

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

Complaint No. CC005000000096064

Kohinoor Televideo Pvt Ltd

... Complainant

Versus

1. Deron Properties Pvt Ltd
2. M/s Durga Associates (as per amendment application)
3. State Bank of India (as per amendment application) ..Respondents

Along with

Complaint No. CC005000000096066

Kohinoor Televideo Pvt Ltd

... Complainant

Versus

1. Deron Properties Pvt Ltd
2. M/s Durga Associates(as per amendment application)
3. State Bank of India (as per amendment application) ..Respondents

MahaRERA Project Registration No. P52100007191

Coram: Shri. Mahesh Pathak, Hon'ble Member – I/ MahaRERA

Ld. Adv. Avinash Pawar appeared for the complainant.

None appeared for the respondent nos. 1 & 3.

CA Mr. Nicky Milani appeared for the respondent no. 2

ORDER

(Wednesday, 30th October 2024)

(Through Video Conferencing)

1. The complainant above named has filed these 2 separate online complaints before the MahaRERA on 27-09-2021 (in sr. no. 1) and on 29-09-2021 (in sr. no. 2) mainly seeking directions from MahaRERA to the respondent -promoter to pay interest for delayed till actual handover of possession along with occupation certificate, for registering the amenities as promised in the brochure with the MahaRERA, for formation of society and cost as prescribed under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') for their respects shops /showrooms as mentioned in the table below (hereinafter referred to as the said units) in respect of the respondents' registered project known as "**Deron Business Square**" bearing MahaRERA registration no. **P52100007191** located at Hinjavadi (CT), Dist. Pune 411057 (hereinafter referred to as the said project) .
2. These complaints were heard by the MahaRERA on several occasions on merits and the same were finally heard on 09-07-2024 as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions if any. Accordingly, the complainant and the respondent no. 2 appeared for the said hearings and made their submissions. However, despite notice, the respondent no. 1 and 3 remained absent. The MahaRERA has heard the argument of the parties and also perused the available record.
3. After hearing the arguments of the parties concerned (as per their appearances recorded in the Roznama), the following Roznamas were recorded in these complaints:-

(i)17-01-2024: "All the parties are present except the State Bank of India. The

respondent nos. 1 and 2 have filed their replies to these complaints. Therefore, the complainant may upload the said reply of the respondent no. 2, landowner Durga Associates in these complaints as well as file rejoinder to the replies of the respondents within a period of three weeks i.e. by 7-2-2024. The State Bank of India is also directed to file its replies to these complaints within the said period of three weeks i.e. by 7-2-2024. The respondents may file their sur-rejoinder if any, within a further period of four weeks i.e. by 6-3-2024 along with their written arguments. Further three weeks' time is granted to the complainants to file their written arguments i.e. by 27-3-2024. These matters are adjourned to a suitable date after 27-3-2024 for final arguments by both sides. Needless to say that the complainants may upload the replies of State Bank of India as well as the respondent no.2 in the complaints. List these matters for next hearing on 24-4-2024."

(ii)24-04-2024: "The complainant is present. The respondent no. 1 is absent. The respondent no. 2 is present. The complainant is directed to serve the copies of the complaints on the respondent no.3 within a period of 2 weeks i.e. by 08-05-2024. The respondent no.2 is proposing to take over the project, however, it has not yet filed any application under section 15 before the Authority, ostensibly, because it has not been able to obtain NOC from the State Bank of India which has provided the project loan and is the mortgagee of the project property. Therefore, it is necessary that the State Bank of India also needs to file its reply to the complaint. The respondent no. 1 has ostensibly abandoned the project. The complainant is also directed to file rejoinder to the reply of the respondent no .2 within the said period of 2 weeks i.e. by 08-05-2024. The respondent no.3 (SBI) may file its replies to these complaints within a further period of 2 weeks i.e. by 22-05-2024. The complainant is also directed to upload the replies of the respondent no. 2 as well as the respondent no. 3 in these complaints. The complainants may file rejoinders to the replies of the respondent nos. 1 and 3

within a further period of 2 weeks i.e. by 05-06-2024. The respondent no. 2 has specifically mentioned that in the agreements for sale of the complainant there is a clause no. 39 where in it is specifically mentioned that it is the responsibility of the complainant to obtain the NOC of State Bank of India for release of mortgage. Be that as it may, the matter is adjourned to a suitable date after 05-06-2024 for further hearing. List these matters for next hearing on 09-07-2024".

