

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

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

1. COMPLAINT NO. CC006000000193698

ASHOK RAMACHANDRAN NAIR
KARTHIYAYANI R NAIR ...COMPLAINANTS
a/w

2. COMPLAINT NO. CC006000000192216

ARCHANA KARNANI ...COMPLAINANT
a/w

3. COMPLAINT NO. CC006000000192221

VRINDA KARNANI ...COMPLAINANT
a/w

4. COMPLAINT NO. CC006000000192305

RAJESH HIRALAL GANDHI
HETAL HIRALAL GANDHI ...COMPLAINANTS
a/w

5. COMPLAINT NO. CC006000000192306

RAJESH HIRALAL GANDHI
HETAL HIRALAL GANDHI ...COMPLAINANTS
a/w

6. COMPLAINT NO. CC006000000192307

HETAL HIRALAL GANDHI
RAJESH HIRALAL GANDHI ...COMPLAINANTS
a/w

7. COMPLAINT NO. CC006000000193699

KARTHIYAYANI R NAIR
KUNCHUPILLAI RAMACHANDRAN NAIR ...COMPLAINANTS
a/w

8. COMPLAINT NO. CC006000000192308

HETAL HIRALAL GANDHI
RAJESH HIRALAL GANDHI ...COMPLAINANTS
a/w

9. COMPLAINT NO. CC006000000195412

PRAVEEN HARIDAS MENON
SMITHA PRAVEEN MENON ...COMPLAINANTS
a/w

10. COMPLAINT NO. CC006000000198191

STEVE ROSHAN REBELLO
KERN LYNDA REBELLO

...COMPLAINANTS

a/w

11. COMPLAINT NO. CC006000000221085

BHAVESH VED

...COMPLAINANT

a/w

12. COMPLAINT NO. CC006000000221129

SHYAM DESAI

...COMPLAINANT

a/w

13. COMPLAINT NO. CC006000000292807

ANAND SURESH DESAI

...COMPLAINANT

a/w

14. COMPLAINT NO. CC006000000292573

ABDULHUSEN M NEEMUCHWALA

...COMPLAINANT

a/w

15. COMPLAINT NO. CC006000000303578

DHRUTI JIGAR MEHTA
JIGAR KISHOR MEHTA

...COMPLAINANTS

a/w

16. COMPLAINT NO. CC006000000375377

SHIRLEY NAGESH BURLA

...COMPLAINANT

VS

1. KEYANA ESTATE LLP
(Formerly known as Kiyana Ventures LLP)
2. KALPATARU LIMITED (for Sr. No. 14 to 18)
3. HOUSING DEVELOPMENT FINANCE
CORPORATION LIMITED (for Sr. No.14)
4. IMTIAZ ISMAIL KANGA (Partner) (for Sr. No. 20)
5. ANUJ AMAR MUNOT (Partner) (for Sr. No.20)
6. PARAG MOFATRAJ MUNOT (Partner) (for Sr. No.20)

...RESPONDENT No. 1 to 6

IN

MAHARERA PROJECT NO-1 REGISTRATION NO. P51800000482 (Sr. Nos 1, 14 & 16)

MAHARERA PROJECT NO-2 REGISTRATION NO. P51800000579 (Sr. Nos 2 to 9)

MAHARERA PROJECT NO-3 REGISTRATION NO. P51800000810 (Sr. Nos 10 to 13 & 15)

FINAL ORDER

March 11, 2024

(Date of hearing as mentioned in para 3 wherein all matters were reserved for orders)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA

Appeared for the Complainant/s

SR.NO	APPEARANCES
1, 7	Advocate Ram Upadhyay
2, 3	Advocate Prateek Pai
4 to 6, 8	In person
9, 12, 13, 14, 16	Advocate Vipul Shah
10	Advocate Smit Shah
11	Advocate Akshay Udeshi
15	Jipnesh Jain

Appeared for the Respondent

SR.NO	APPEARANCES
1, 2, 3,4,5,6,7,8	Advocate Abir Patel
9	Advocate Pavitra Pillay i/b Senior Counsel Tyagi
10, 11, 15	Advocate Suneet Kr Tyagi
12, 14	Advocate Suneet Kr Tyagi for Respondent No.2 Advocate Aniket Deshmukh for Respondent No. 1
13, 16	Advocate Suneet Kr Tyagi for Respondent No. 1 & 2

1. All 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**”).The Respondent is the Promoter/Developer within the meaning of Section 2 (zk) of the said Act and is registered as the Promoter of the under section 5 of the said Act for the following projects mentioned hereinbelow (hereinafter referred to as the “**said Projects**”) having the following completion dates;

Table 1 (Project details)

PROJECT NO.	PROJECT NAME	PROPOSED COMPLETION DATE	REVISED COMPLETION DATE	EXTENDED COMPLETION DATE	OCCUPANCY CERTIFICATE
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P51800000482	Kalpataru Radiance C	30.06.2018	30.06.2022	30.12.2023	FULL - 10.04.2023
P51800000579	Kalpataru Radiance D	30.06.2018	30.06.2022	30.12.2023	FULL- 10.04.2023
P51800000810	Kalpataru Radiance B	31.12.2019	30.06.2022	30.12.2023	PART- 10.04.2023

2. The Complainants are seeking the following reliefs:

SR. NO.	COMPLAINT NO.	RELIEFS REPRODUCED	RELIEFS IN BRIEF
1	CC006000000193698	<i>Promoter be directed to pay full amount which our client paid to promoter till date with interest of 18% as refund amount in accordance with proviso to section 18 of RERA Act.</i>	<i>Refund along with interest</i>
2	CC006000000192216	<i>1 - As per section 18 (1) of RERA Act, refund of payment made along with 12 percent interest and compensation. 2 - Order for costs. 3 - Any suitable order to meet the ends of justice.</i>	<i>1. As per section 18 (1) of rera act, refund of payment made along with 12 percent interest and compensation. 2. Order for costs.</i>
3	CC006000000192221		
4	CC006000000192305	<i>Relief Sought is all money back with interest at 21% p.a. compounded quarterly from date paid: We wish to exercise our right to cancel and withdraw and receive our full money back with interest from date paid because the builder/promoter did not offer possession on or before the due date of 31.12.2019 as per the Registered Agreement. In total we paid 2,17,21,304/- Rupees. As per the allotment letter and the initial cost sheet which states that the interest charged on late payment will be 21% we wish to be paid the same rate of interest since we believe the RERA rules state that the interest rate should be same for both promoter and allottee. We assume the rate is compounded quarterly. We also wish to be reimbursed for our international travel costs for attending each hearing plus RERA fees. Uploaded Documents: • Allotment letter – showing interest rate of 21% and payment schedule • Receipts for payments to builder (x6) • Initial cost sheet – showing interest rate of 21% and payment schedule</i>	<i>1. Cancel & withdraw from the project. 2. Refund full money paid with 21% p.a. compounded quarterly from the date paid. 3. Reimbursement for the international travel costs required for attending each hearing plus rera fees.</i>
5	CC006000000192306	<i>Relief Sought is all money back with interest at 21% p.a. compounded quarterly from date paid: We wish to exercise our right to cancel and withdraw and receive our full money back with interest from date paid because the builder/promoter did not offer possession on or before the due date of 31.12.2019 as per the Registered Agreement. In total we paid 2,11,04,817/- Rupees. As per the allotment letter and the initial cost sheet which states that the interest charged on late payment will be 21% we wish to be paid the same rate of interest since we believe the RERA rules state that the interest rate should be same for both promoter and allottee. We assume the rate is compounded quarterly. We also wish to be reimbursed for our international travel costs for attending each hearing plus RERA fees. Uploaded Documents: • Allotment letter – showing interest rate of 21% and payment schedule • Receipts for payments to builder (x6) • Initial cost sheet – showing interest rate of 21% and payment schedule</i>	<i>1. Cancel & withdraw from the project. 2. Refund full money paid with 21% p.a. compounded quarterly from the date paid. 3. Reimbursement for the international travel costs required for attending each hearing plus rera fees.</i>
6	CC006000000192307	<i>Relief Sought is all money back with interest at 21% p.a. compounded quarterly from date paid: We wish to exercise our right to cancel and withdraw and receive our full money back with interest from date paid because the builder/promoter did not offer possession on or before the due date of 31.12.2019 as</i>	<i>1. Cancel & withdraw from the project. 2. Refund full money paid with 21% p.a. compounded quarterly from the date paid.</i>

