provision under Section 13 was not available. The Authority would have had no hesitation directing a remedy under Section 13 subsequent to the advent of RERA even though the payments have been made before the advent of RERA. The hands of the Authority however are tied in the present cases as the Parties have failed to show the exact purpose for which payments were made. Even the MOUs claimed to have been executed by the Parties have also not been uploaded to enable the Authority to interpret the purpose of payments. To complicate matters it is also on record that certain amounts have been paid as interest to the Complainants herein. This has created a very ambiguous situation wherein it is not clear whether the payments were a financial investment for financial returns or were there payments for which the consideration was a shop

as claimed by the Complainants. Further it is also not clear as to why after having paid such huge amounts the Complainants have not even raised a whisper about incomplete documentation either before the advent of RERA or even four (4) years after the advent of RERA. In the above circumstances the Authority would not grant any relief under Section 13 and the prayer seeking the same stands rejected.

k. The next issue before the Authority is one of adjudicating the return of amounts paid by the Complainants and compensation being sought under Section 18.

l. The essential ingredient to trigger Section 18 would be first to establish a Promoter and an Allottee relationship between the Parties herein. Unfortunately, with the sketchy documents on record it is impossible to irrefutably conclude that a Promoter and an Allottee relationship exists. The establishment of this relationship is the basis of Section 18. In the captioned complaints it is not clear whether it is a Promoter and an Allottee relationship or a financial transaction made for gains in terms of interest on the investments. Thus, wherever there is a doubt on the very existence of this relationship the Authority shall refrain / restrict itself from ruling on such matters/complaints. The basic concept of this piece of legislation (RERA) has been to protect homebuyers / allottees of real estate projects. The legislation in no way intends to protect investors hunting for financial returns on investments made. In view of the above, the Authority is left with no option but to dismiss the prayers sought by the Complainants herein under Section 18. Thus, the answer to the **issue at para No. 6** is answered in **negative**.

8. The Authority notes with concern the attempt of the Party to use the Authority for settling financial claims. The Authority would like to warn the Parties that such conduct will be viewed seriously. The Authority would also like to draw attention of the Parties to the object and reasons of this piece of legislation (RERA). Such a conduct as seen above in captioned cases only tends to waste the time of the Authority which results in delaying justice for genuine grievances. The Authority would like to caution all concerned that such attempts will be viewed very seriously in future attracting costs.

9. Thus, in view of the above, all the captioned complaints are dismissed. No order as to costs.

10. Further the said Project is 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 advertise, market, book, sell or offer for sale, or invite person/s to purchase in any manner any apartment in the said Project till he obtains extensions of the said Project from MahaRERA.

(Ajoy Mehta)
Chairperson, MahaRERA