(iii)Common Roznama dated 09-07-2024:- (these complaints were listed at sr. nos. 18 and 19 on that date)

"All the parties are present except the respondent no.1 (Deron Properties Pvt Ltd) and the financial institution. The complainants at s. nos. 21 to 36 (CC005000000116968, CC005000000116969, CC005000000116970, CC005000000116973, CC005000000116974, CC005000000116975, CC005000000116977, CC005000000116978, CC005000000116979, CC005000000116980, CC005000000116981, CC005000000116995, CC005000000116996, CC005000000116997, CC005000000116998, CC005000000117023) although have filed rejoinders are directed to upload the copies of the replies of the landowners (Durga Properties Pvt. Ltd.) in the complaints. The complainants at s. nos. 18 & 19 (CC005000000096064 & CC005000000096066) have prayed for possession along with interest and compensation for delay as per their agreements for sale. As pointed out in the earlier hearing only the allotments of the complainants at sr nos. 20 & 37 (CC005000000106387 & CC005000000127107) were in respect of units up to the 4th floor beyond which the CC was not in existence meaning thereby that the remaining complainants have allotment letters/unregistered agreements for sale for units which do not have the CC and also there was a loan from State Bank of India of which the complainants were aware. All the complainants except sr. nos. 18 & 19 (CC005000000096064 & CC005000000096066) have prayed for execution of the agreement for sale and possession along with interest and compensation for delay. It is pointed out by

the MahaRERA to the complainants from sr. nos. 20 till 51 (CC005000000106387, CC005000000116968, CC005000000116969, CC005000000116970, CC005000000116973, CC005000000116974, CC005000000116975, CC005000000116977, CC005000000116978, CC005000000116979, CC005000000116980, CC005000000116981, CC005000000116995, CC005000000116996, CC005000000116997, CC005000000116998, CC005000000117023, CC005000000127107, CC005000000269429, CC005000000269431, CC005000000269432, CC005000000269433, CC005000000269434, CC005000000269435, CC005000000269438, CC005000000269439, CC005000000269475, CC005000000269476, CC005000000269477, CC005000000279754, CC005000000279756, CC005000000279757) that neither the project registration has lapsed and moreover, the financial institution has taken symbolic possession of the project land and the CC is also not valid. Moreover, on the issue of privity with the landowners, the said complainants at s. nos. 38 till 51 have contended that as per the case law, the landowner is also a promoter as defined under RERA and the complainants have privity with the said landowner. Moreover, the power of attorney specifically clause 32 specifically mentions that the landowner could be responsible for all the acts of the promoter in respect of allotments. Therefore, the complainants pray for execution of the agreements for sale and possession along with interest and compensation for delay. The respondent-landowner has pointed out that some of the payments are prior to the development agreement and also as mentioned in the previous hearing, payments have been made to one Asterisk Properties Pvt. Ltd. which is a separate entity of sister concern of Deron Properties Pvt Ltd. Therefore, the landowner cannot be expected to know the previous transactions of the promoter Deron Properties Pvt Ltd. Moreover, the landowner is not shown as one of the promoters in the project on the MahaRERA website although the CC is jointly in the name of the landowner and the promoter. Further, the landowner has also pointed out that it has moved an application before the DRT for challenging the possession of SBI on the ground that the consent of the landowner was not obtained for the loan and the