SR. NO.	COMPLAINT NO.	RELIEFS REPRODUCED	RELIEFS IN BRIEF
		<i>per the Registered Agreement. In total we paid 2,29,08,212/- Rupees. As per the allotment letter and the initial cost sheet which states that the interest charged on late payment will be 21% we wish to be paid the same rate of interest since we believe the RERA rules state that the interest rate should be same for both promoter and allottee. We assume the rate is compounded quarterly. We also wish to be reimbursed for our international travel costs for attending each hearing plus RERA fees. Uploaded Documents: • Allotment letter – showing interest rate of 21% and payment schedule • Receipts for payments to builder (x6) • Initial cost sheet – showing interest rate of 21% and payment schedule</i>	3. Reimbursement for the international travel costs required for attending each hearing plus rera fees.
7	CC006000000193699	<i>Promoter be directed to pay full amount which our client paid to promoter till date with interest of 18% as refund amount in accordance with proviso to section 18 of RERA Act.</i>	Refund along with interest
8	CC006000000192308	<i>Relief Sought is all money back with interest at 21% p.a. compounded quarterly from date paid: We wish to exercise our right to cancel and withdraw and receive our full money back with interest from date paid because the builder/promoter did not offer possession on or before the due date of 31.12.2019 as per the Registered Agreement. In total we paid 2,22,56,791/- Rupees. As per the allotment letter and the initial cost sheet which states that the interest charged on late payment will be 21% we wish to be paid the same rate of interest since we believe the RERA rules state that the interest rate should be same for both promoter and allottee. We assume the rate is compounded quarterly. We also wish to be reimbursed for our international travel costs for attending each hearing plus RERA fees. Uploaded Documents: • Allotment letter – showing interest rate of 21% and payment schedule • Receipts for payments to builder (x6) • Initial cost sheet – showing interest rate of 21% and payment schedule</i>	1. Cancel & withdraw from the project. 2. Refund full money paid with 21% p.a. compounded quarterly from the date paid. 3. Reimbursement for the international travel costs required for attending each hearing plus rera fees.
9	CC006000000195412	9.1 The Respondent be directed to forthwith hand over the possession of Flat No. 72 in the "D" Wing of the Building to "Kalpataru Radianc". 9.2 The Respondent be directed to pay to the Complainants Interest u/s. 18(1) of the RERA act for the delayed possession with a further direction to pay it in two installments, one from 1st January, 2017 till the date of this complaint and Second installment from the date of filing of complaint till the date of handing over of the possession, at the rate as provided under RERA Act, 2016 and rules made thereunder. 9.3 The Respondent be directed to pay to the Complainants a compensation of Rs. 58,55,341/- for its Defective title as provided in Sec. 18(2) of the RERA. 9.4 The Respondent be directed to pay to the Complainants a compensation of Rs. 16,80,000/-, being loss of Rent to the Complainants, for delaying possession as provided in Sec. 18 (3) of the RERA. 9.5 The Respondent be directed to pay to the Complainants a monthly compensation of Rs. 50,000/- towards rent w.e.f. 1.1.2021 till the payment of the entire claim of the Complainants. 9.6 The Respondent be directed to pay to the Complainants a Compensation for failing in discharging the obligations imposed upon it under RERA and also for violation of agreed terms in the Agreement for Sale and wrong statements made therein as provided u/s 18(3) of the RERA. 9.7 The Respondent be directed to pay to the Complainants a compensation of as provided in Sec. 12 of the RERA for loss/damage suffered by the Complainants due to not providing true facts in advertisement/brochure/personal meeting and even in Agreement for Sale and thereafter. 9.8 The Respondent be directed to pay penalty for violation and non-compliance of provisions of the RERA Act, 2016. 9.9 The cost of this complaint be provided for.	1. Possession of flat d-72 with oc. 2. Compensation for defective title. 3. Compensation for loss of rent for delayed possession. 4. Complainants interest u/s. 18(1) of the rera act. 5. A monthly compensation of rs. 50,000/- towards rent. 6. Costs.

SR. NO.	COMPLAINT NO.	RELIEFS REPRODUCED	RELIEFS IN BRIEF
		9.10 Any such other and further relief / order that this Hon'ble Authority may feel appropriate in the interests of justice and fair play based on the facts and circumstances of the case.	
10	CC006000000198191	5.1.1. Give possession of the said Apartment i.e., Apartment No. 111, 11th floor, B-wing, Kalpataru Radiance admeasuring 992 sq. ft. (i.e., 92.16 sq. mt.) Carpet area along with Occupation Certificate. 5.1.2. To direct the Respondent to pay Interest at the Applicable rate (i.e. S.B.I.'s highest M.C.L.R + 2% i.e. of 9.3% p.a.) on account of delay in possession of the said apartment from the date of default i.e., 1st January 2021 till date of actual possession. 5.1.3. To direct the respondent to pay compensation of Rs. 10,00,000/- (Rupees Ten Lakh Only) towards mental and physical agony besides causing immense monetary loss. 5.1.4. To direct the respondent to pay cost and legal expenses. 5.1.5. Any other Relief(s) that are deemed fit by the Hon'ble Authority in the interest of Justice.	1. Possession of flat with OC 2. Pay interest for delayed possession till actual possession. 3. Compensation. 4. Costs.
11	CC006000000221085	1. An order directing Respondent to Deliver possession of the Flat. 2. An order directing Respondent to pay Rs. 35,84,990 towards interest on principle amount from 1st July 2020 to 30th April 2020. 3. An order directing the Respondent to pay Rs. 11,00,000 towards mental and physical harassment, damages and legal cost. 4. An order directing the Respondent to deposit a further amount of Rs. 1,62,954 with the Complainant from 1st May till the possession of the Flat is given to the Complainant. 5. Penalty upto 5% of the Project costs on the Respondent in accordance with the provision of the act for other non-compliances along with restrictive orders on the Respondent to refrain from branding and marketing the Project Kalpataru under till the Respondent handovers possession of the Flat to the Complainants.	1. Possession of flat. 2. Pay interest for delayed possession. 3. Compensation. 4. Costs.
12	CC006000000221129	14.1 The Respondent No. 1 & 2 and the Partners of Respondent No. 1 be jointly and severally directed to pay to the Complainants a compensation of Rs.56,41,000/-, as provided in Sec. 12 of the RERA, for the loss/damage suffered by the Complainants for not providing true facts in advertisement/brochure/personal meeting and even in Agreement for Sale and thereafter. 14.2 The Respondent No. 1 & 2 and the Partners of Respondent No. 1 be jointly and severally directed to pay to the Complainants an interest for the delayed possession from the agreed date of possession till the date of handing over the actual physical possession as provided u/s. 18(1) of the RERA, 2016. 14.3 The Respondent No. 1, 2 and Respondent No. 3, jointly and severally, be directed to refund/reimburse to the Complainants a sum of Rs.46,56,861/- being interest charged by the Respondent No. 3 and paid by the Complainants till 30.04.2022 on the Home Loan. 14.4 The Respondent No. 1 & 2 and the Partners of Respondent No. 1 be jointly and severally directed to pay to the Complainants a monthly compensation of Rs.1,00,000/- towards Interest on Loan till the date of handing over of the possession of flat. IN ALTERNATE the Respondent No. 3 be directed to suspend the charging of interest on Home Loan till the date of handing over of physical possession by the Respondent No. 1. 14.5 The Respondent No. 1 & 2 and the Partners of Respondent No. 1 be jointly and severally directed to pay to the Complainants a compensation for the defective title, as this Hon'ble Authority deems fit, as provided in Sec. 18(2) of the RERA. 14.6 The Respondent No. 1 & 2 and the Partners of Respondent No. 1 be jointly and severally directed to pay to the	1) Compensation for not providing true facts in advertisement/brochure/personal meeting and even in Agreement for Sale 2) Interest for delayed possession. 3) Refund/reimburse a sum, being interest charged by the Respondent No. 3 and paid by the Complainants till 30.04.2022 on the Home Loan. 4) Monthly compensation of Rs.1,00,000/- towards Interest on Loan till the date of handing over of the possession of flat. 5) Compensation for the defective title. 6) Compensation for failing to discharge RERA obligations. 7) Pay penalty for violation and non-compliance of provisions of the RERA.

SR. NO.	COMPLAINT NO.	RELIEFS REPRODUCED	RELIEFS IN BRIEF
		Complainants a Compensation for failing in discharging the obligations imposed upon it under RERA and also for violation of agreed terms in the Agreement for Sale and wrong statements made therein as provided u/s 18(3) of the RERA, as this Hon'ble authority deems fit. 14.7 The Respondent No. 1 & 2 and the Partners of Respondent No. 1 be jointly and severally directed to pay penalty for violation and non-compliance of provisions of the RERA Act, 2016. 14.8 The cost of this complaint be provided for. 14.9 Any such other and further relief/ order that this Hon'ble Authority may feel appropriate in the interests of justice and fair play based on the facts and circumstances of the case.	
13	CC006000000292807	9.1 The Respondent No. 1 be directed to forthwith hand over the possession of Flat No. 63 in the "B" Wing of the Building "Kalpataru Brilliance" to the Complainants. 9.2 The Respondent No. 1 & 2 and the Partners of Respondent No. 1 be jointly and severally directed to pay Complainants Interest u/s. 18(1) of the RERA act for the delayed possession with a further direction to pay it in two installments, one from 1st January, 2021 till the date of this complaint and Second installment from the date of filing of complaint till the date of handing over of the possession, at the rate as provided under RERA Act, 2016 and rules made thereunder. 9.3 The Respondent No. 1 & 2 and the Partners of Respondent No. 1 be jointly and severally directed to pay to the Complainants a compensation for its Defective title as provided in Sec. 18(2) of the RERA, as it may deem fit by the Hon'ble Authority. 9.4 The Respondent No. 1 & 2 and the Partners of Respondent No. 1 be jointly and severally directed to pay to the Complainants a compensation of Rs.24,50,593/- being home loan interest paid by the Complainants, as provided in Sec. 18 (3) of the RERA. 9.5 The Respondent No. 1 be directed to pay to the Complainants a monthly compensation of Rs.1,30,000/- w.e.f. 1st October, 2022 till the date of handing over of the possession of flat. 9.6 The Respondent No. 1 & 2 and the Partners of Respondent No. 1 be jointly and severally directed to pay to the Complainants a compensation of Rs.20,79,888/- as provided in Sec. 12 of the RERA for loss/damage suffered by the Complainants due to not providing true facts in advertisement/brochure/personal meeting and even in Agreement for Sale and thereafter. 9.7 The Respondent No. 1 & 2 and the Partners of Respondent No. 1 be jointly and severally directed to pay penalty for violation and non-compliance of provisions of the RERA Act, 2016. 9.8 The cost of this complaint be provided for. 9.9 Any such other and further relief/ order that this Hon'ble Authority may feel appropriate in the interests of justice and fair play based on the facts and circumstances of the case.	1) Possession of Flat. 2) Pay Interest for the delayed possession. 3) Pay compensation for Defective title as provided U/s 18(2) of the RERA. 4) Compensation. 5) Pay penalty for violation and non-compliance of provisions of the RERA. 6) Costs.
14	CC006000000292573	1) The Respondent No. 1 be directed to forthwith hand over the possession of Flat No. 136 in the "C" Wing of the Building "Kalpataru Radianc" to the Complainants. 2) The Respondent No. 1 & 2 and the Partners of Respondent No. 1 be jointly and severally directed to pay Complainants Interest u/s. 18(1) of the RERA act for the delayed possession with a further direction to pay it in two installments, one from 1st January, 2019 till the date of this complaint and Second installment from the date of filing of complaint till the date of handing over of the possession, at the rate as provided under RERA Act, 2016 and rules made thereunder. 3) The Respondent No. 1 & 2 and the Partners of Respondent No. 1 be jointly and severally directed to pa	<u>Resp.1:</u> 1.Possession 2. Rent till possession. <u>Resp. 1& 2:</u> Interest for delayed possession & compensation for false advertising & defective title