landowner was also not a party to the mortgage deed signed between the State Bank of India and the promoter. However, the landowner has also pointed out that it has filed a complaint before the EOW and therefore, the respondent landowner is directed to upload the said copies of the EOW as well as its DRT application while filing its written submissions in the complaint. The respondent-landowner has also pointed out that some of the allotments have been made below the construction cost and also the rate per sq. ft. varies for the allottees and there is no consistency regarding the same. The allottees (from s. nos. 38 to 51) have pointed out that this is because of the earlier transactions between the complainants and Deron Properties Pvt. Ltd. In view of the above, all the parties may file their written submissions in the complaints within a period of 3 weeks i.e. by 30-7-2024 including all the necessary documents if not uploaded already and those mentioned in the hearing. Needless to say, they may serve copies of their written submissions on each other and the complainants may upload the written submissions of the landowner in the complaints. Both the promoter and State Bank of India a real so granted last chance to file their replies and written submissions by the said date and the complainants may upload the same in the complaints as well. Accordingly, these complaints are reserved for orders suitably after 30-07-2024 based on the arguments of the hearing as well as the replies, rejoinders, written arguments, written submissions and case laws uploaded in the complaints."

4. However, despite the aforementioned directions issued by the MahaRERA, both the parties have not uploaded any further submissions on record of MahaRERA after 09-07-2024. Hence, the MahaRERA has perused the available records.
5. The complainant in both these complaints has mainly prayed for possession of the said units along with interest and compensation on account of delay under section 18 of the RERA. The complainant has provided the following information

such as the details of units booked, allotment letter/agreement for sale, date of possession, total consideration and consideration paid etc,. in these complaints :

Complaint No	Flat Details	Date of Agreement for sale and Possession Date	Consideration Consideration Paid
1. CC005000000096064	Showroom no. 005 on ground floor	28-12-2018 Clause 11 (a) - 31-12-2020	Rs.4,37,00,000/- Rs. 3,87,00,000/-
2. CC005000000096066	Showroom no. 004 on ground + Mezzanine floor	28-12-2018 Clause 11 (a) - 31-12-2020	Rs.4,20,40,000/- Rs. 3,70,40,000 /-

6. It is the case of the complainant that it is a private limited company registered under the Companies Act, 1956. It has filed the present complaints through its authorised representative namely Mr. Rahul Parwani. The complainant further stated that, based on the representation made by the respondents, it had purchased the said units as mentioned in the aforesaid table at para no 5 and has paid the amounts towards the said booking (mentioned as above) . Further, as per clause 11 (a) of the said agreements for sale, the respondent promoters have assured and undertaken to handover the possession of the said units on or before 31-12-2020. However, there was no possession provided to them which caused financial loss to it. It has been following up with the respondents to get the exact date of possession. However, the respondents have failed to handover the possession of the said units to it, as per the terms and conditions set out in the said agreements for sale. Being aggrieved by the conduct of the respondents, they have filed these present complaints.

7. The respondent no. 1 is the promoter and in a joint venture with the respondent no. 2 (who is the landowner in the said project) has refuted the contentions of the complainant by filing its reply on record of MahaRERA on 31-12-2021. It has stated that as per clause no. 11 (a) of the said agreements for sale, it has promised to handover the possession of the said units to the complainant on or before 31-12-2020. Further it stated that, the possession of the said units has been delayed by 8 months as alleged by the complainant, however, delay has been caused due to some unavoidable circumstances namely, the Covid 19 pandemic which imposed various restrictions and locked down the entire nation; the promoter & CMD of the company also lost his mother due to this pandemic in April 2021; the occupation certificate is not received from the competent authority and there has been revision of the floor plans for which sanction from PMRDA is awaited. Furthermore, the respondent no. 1 stated that the said project is a joint venture project with the respondent no. 2 i.e. M/s. Durga Associates the landowner and due to the financial difficulty faced by the respondent no. 1 and due to delay in the project execution because of various reasons, the respondent no. 2 - M/s. Durga Associates has now come forward to take over the entire project and complete the same. The modalities and formalities in this regard have been completed. However, due to the complex nature of transactions involving banks, customers, contractors, suppliers, service providers etc., such transfer is delayed. The respondent no. 1 additionally contended that its financial position has been adversely affected and it will not be able to pay any compensational amount of 12 % per annum for the delayed period till the actual delivery of possession, as claimed by the complainant in the present complaints. Hence it prayed for the dismissal of these complaints, to grant time to get the revised sanction plan and to complete the construction work with the help of respondent no. 2.

8. The complainant has uploaded the amendment application on 18-02-2023 on the record of MahaRERA wherein it has made M/s Durga Associate and State Bank of India as a party / respondent no. 2 and respondent no. 3 to these complaints.
9. The respondent no. 2 uploaded its reply dated 14-04-2023 on record of MahaRERA on 01-07-2024, wherein it has stated that it vide the said development agreement had retained the rights to sell 50% of the F.S.I. out of the total permissible and grantable F.S.I. in respect of the said property and 50% of the rights were granted to respondent no. 1- M/s Deron Properties Private Limited. The respondent no. 1 availed loan of Rs. 25 crore from the SBI bank without taking its consent. Therefore, it has filed 2 complaints namely, civil suit bearing 816 of 2022 before the Civil Court at Pune and EOW Pune. Further, all the monies have been paid by the complainant to the respondent no. 1 and it has not been received by it. Further, the respondent no. 1 is liable to complete the said project. The project registration has been done by the respondent no. 1 and it was its duty to disclose respondent no. 2 as landowner, however it has failed to do so. Furthermore, it has not been taken over the said project as contended by the respondent no. 1 however it is willing to complete the said project. Hence, it has prayed for dismissal of these complaints against it.
10. The complainant has also uploaded its rejoinder on record of MahaRERA 24-04-2024 denying the contentions / allegations made by the respondents in their replies. It had stated that the respondent no. 1 was broken and penniless, hence, the respondent no. 2 has taken over the project and it is in physical possession. The respondent no. 2 itself communicated the same via email dated 02-05-2022. The respondent no. 2 in its own reply has asked for permission to complete the balance construction of the said project. Thus, the respondent no. 2 cannot take defence of privity of contract with regard to third party rights created by respondent no. 1 towards the complainant, in light of Wadhwa Group Housing judgement dated 26-

02-2024 passed by the Hon'ble High Court. Moreover, the respondent no. 1 had made the agreements / allotments under the mandate of joint development agreement and power of attorney from the respondent no. 2 who was the landowner and had an area share in the construction. The judgement passed by the Hon'ble High Court in the matter of Wadhwa Housing, wherein it had made it clear that the co-promoter / joint promoter is liable even to the allottees by the other co-promoter as well, whether promoter had informed the said allotment to other promoters or not and whether the money was received by one promoter or all. Furthermore, the burden of any promoters' deeds and misdeeds have to be shared by all the promoters and cannot be put on the heads of the allottees. Furthermore, the civil suit and police complaint filed by the respondent no. 2 against the respondent no. 1 is completely an afterthought as the present RERA complaints were filed by complainant prior to the said complaints on 27-09-2021.

11. The MahaRERA has examined the submissions made by the complainant as well as the respondent viz. M/s. Durga Associates (hereinafter referred to as the 'landowner' for the sake of brevity) and the respondent promoter viz. M/s. Deron Properties Pvt. Ltd (hereinafter referred to as the 'promoter').
12. The complainant who is an allottee of the said project as defined under section 2(d) of the RERA, by filing these complaints under section 31 of the RERA has approached the MahaRERA mainly seeking substantive reliefs under section 18 of the RERA towards possession of the said units along with interest and compensation. The complainant has agitated the said claim by virtue of the registered agreements for sale dated 28-12-2018. The complainant has contended that the respondent promoters as per the said agreements for sale has agreed to handover possession of the said units to it on or before 31-12-2020. However, it has failed to do so. Hence, it has filed these complaints.