SR. NO.	COMPLAINT NO.	RELIEFS REPRODUCED	RELIEFS IN BRIEF
		y to the Complainants a compensation for its Defective title as provided in Sec. 18(2) of the RERA, as it may deem fit by the Hon'ble Authority. 4) The Respondent No. 1 & 2 and the Partners of Respondent No. 1 be jointly and severally directed to pay to the Complainants a compensation of Rs.26,40,000/- being loss of Rent suffered by the Complainants, due to delay in possession, as provided in Sec. 18 (3) of the RERA. 5) The Respondent No. 1 be directed to pay to the Complainants a monthly compensation of Rs.75,000/- towards rent w.e.f. 1.9.2022 till the date of handing over of the possession of flat. 6) The Respondent No. 1 & 2 and the Partners of Respondent No. 1 be jointly and severally directed to pay to the Complainants a compensation of Rs.38,63,350/- as provided in Sec. 12 of the RERA for loss/damage suffered by the Complainants due to not providing true facts in advertisement/brochure/personal meeting and even in Agreement for Sale and thereafter. 7) The Respondent No. 1 & 2 and the Partners of Respondent No. 1 be jointly and severally directed to pay penalty for violation and non-compliance of provisions of the RERA Act, 2016. 8) The cost of this complaint be provided for. 9) Any such other and further relief / order that this Hon'ble Authority may feel appropriate in the interests of justice and fair play based on the facts and circumstances of the case.	
15	CC006000000303578	i. The Hon'ble Authority may please to pass an order against the Respondents, directing the Respondents to comply with respect to the terms and conditions of the said Agreement for sale dated 22nd May, 2018 and further to comply with respect to the provisions of the Real Estate (Regulation and Development) Act, 2016 and the rules framed thereto; ii. The Hon'ble Authority may please to pass an order against the Respondents, directing the Respondents to pay interest @12% p.a for the delayed period on the entire consideration amount of as paid by the Complainants to the Respondents, from the date of 31st December, 2020 (being Actual date of possession) as per the provisions of Real estate (Regulation and development) Act, 2016 and the rules framed thereto till the date of the handing over of the possession of the Complainants; iii. The Hon'ble Authority may please to pass an order against the Respondents, directing the Respondents to pay an amount being towards the License fees of Rs 75,000/- (Rupees Seventy five thousand only) per month from the date of 31st December, 2020 (being actual date of possession) as been payable by the Complainants to licensor, as to be borne by the Complainants, being towards the license fees for alternate accommodation on account of the default of the Respondents in handing over the possession of the said premises to the Complainant as per the terms and conditions of the said agreement. iv. The Hon'ble Authority may please to pass an order against the Respondents, directing the Respondents to pay the compensation of Rs.1,00,000/- (Rupees One Lakh Only) for the loss of the opportunity, hardship and mental harassment to the Complainants; v. The Hon'ble Authority may please to pass an order against the Respondents, directing them to pay legal cost of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the Complainants; vi. For such further and/ or any other reliefs as nature and circumstances of the Complainants as the case may require.	1. Interest for Delayed Possession. 2. Compensation for Mental Harassment. 3. Legal Cost

SR. NO.	COMPLAINT NO.	RELIEFS REPRODUCED	RELIEFS IN BRIEF
16	CC006000000375377	1) The Respondents be directed to forthwith hand over the possession of Flat No. 152 in the "C" Wing of the Building "Kalpataru Radiance" to the Complainants. 2) The Respondents and the Partners of the Respondent No. 1 be jointly and severally directed to pay to the Complainants Interest u/s. 18(1) of the RERA, 2016 for the delayed possession at the rate provided in RERA, 2016 and rules made thereunder. 3) The Respondents and the Partners of Respondent No. 1 be jointly and severally directed to pay to the Complainants a compensation for its Defective title, as provided in Sec. 18(2) of the RERA, Rs. 48,75,000/- OR as this Hon'ble Authority may deem fit. 4) The Respondents and the Partners of Respondent No. 1 be jointly and severally directed to pay to the Complainants a compensation for the failure of the Respondents in discharging their obligations, as provided in Sec. 18(3) of the RERA, as this Hon'ble authority may be deemed fit. 5) The Respondents and the Partners of Respondent No. 1 be jointly and severally directed to pay to the Complainants a compensation of Rs.34,77,430/- as provided in Sec. 12 of the RERA for loss/damage suffered by the Complainants due to not providing true facts in advertisement/brochure/personal meeting and even in Agreement for Sale and thereafter. 6) The cost of this complaint be provided for. 9.7 Any such other and further relief/ order that this Hon'ble Authority may feel appropriate in the interests of justice and fair play based on the facts and circumstances of the case.	1. Possession 2. Interest for Delayed Possession 3. Compensation 4. Cost of The Complaint

3. All the complaints were heard by this Authority wherein the following roznama was recorded:

SR. NO.	HEARING DATE	COMPLAINT NO.	LAST ROZNAMA REPRODUCED
1	11.05.2023	CC006000000193698 (Was Listed at Sr.No.9)	Both Parties are present. The Complainant at the outset states that all arguments made in Sr. No. 2 & 3 be taken on record and he would like to reiterate the same. The agreement for sale was executed on 31.12.2018 and at that point of time, the Developer was fully aware of the circumstances prevailing. However, the Respondent continued to accept money which is a breach of trust. The Complainant further states that when they sent the notice, they were never informed that the building is ready and that there is no evidence to bear out that the building was completed in June 2019 as is claimed by the Respondent. The Complainant has paid 95% of the consideration and that he cannot be burdened with the dispute between MHADA and Guru Aashish and the same cannot be used to deny him his reliefs. The Complainant seeks to exit the project with refund and interest. The Respondent once again reiterated the arguments made by him in Sr. Nos. 2 & 3 and states that the delays are not attributable to him. Further, the Respondent states that within 2 weeks of the High Court order, he was able to obtain the OC, which is an indication that his project was complete. The Respondent also points out that as per the procedure prescribed, the Complainant was to give a 15 days' notice before terminating. The Respondent also states that all disclosures were made in RERA website and that he had not kept back any facts. The Complainant avers that he is seeking to exist the project and seeks refund and there is no question of a termination notice being issued as the project is delayed. Parties are at liberty to file written submissions, if any, by 25.05.2023. Subsequent to which, the matter will be reserved for orders.
2	11.05.2023	CC006000000192216 (Was Listed at Sr.No.2)	Both Parties are present. The Complainant avers that he seeks refund together with interest. 1st payment was made on 20.01.2015. The agreement for sale was dated 21.05.2018. The date of possession promised was 31.12.2019. Having not received possession, the Complainant now seeks to exit together with refund and interest. The Complainant points out that Section 18 grants him this relief and the