13. In addition to this, the complainant, although has prayed for other reliefs under section 11(4) (e) of the RERA etc , has not pressed for the same during the final hearings held in these complaints. Hence, the MahaRERA in these complaints needs to decide the substantive claim sought by the complainant towards possession along with interest/compensation sought by the complainant under section 18 of the RERA.
14. The complainant herein has initially filed these complaints by joining the promoter as party respondent to these complaints. However, during the course of hearing it has filed an amendment application on record of MahaRERA for joining landowner as party respondent no. 2 to these complaints. The said amendment sought by the said complainant is merely technical in nature and also the same has not been contested by either promoter or landowner. Hence, the same was allowed impliedly during the hearing. Accordingly, the landowner has appeared and filed its reply to these complaints on the record of MahaRERA.
15. The promoter, although has failed to appear for the final hearing held in these complaints , has filed its reply to these complaints and resisted these complaints. It has mainly cited the reasons for the delay in completion of the said project as the covid-19 pandemic and financial issues etc. However, it has admitted the allotment done in favour of the said complainant i.e. execution of the said agreements for sale and the date of possession mentioned therein as 31-12-2020.
16. However, the landowner, who appeared for the said hearings held in these complaints has resisted the aforesaid claims of the complainant mainly raising the following issues by filing its replies on record of MahaRERA (as applicable):-

- i) The allotment letters issued by the promoter in favour of the complainant and that the complainant has paid the said amount to the promoter.
- ii) It has also contended that it is proposing to take over the said project, however, it has not yet applied to MahaRERA for change of promoter under section 15 of the RERA. It is ostensibly because it could not obtain NOC from the State Bank of India, which has given a project loan to the promoter by mortgaging the said project property, which belongs to it.
- iii) It has not been shown as a promoter (landowner) on the MahaRERA website. Hence, it cannot be held liable for the said allotments done by the promoter in favour of this complainant.
- iv) The State Bank of India has taken symbolic possession of the said project and it has moved an application before the Debt Recovery Tribunal (DRT) challenging the said possession obtained by the State Bank of India, mainly on the ground that its consent was not obtained by the promoter for borrowing the said project loan. Also, it is not party to the said Mortgage Deed signed by and between State Bank of India and the promoter.
- v) It has also filed a complaint against the promoter before the Economics Offence Wing (EOW).

In view of these facts, the landowner prayed for dismissal of these complaints.

17. The complainant has refuted the aforesaid claims agitated by the landowner. As far as the issue of privity between it and the landowner, raised by the landowner, it has contended that the landowner is also a promoter as per the phrase 'promoter' defined under section 2(zk) of the RERA. Hence, it has privity of contract with the landowner. To support its claim it has also relied upon the recent judgement passed by the Hon'ble Bombay High Court dated 26-02-2024 in Second Appeal (St) No.21842 of 2023 (Wadhwa Group Housing

Pvt Ltd vs Vijay Choksi and Ors). Hence, it has prayed to allow these complaints and grant the reliefs as sought for in the same.

18. However, in the present case, on bare perusal of the webpage information uploaded by the promoter on the MahaRERA website while registering the said project with the MahaRERA, it appears that the promoter has filed an application for registration of the said project with MahaRERA on 30-07-2017. The said project is located on a plot of land bearing Survey No. 29, Hissa Nos. 1, 2 and 3 having an area admeasuring 2853.38 sq.mtrs of Village Hinjewadi, Taluka Mulshi, Dist Pune. The said land, admittedly, belongs to the landowner. Further, by virtue of the registered development agreement and power of attorney dated 1-03-2014, the landowner has assigned the development rights in respect of the said project land to the promoter. Accordingly, the promoter has applied for requisite permissions to the concerned competent authority viz. PMRDA and obtained a commencement certificate (CC) for implementation of the said project on 8-04-2019. Admittedly, the said CC stands in the names of both the promoter as well as the landowner jointly. The promoter while applying for registration has shown one building having 3 Basements+1 Plinth 6 sanctioned floors. However, it seems that the said CC dated 8-04-2019 has been obtained till 4th floor of the said building (as per the extension application filed by the promoter on 30-06-2021). The promoter in the said extension application has mentioned that as of now, it has obtained CC till 4th floor and it has submitted the revised plan to PMRDA for revised permissions till 7th floors. It has also cited the reason for the said delay as mainly being due to the Covid-19 pandemic.
19. Further, the promoter while registering the said project with the MahaRERA has mentioned the proposed date of completion of the said project as 30-06-2020,

which is revised till 30-06-2021. However, as stated hereinabove, the promoter although has applied for extension of the project validity till 31-05-2022, it did not pursue the said extension application. It shows that the said project, as on date stands lapsed as on 30-06-2021.

20. In addition to this, the MahaRERA has also noticed that the promoter has availed the project loan earlier from TJSB Bank and thereafter from State Bank of India on 1-08-2017 by clearing the earlier loan borrowed from TJSB vide a Release Deed of Mortgage dated 28-08-2017 signed with the TJSB. The record shows that the promoter has availed project loan of Rs. 25 crores from the State Bank of India. However, it appears that due to the default on the part of the promoter in clearing the said project loan, the State Bank of India has initiated action against the promoter and has obtained symbolic possession of the said project due to which the landowner, who is willing to take over the said project for its completion could not get the NOC from the State Bank of India. Hence, it has initiated the appropriate proceedings against State Bank of India before the DRT and the said proceedings will take their own recourse under the applicable law.
21. Be that as it may, in view of the said fact that the symbolic possession has been obtained by the State Bank of India, the MahaRERA has felt it necessary that the said bank also be made a necessary party to these complaints. Hence, the complainant has filed necessary amendment application on record of MahaRERA on 20-07-2023 for joining the State Bank of India as party respondent to these complaints. The said application was allowed and accordingly, the complainant has served the notice to the said bank and has also filed service proof on record of MahaRERA. However, despite service of these complaints,

the State Bank of India has neither appeared for the hearings nor has filed any reply to these complaints.

22. In view of the above, as stated hereinabove, since the landowner has already initiated action against the said bank under the applicable law, the competent forum will take a decision in that regard. Needless to state here that the landowner which has shown its willingness to take over the said project for its completion, under the provisions of section 15 of the RERA would have to take care of all the liabilities of the promoter in the said project. However, the said issue is premature as on date, as far as the liability of the landowner is concerned, since it has not yet filed an application under section 15 of the RERA for change of promoter. Hence, at this stage the MahaRERA is not inclined to decide the issue of privity raised by the landowner. Needless to state here that the landowner is also a confirming party to the said agreements for sale signed with the complainant. Hence, its liability towards the complainant is also clarified in the said agreements for sale and the terms and conditions stipulated in the said agreements for sale are binding upon the landowner.
23. As far as the substantive issue raised by the complainant under section 18 of the RERA for possession of the said units along with interest and compensation, the MahaRERA has noticed that the promoter has mainly contended that the project got delayed mainly due to the covid-19 pandemic and due to the financial difficulties etc. It has stated that the said delay was beyond its control. Hence, it has prayed for dismissal of these complaints.
24. In the present case, admittedly, as per clause no. 11 of the said agreements for sale dated 28-12-2018 , the promoter was liable to handover possession of the said units to the complainant on or before 31-12-2020. Admittedly, the

possession was not handed over to the complainant on the said date and also as on date the project is still incomplete. To justify the said delay, the promoter has stated that the said delay has occurred mainly due to the financial difficulties as well as due to the covid-19 pandemic.

25. As far as the reason cited by the promoter of financial difficulties, the MahaRERA is of the view that the same does not fall within the purview of force majeure reasons mentioned in the said agreements for sale.
26. As far as the another reason of delay cited by the promoter of the covid- 19 pandemic, the MahaRERA has noticed that after execution of the said agreements for sale dated 28-12-2018, the Covid -19 pandemic spread all over the world and affected all sectors of the society including the real estate sector. Considering the said pandemic period as a force majeure factor beyond the control of the promoters, the MahaRERA has granted one year extension by issuing various orders to all the promoters for completion of the projects registered with the MahaRERA.
27. However, considering the said one year extension granted by the MahaRERA, the date of possession in this case gets extended till 31-12-2021 from 31-12-2020. Even on that extended date of possession due to Covid-19 pandemic, the project was incomplete, and the possession was not handed over to the complainant. It shows that the promoter has violated the provisions of section 18 of the RERA and hence, the said complainant is entitled to seek reliefs towards interest on account of delay under section 18 of the RERA from 1-01-2022 till the date of actual possession along with OC.