SR. NO.	HEARING DATE	COMPLAINT NO.	LAST ROZNAMA REPRODUCED
3	11.05.2023	CC006000000192221 (Was Listed at Sr.No.3)	same has been confirmed by various judgments of the Hon'ble High Court and the Supreme Court. The Complainant further avers that the Respondent was fully aware of the purported mitigating circumstances and neither mentioned nor took care of them in the Agreement. The Complainant states that all purported mitigating circumstances quo MHADA were in existence but the agreement for sale remained silent. The Respondent narrates the history of the project essentially bringing out the agreement between HDIL (Guru Ashish) and MHADA. Subsequently, MHADA gave rights to Guru Ashish for creating third party interest. However, in 2015, stop work notice was issued by MCGM. The Respondent points out that the Newtech Judgment deals with a plain vanilla situation and not a situation that exists today wherein the date of possession was contingent to certain inbuilt conditions. In January 2018, MHADA terminated the Joint Venture as HDIL had gone into liquidation. The Developer however continued work and completed the building before 31.12.2018, the date of possession. The Respondent thus states that he completed the work and the dispute between MHADA and HDIL cannot be a reason to penalise him. The Respondent also puts on record the order of Hon'ble High Court dated 21.03.2023 pointing out that the High Court confirmed that there was no allegation against the developer or the allottees. The Developer had no role in the same. Further, the Complainant states moulding of reliefs cannot take away the contested rights. The Respondent however counters that he has been before the Hon'ble High Court since 2018. Parties are at liberty to file written submissions, if any, by 25.05.2023. Subsequent to which, the matter will be reserved for orders.
4	11.05.2023	CC006000000192305 (Was Listed at Sr.No.4)	Both Parties are present. At the outset, the Complainant bring to our notice, a complaint in the same matter relating to him has been missed out. The Complainant seeks that the Complaint that has been missed out be also heard. The Complainant has put the CC number of this missed out item in the chatbox. The Registry to list this matter bearing CC No. CC006000000192308 on 20.07.2023 for hearing.
5	11.05.2023	CC006000000192306 (Was Listed at Sr.No.5)	The Complainant seeks to exit with refund. The Complainant has put his detailed arguments and documents he seeks to rely upon, on record and the same are taken by the Authority. The Respondent points out that there is a reply uploaded by the Complainant just yesterday and he would need time to peruse that. The Complainant seeks to withdraw that document and states that he would not like to pursue the rebuttal posted by him yesterday and would not rely on the same. The Authority notes the averment of the Complainant and the reply posted by him yesterday stands withdrawn as desired by the Complainant. The same will not be taken on record. Rest of the arguments and papers submitted by the Complainant shall be on the record of the Authority.
6	11.05.2023	CC006000000192307 (Was Listed at Sr.No.6)	The Respondent avers that the arguments made by him in Sr. No. 1 & 3, together with all documents and affidavits submitted by him should be taken on record by the Authority. Parties are at liberty to file written submissions, if any, by 25.05.2023. Subsequent to which, the matter will be reserved for orders.
7	11.05.2023	CC006000000193699 (Was Listed at Sr.No.10)	Both Parties are present. The Complainant at the outset states that all arguments made in Sr. No. 2 & 3 be taken on record and he would like to reiterate the same. The agreement for sale was executed on 31.12.2018 and at that point of time, the Developer was fully aware of the circumstances prevailing. However, the Respondent continued to accept money which is a breach of trust. The Complainant further states that when they sent the notice, they were never informed that the building is ready and that there is no evidence to bear out that the building was completed in June 2019 as is claimed by the Respondent. The Complainant has paid 95% of the consideration and that he cannot be burdened with the dispute between MHADA and Guru Aashish and the same cannot be used to deny him his reliefs. The Complainant seeks to exit the project with refund and interest. The Respondent once again reiterated the arguments made by him in Sr. Nos. 2 & 3 and states that the delays are not attributable to him. Further, the Respondent states that within 2 weeks of the High Court order, he was able to obtain the OC, which is an indication that his project was complete. The Respondent also points out that as per the procedure prescribed, the Complainant was to give a 15 days' notice before terminating. The Respondent also states that all disclosures were made in RERA website and that he had not kept back any facts. The Complainant avers that he is seeking to exist the project and seeks refund and there is no question of a termination notice being issued as the project is delayed. Parties are at liberty to file written submissions, if any, by 25.05.2023. Subsequent to which, the matter will be reserved for orders.
8	20-07-2023	CC006000000192308 (Was Listed at Sr.No. 1)	Parties are present. 1. The Complainant avers that Respondent has not given him possession and the reasons given do not stand to scrutiny. The claim that the flat was ready in 2018 is also not borne out by the

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			architect certificate submitted by the Respondent. The Complainant seeks to withdraw, seeks refund and interest. 2. The Respondent recounts the history of the Project wherein there was a joint venture with MHADA and Guru Ashish and finally Guru Ashish was terminated leading to litigation and delays. Finally, the occupancy certificate was received after intervention of Hon'ble Bombay High Court. The Respondent avers that the Complainant is a Non-Resident and is not a homebuyer but an investor. He further avers that as a homebuyer he should have persisted to on receiving possession when occupancy certificate was in place rather than seeking an exit and refund. Hon'ble Supreme Court judgement is pointed to show that RERA cannot be used by investors. The Respondent avers that the delay was by MHADA and not by them and the same has been pointed out by Hon'ble Bombay High Court while granting occupancy certificate. Respondent seeks that in this case the Neelkamal judgement is applicable, and reliefs have to be moulded and this case is unique wherein the causes of delay were beyond the control of the Respondent and in the end, it was only the intervention of Hon'ble Bombay High Court that enabled them to get occupancy certificate. 3. The Complainant reiterated that the Act gives two choices namely staying in the Project or exiting just the exercise of one choice cannot negate his status as an Allottee. 4. Parties at liberty to file written submissions if any by 04.08.2023, Subsequent to which the matter will be reserved for orders.
9	20-07-2023	CC006000000195412 (Was Listed at Sr.No.3)	Parties are present. 1. The Respondent senior counsel is not available, they seek an adjournment the same is not granted as there are a large number of Allottees who are suffering, and the matter is now overdue for adjudication. However, in the interest of natural justice the junior advocate present on behalf of the senior counsel has been requested to take notes of the arguments made and a suitable time will be given in the roznama for them to file written submissions if any. These written submissions will be treated as the notes of argument and will be taken on record by the Authority. 2. The Complainant states that the averment of the Respondent in the affidavit filed namely that the Hon'ble Bombay High Court itself has held MHADA to have delayed the project is not correct as the Hon'ble Bombay High Court never went into the merits of the case. Further it was not the Developer who went to the Hon'ble Bombay High Court, but it was the Allottees seeking their flats who went to the Hon'ble Bombay High Court. The Hon'ble Bombay High Court has also not ruled on neither the title or the Government Resolution (GR) and hence this cannot be cited as the reason to condone the delay. The occupancy certificate was applied much later than February 2020 and thus to say that it was complete in February 2020 would be wrong statement. Even today the occupancy certificate that has been granted seeks certain compliances from the Developer and is not a complete occupancy certificate. The Complainants are still not aware as to whether these compliances have been done or not. 3. The Respondent to file written submissions if any by 04.08.2023 with copies being served on the Complainants. The Complainant is at liberty to file any re-joinder to the same by the 11.08.2023. Matter reserved for orders.
10	12.10.2023	CC006000000198191 (Was Listed at Sr.No. 9)	Both Parties are present. 1. The Complainant states that the date of possession was given as 31st December 2020, and the building is still incomplete and various works are going on. The party has received only part OC. The Complainant thus seeks interest for delay together with compensation. 2. The Respondent points out to the litigation history of this particular project. The MHADA has entered into a joint development agreement with Guru Ashish wherein they were permitted to create third party rights. Subsequently a stop work notification was given and Guru Ashish went into liquidation. The MHADA then attempted to terminate the Joint development agreement in January 2018. The Respondent approached the Hon'ble High Court to prevent coercive takeover by MHADA in order to protect the interest of the Allottees. The Agreement for Sale gives the whole title history of the case. The Respondent also points out to the various circular issued during Covid for condoning delay. The Respondent states that his project was dragged into unwarranted court litigations and various stop works delaying the project. This clearly falls within the exceptional circumstances as mentioned while qualifying the date of possession. 3. The Complainant states that building No. 4 has being intentionally delayed and they vehemently seeks interest and compensation. 4. The Respondent however avers that because of the ligation there was financial restraint which prevented them from taking actions as needed. 5. Parties are at liberty to file written submissions, if any, by 10.11.2023. Subsequent to which, the matter will be reserved for orders.
11	12.10.2023	CC006000000221085 (Was Listed at Sr.No.20)	Both Parties are present. 1. The Complainant avers that Agreement for sale was executed on 08.11.2017, the date of possession was given as 30.06.2020. They have not yet received possession. The Complainant has taken loans and has been put into great financial difficulty. The Complainant seeks interest together with compensation. The Complainant also seeks that a 5 % penalty be imposed as this case is a clear violation of section 61 of the Act.