28. With regard to the claim of the complainant towards compensation as sought by it under section 18 of the RERA, the MahaRERA is of the view that since the said complainant-allottee is willing to remain in the project and to have possession of its units, it is entitled to seek interest on account of the delay. Hence, its claim towards compensation stands rejected.
29. In the present case, it is pertinent to note that the MahaRERA by issuing various orders has declared the covid-19 pandemic period as force majeure factor which is beyond the control of the promoter. Accordingly, the one-year grace period is given to all the promoters which have registered their projects with MahaRERA. Furthermore, it is pertinent to note that the Hon'ble Bombay High Court by considering the lockdown restriction issued by the Central as well as the State Government on account of the said Covid-19 pandemic has issued various orders in Suo Moto PIL No. 1 of 2021 thereby extending the interim orders passed by it in various matters. Even, the Hon'ble Supreme Court of India by taking cognizance of the said epidemic has also passed various orders in Suo Moto Writ Petition (Civil) No. 3 of 2020 and has extended the limitation period from 15-03-2020 till 28-02-2022, thereby the said period was excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all the judicial or quasi-judicial proceedings. No doubt the said pandemic affected all sectors of the society including the real estate sector. Keeping the same in mind, the MahaRERA has taken such a general decision by issuing said orders in the interest of all the projects registered with the MahaRERA. Hence, the promoter in this case, is also entitled to seek benefit of the said covid-19 pandemic while making the payments towards the interest amount. The said general decisions cannot be changed for this particular project nor any exception can be made considering the above.

30. In addition to this , it is pertinent to note that there are various orders passed by the MahaRERA deferring such refund /payment of interest till date of completion of the project i.e. till the date of occupancy certificate is obtained. Such directions are issued by the MahaRERA mainly keeping the interest of the project and to ensure timely completion of the project. No doubt the main intention of the RERA legislation is not only to regulate but to ensure the development which will happen only when the project gets completed in a time bound manner. The diversion of funds during the implementation of the project would definitely affect the cash flow in the project and the possibility that the project may get further delayed. The same may result in further delay in possession of the flats to the homebuyers who seek possession of their flats. The provisions of sections 32 and 38 (2) of the RERA empowers the MahaRERA to issue such directions to achieve the aim and object of the RERA. Hence, issuing such directions, may definitely not amount to the dilution of any other provisions of the RERA.

31. Considering these facts, the following order is passed:-

- a) The present complaints are partly allowed.
- b) The claim of the compensation sought by the complainant stands rejected in view of the observations made in the aforesaid para no. 28.
- c) The promoter/landowner (as applicable as per the terms and conditions of the said agreements or sale) is directed to pay interest for the delayed possession to the complainant on actual amounts paid by the complainant towards the consideration of the said units at the rate of SBI's Highest Marginal Cost Lending Rate (MCLR) plus 2% as prescribed under the provisions of section-18 of the Real Estate (Regulation and Development) Act, 2016 and the Rules made thereunder, for every month of delay from 01-01-2022 till the date of

offer of possession of the said units to the complainant with OC.

- d) Needless to state here, that the actual amount as provided under section 18 of the RERA means the amounts paid by the complainant towards the consideration of the said units only, excluding the stamp duty, registration charges and taxes etc. (as applicable) paid to the government.
- e) However, in view of the mitigating circumstances beyond the control of the promoter and also to ensure that the said project is not jeopardised due to the outflow of finances and is completed keeping in mind the interest of the other buyers of the said project at large, the amount of interest payable by the said promoter/landowner (as applicable) to the complainant shall be made after obtaining the full occupancy certificate for the project. Also, the promoter/landowner (as applicable) at the time of possession of the units to the complainant may set off the outstanding dues with the interest amount payable by it to the complainant and the balance amount if any, by either party be paid at the time of possession

32. With these directions, both these complaints stand disposed of.


(Mahesh Pathak)

Member - 1/MahaRERA