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			2. The Respondent points out to the litigation history of this particular project. The MHADA has entered into a joint development agreement with Guru Ashish wherein they were permitted to create third party rights. Subsequently a stop work notification was given and Guru Ashish went into liquidation. The MHADA then attempted to terminate the Joint development agreement in January 2018. The Respondent approached the Hon'ble High Court to prevent coercive takeover by MHADA in order to protect the interest of the Allottees. The Agreement for Sale gives the whole title history of the case. The Respondent also points out to the various circular issued during Covid for condoning delay. The Respondent states that his project was dragged into unwarranted court litigations and various stop works delaying the project. This clearly falls within the exceptional circumstances as mentioned while qualifying the date of possession. 3. The Respondent further avers that they have uploaded, time and again reasons for the delay. Further the delays have taken place for reasons which were beyond their control and hence they cannot be blamed for the delays and thus there is no case for imposing a penalty on them. 4. Parties are at liberty to file written submissions, if any, by 10.11.2023. Subsequent to which, the matter will be reserved for orders.
12	12.10.2023	CC006000000221129 (Was Listed at Sr.No.21)	Both Parties are present. 1. The Respondent points out to the litigation history of this particular project. The MHADA has entered into a joint development agreement with Guru Ashish wherein they were permitted to create third party rights. Subsequently a stop work notification was given and Guru Ashish went into liquidation. The MHADA then attempted to terminate the Joint development agreement in January 2018. The Respondent approached the Hon'ble High Court to prevent coercive takeover by MHADA in order to protect the interest of the Allottees. The Agreement for Sale gives the whole title history of the case. The Respondent also points out to the various circular issued during Covid for condoning delay. The Respondent states that his project was dragged into unwarranted court litigations and various stop works delaying the project. This clearly falls within the exceptional circumstances as mentioned while qualifying the date of possession. 2. The Complainant avers that the project is not complete and it will take more than 5 to 6 months to complete this. The Complainant further avers that even though the joint development agreement was terminated and the Respondent had to move the High Court for preventing coercive action there was nothing that restrained him to continue with the work. Further even during the subsistence of the various government committees that were formed there was no restraining order and hence the work could have easily continued and thus there is no justification for the delay. The Complainant also points to the Yogendra Singh Case and the Parihar Case. 3. The Respondent cites orders of the various Courts to state that when there are reasons beyond the control of developer, the developer is then entitled to a reasonable extension of time. In this case, the litigations and stop works were beyond his control and hence he should not be penalized for delays resulting from those events. 4. The Respondent No.2 seek discharge stating that: - There is no cause of action made out. - He is not shown as the promoter in the RERA registration. - He is not developing the project. - There is no privity of contract between him and the Complainant. - There are no monies paid to him. 5. The Respondent No. 2 also points to the Limited Liability Act stating that he is a partner in the LLP and that cannot be used to drag him in this case. 6. The Complainant avers that he made the booking as the advertisement was made in the name of Kalpatru. Kalpatru being a reputed name, he was attracted to the Project and today they cannot shirk their responsibility. 7. Parties are at liberty to file written submissions, if any, by 10.11.2023. Subsequent to which, the matter will be reserved for orders.
13	12.10.2023	CC006000000292807 (Was Listed at Sr.No.26)	Both Parties are present. 1. The Complainant states that the date of possession was given as 31.12.2020. The project is delayed and hence he seeks interest together with compensation. 2. The Respondent points out to the litigation history of this particular project. The MHADA has entered into a joint development agreement with Guru Ashish wherein they were permitted to create third party rights. Subsequently a stop work notification was given and Guru Ashish went into liquidation. The MHADA then attempted to terminate the Joint development agreement in January 2018. The Respondent approached the Hon'ble High Court to prevent coercive takeover by MHADA in order to protect the interest of the Allottees. The Agreement for Sale gives the whole title history of the case. The Respondent also points out to the various circular issued during Covid for condoning delay. The Respondent states that his project was dragged into unwarranted court litigations and various stop works delaying the project. This clearly falls within the exceptional circumstances as mentioned while qualifying the date of possession. The Respondent cites orders to reiterate that they are entitled to reasonable extension in cases where circumstances beyond their control have led to delays.

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			3. The Respondent No.2 seek discharge stating that: a. There is no cause of action made out. b. He is not shown as the promoter in the RERA registration. c. He is not developing the project. d. There is no privity of contract between him and the Complainant. e. There are no monies paid to him. 4. The Respondent No. 2 also points to the Limited Liability Act stating that he is a partner in the LLP and that cannot be used to drag him in this case. 5. The Complainant avers that he made the booking as the advertisement was made in the name of Kalpatru. Kalpatru being a reputed name, he was attracted to the Project and today they cannot shirk their responsibility. 6. Parties are at liberty to file written submissions, if any, by 10.11.2023. Subsequent to which, the matter will be reserved for orders.
14	21.11.2023	CC006000000292573 (Was Listed at Sr.No.16)	Both Parties are present 1. Complainant avers that it is an admitted fact that there has been a delay in the project and also a delay in obtaining OC. This delay is on account of the developer and that he should be given possession without any conditions and also interest for delayed possession. The Complainant also states that the Respondent Kalpataru should not be discharged in the matter as the project was marketed under the brand name of Kalpataru and all Allottees were under impression that this is Kalpataru project and hence should not be discharged from obligations. 2. The Respondent states that the letter which is anticipated by the Complainant cannot be taken on record and the subject matter of adjudication today. The Respondent avers that Kiyana was the promoter, the completion certificate and OC has been received in the name of Kiyana and today at this stage the Complainant cannot seek to include another entity as a promoter. The amounts were paid to Kiyana. Kalpataru was only marketing the same and promotion charges towards that have been paid. The Respondent also points the substantive Act and also states that the single partner cannot be isolated from the LLP. The Respondent further states that all delays took place because of MHADA and other reasons. The delays cannot be attributed to him as he himself has fought at every level to ensure that the OC and CC is made available. 3. The Respondent states that in May 2023, itself an intimation of possession was given, however further payments were not made by the Complainant. He further reiterates that OC was withheld by MHADA and the same came to be given only subsequent to orders of the Hon'ble Bombay High Court. 4. Parties are at liberty to file written submissions if any, on or before 15.12.2023, subsequent to which the matter will be reserved for orders.
15	20.12.2023	CC006000000303578 (Was Listed at Sr.No.27)	Both Parties are present. 1. Complainant states that an Agreement for sale was executed on 04.06.2018. Date of possession was given 31.12.2020. The Complainant has paid a substantial portion of the consideration. The Complainant cites the Newtech case and seeks possession together with interest for delay. 2. The Respondent states that they are ready to offer possession, however without interest because of Force Majeure. Further Force Majeure itself is defined in the contract and they cannot be held liable for the delays. 3. Parties are at liberty to file written submissions, if any, by 05.01.2024. Subsequent to which, the matter will be reserved for orders.
16	20.12.2023	CC006000000375377 (Was Listed at Sr.No.28)	Both Parties are present. 1. Complainant avers that they made a booking in March 2019 and were to get possession by 31.12.2019. By 10.10.2023 they have made full payments. The developer has received OC in April and even till date has not handed him the possession. The Complainant seeks unconditional possession together with interest. The Complainant avers that from various letters and emails and the conduct of the Respondent can be concluded that the project has been delayed. The Complainant further avers that he has paid Kalpataru as a party as he has purchased the flat based on the advertisement given by Kalpataru. 2. The Respondent avers that he made every effort for getting OC and took proactive steps to prevent any coercive action. The Respondent further avers that the flats are ready since May, and they are in the process of offering possession. The delay took place because of force majeure events like various litigations over which the Respondent had no control. The Kalpataru is only a partner in the company and a partner cannot be held liable for acts of an LLP. 3. The Complainant states that there is no delay in payments. The last instalments were to be paid only after inspection. 4. Parties are at liberty to file written submissions, if any, by 05.01.2024. Subsequent to which, the matter will be reserved for orders.

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

SR. NO.	COMPLAINT NO./ DATE OF FILING	WING/ FLAT NO.	DATE OF AFS ¹	DATE OF POSSESSION	TOTAL CONSIDERATION	TOTAL AMOUNT PAID ²
1	CC006000000193698 13.08.2020	C- 153	01.01.2018	On or before 31.12.2018	3, 16,11,950/-	3,00,31,353/-
2	CC006000000192216 17.01.2020	D- 226	21.05.2018 AFS NOT UPLOADED	On or before 31.12.2019 (complaint copy)	2,49,77,010/-	2,49,71,274
3	CC006000000192221 17.01.2020	D-225	21.05.2018 AFS NOT UPLOADED	On or before 31.12.2019 (complaint copy)	2,57,13,900/-	2,57,07,656/-
4	CC006000000192305 25.01.2020	D - 75	25.10.2017 INCOMPLETE AFS	On or before 31.12.2019 (possession clause uploaded)	2,07,43,900/-	2,17,21,304/-
5	CC006000000192306 25.01.2020	D - 76	25.10.2017 INCOMPLETE AFS	On or before 31.12.2019 (possession clause uploaded)	2,01,54,010/-	2,11,04,817/-
6	CC006000000192307 25.01.2020	D - 155	25.10.2017 INCOMPLETE AFS	On or before 31.12.2019 (possession clause uploaded)	2,18,79,900/-	Rs. 2,29,08,212/-
7	CC006000000193699 13.08.2020	D - 171	31.12.2018 AFS NOT UPLOADED	On or before June 2019 (complaint copy)	3,37,45,250/-	3,25,57,989/-
8	CC006000000192308 25.01.2020	D - 156	09.11.2017 INCOMPLETE AFS	On or before 31.12.2019 (possession clause uploaded)	2,12,56,410/-	2,22,56,791/-
9	CC006000000195412 27.12.2020	D-72	17.03.2018	31.12.2019	2,75,02,782/-	2,92,76,705/-
10	CC006000000198191 09.09.2021	B-111	06.10.2017	on or before 31.12.2020	2,36,75,030/-	2,12,14,550/-
11	CC006000000221085 14.05.2022	B-246	08.11.2017 AFS NOT UPLOADED	30.06.2020 (complaint copy)	-	-
12	CC006000000221129 10.05.2022	B-134	07.10.2017 INCOMPLETE AFS	On or before 30.06.2020 (possession clause uploaded)	2,37,81,030/-	2,35,05,142/-
13	CC006000000292807 24.09.2022	B-63	11.10.20217 AFS NOT UPLOADED	31.12.2020 (complaint copy)	2,25,40,163/-	1,75,79,372/-
14	CC006000000292573 07.09.2022	C- 136	19.09.2017 AFS NOT UPLOADED	December 2018 (complaint copy)	1,93,40,508/-	1,93,16,729/-
15	CC006000000303578 07.12.2022	B- 75	22.05.2018	30.06.2020	2,11,85,662/-	2,24,64,117/-
16	CC006000000375377 25.04.2023	C- 152	30.03.2019 INCOMPLETE AFS	31.12.2019 (possession clause uploaded)	3,15,68,284/-	3,16,12,989/-

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

- a) The captioned complaints primarily seek possession or refund of the amounts paid. The Complainants (Sr. Nos 1 to 8) seeks refund of amounts along with interest and compensation and the Complainants (Sr. Nos. 9 to 16) seeks for possession along with interest and compensation.

¹ AFS-AGREEMENT FOR SALE

² Includes of taxes and other charges.

- b) Further the Complainants in the captioned complaints additionally submit that the Respondent is non-compliant not only with respect to his duties towards the Project and Allottees but also towards the Authority.
- c) The Complainants submit that the Respondents' submissions are objected in totality.
- d) The Complainants submit that Maharashtra Housing and Area Development Authority (MHADA) and Guru Ashish Construction Private Limited (GACPL) terminated in January 2018 by Respondent's own admission. The Complainants registered their Agreements in 2017. Since the Respondents knew the problem then why they put the absolute final date of possession as 31.12.2019 and since this is not force majeure they are at fault for not delivering on the due date.
- e) The Complainants submit that they did not book and register on the same day as falsely claimed by Respondent but with a gap of 3 years.
- f) The Complainants submit that the building construction did not complete in 2018 and not even complete in Feb 2020 as shown by their own Architect's certificate, uploaded earlier and on RERA website.
- g) The Complainants submit that the agreements are executed with the Respondent only and not with third parties such as MHADA or GACPL and hence only the Respondent is liable for the delay.
- h) The Complainants submit that the Respondent is once again trying to confuse project completion and building completion date. The building completion date was 31.12.2019.
- i) Further the Complainants reiterate their earlier submission that it is well accepted that all these types of agreements are arbitrary and the allottee has very little to no influence to change any aspect of this.
- j) The Complainants submit that the Respondent has received the OC since 10.04.2023, and the building is ready, why are they still NOT giving possession, they are still holding on for some reason. Further the Complainants have learnt from the various hearings that the latest OC is not complete and unconditional but requires some criteria to be met by the

Respondent and perhaps that is the reason for the delay now in handing over the possession.

6. The brief observations of the submissions of the Respondent No. 1 are as follows:
- a) That the Respondent No. 1 submits that it is evident that the Complainants approached the Respondent to purchase the said Flat after the MHADA had terminated GACPL and the said Suit was filed. The entire issue had already gained public limelight.
 - b) That the Respondent No. 1 submits that it is pertinent to note that when the subject Project was registered, the date of completion of the Project was declared as 31.12.2021. At the said time, there wasn't any imminent threat of MHADA taking any action against GACPL and the completion date was declared as per the then prevailing scenario.
 - c) That the Respondent No. 1 submits that it is evident from the above that the project is already completed in the year 2018. The Respondent hasn't been able to apply for an occupation certificate (OC) since the year 2018 itself owing to the standoff between MHADA and GACPL.
 - d) That the Respondent No. 1 submits that in the backdrop of the disputes created by MHADA and the pendency of the court proceedings, the clauses of the agreement including all the exceptions were admitted in the knowledge of the Complainants. The terms of the Agreement have mutually been agreed to between the parties and has never been disputed by the Complainants.
 - e) That the Respondent No. 1 submits that it has always been the submission of the Respondent that the alleged delay, if any in possession of the flat was not on account of any reasons attributable to it, but due to the reasons beyond its control, particularly the disputes between MHADA and GACPL, and MHADA having dragged its feet in granting OC.
 - f) That the Respondent No. 1 submits that the instant case is a unique one, where necessary parties being MHADA and GACPL ought to have been

joined as they are answerable for the project being stalled. Thus, the Respondents claim non-joinder of the necessary parties to the suit.

- g) That the Respondent No. 1 submits that it is pertinent to note that immediately, based on the Order dated 27.03.2023 passed by the Hon'ble High Court at Bombay, the OC dated 10.04.2023 had been issued to the said Project. This proves that construction of the project was complete all along.
- h) That the Respondent No. 1 submits that the Complainants are to make a return on investment is evident from the fact that even after the OC is obtained and possession on the horizon, the Complainants are insisting on a refund with interest.
- i) The Respondent No. 1 submits that the RERA is meant to protect the interest of allottees so that they get their homes and not to reward them with handsome returns. It has been promulgated to put home buyers in possession. The object of any home buyer is to take possession, a priority to any monetary claim.
- j) Respondent No. 1 submits that until the OC was obtained, there were nearly 24 allottees who wanted a refund, but after the OC was obtained, allottees have sought to convert their cases from that of refund to that for possession, and such cases are only increasing.
- k) That the Respondent No. 1 submits that on 01.05.2017, the RERA was promulgated. The project was registered with this Authority in July 2017 as per the requirements of section 3 of the RERA. As per Section 4 (2) of RERA, the promoter is permitted to give a revised date and the Respondent declared 31.12.2021 as the date for completion of the project.
- l) That the Respondent No. 1 submits that through circulars the project registration date has been extended by the Authority to 30.06.2022 due to Covid-19 pandemic lockdown.
- m) That the Respondent No. 1 submits that without prejudice to the above, it is submitted that the Authority ought not go ahead and decide the complaint since the issue of delay in possession has been raised by a group of allottees in Interim Applications No. 1212 of 2020 and Interim Applications (L)

No.1124 of2021 which has been tagged along with the suit filed by the Respondent before the Hon'ble Bombay High Court. Since the superior court was already seized of the issue, the subordinate court ought not to have proceeded with the issue out of judicial decorum. In any event the project is complete, and the flat is going to be handed over to the Complainants.

- n) That the Respondent No. 1 submits that section 31 of the RERA clearly provides that a case only lies when there has been a violation of the provisions thereof. As is evident from the abovementioned series of events, the Respondent completed the construction of the subject Project in 2018 and obtained OC on 10.04.2023.
- o) That the Respondent No. 1 submits that on 10.05.2018. A structural stability certificate was obtained which clearly shows that the subject building is stable and safe for the purpose it intended. Despite completion of the construction, the Respondent could not offer possession of flats to the allottees. The reasons for the same are now well documented and pleaded before multiple forums.
- p) That the Respondent No. 1 submits that a routine argument is being made on behalf of allottees that their right to take refund with interest under section 18 of the RERA is an unqualified right and cannot be extended. In the instant case the Complainants are entitled to take refund of the amounts in terms of the agreement for sale and not otherwise. Since the Respondent has shown that there is no delay in offering possession of their subject flats, the Complainants can seek refund only in terms of the said agreements.
- q) That the Respondent No. 1 submits that he has offered possession vide a letter dated 25.05.2023 in (Sr. No.14) & 17.05.2023 in (Sr. No. 16) stating the on account of receipts of OC for Wing A, C & D in the said project they are ready to hand over possession once the balance amount towards the total consideration as per the said Agreement is paid.
- r) That the Respondent No. 1 submits that in the light of the reasons stated hereinabove, the complaint is not entertained considering the facts of the

case and going by the principle of balancing of equities and moulding of reliefs, the Respondent is not burdened for something not attributable to it.

7. The brief observations of the submissions of the Respondent No. 2 are as follows:

- a) Respondent No. 2 submits that Respondent No. 1 i.e. Kiyana Ventures LLP was incorporated under the LLP Act, 2008. The name of Kiyana Ventures LLP has been changed to "*Keyana Estate LLP*" with effect from 08.05.2023 under Rule 20(3) of the LLP Rules, 2009. The said fact is imperative to be brought on record before this Hon'ble Tribunal.
- b) The Respondent No. 2 submits that the complaint is devoid of any merit, baseless and vexatious and except for what is specifically admitted herein and/or the correct factual position, which is a matter of record, all other contents of the said complaint are denied as false and incorrect. Nothing contained in the present affidavit in reply may be deemed to be admitted for want of specific traverse and all allegations and the contentions made by the Complainants in the complaint, are denied in toto.
- c) The Respondent No. 2 submits that the said land is one of the subdivided plots of the entire layout of the larger land which is owned by MHADA. The MHADA, who is the landowner under the provisions of the said Act, is entitled to, as may be evident from what is stated herein, built up area on a larger land which in turn MHADA has reserved the rights to sell in the open market for a consideration.
- d) Respondent No. 2 submits that the buildings/wings, i.e. wings A, B, C and D have been registered under the RERA as separate real estate projects. Out of the said four (4) buildings/wings, wings A, C and D are already constructed and completed by the Respondent and have received OC on 10.04.2023 for Wing A, C and D by MHADA, Planning Authority.
- e) The Respondent No. 2 submits that thereafter, due to the outbreak of the second wave of Covid-19 in the State of Maharashtra and lockdown orders issued from time to time and considering the real estate industries being impacted severely, MahaRERA issued Order No. 21/2021 dated 06.08.2021

whereby the project completion was extended by six months due to force majeure events and hence extended date of completion of the project is 30.12.2023.

- f) The Respondent No. 2 submits that this Respondent is a bonafide developer who is desirous of giving possession and has even completed the project but is suffering on account of disputes between third parties, which disputes are beyond its reasonable control.
- g) The Respondent No. 2 submits that it is pertinent to point out that the Respondent is incurring huge financial expenditure on account of interest, maintenance, and upkeep of the Project.
- h) The Respondent had taken all possible and necessary steps to resolve the disputes between GACPL and MHADA at the earliest so that the OC could be obtained, which was stuck without there being any fault of this Respondent.
- i) The Respondent No. 2 submits that it is necessary to bring to this Authority's notice that the Government of Maharashtra has also taken cognizance of the issues surrounding the Larger Layout where on the present project stands. The Government has appointed a committee under retired IAS Officer Mr. Johnny Joseph to come up with recommendations so that the deadlock between MHADA and GACPL is broken and the 1100 allottees (approx.) in the said Larger Layout, don't suffer any further. Vide Notification dated 16.10.2020, the State Government has granted final extension to the committee to submit its report. Based on the submissions and recommendations made in the report by the above-stated committee, on 09.07.2021, the Government of Maharashtra has issued a Gazette Notification No. Misc-2020/case No.338/GNP (*Notification*) which has inter alia paved the way for the present real estate project to be granted OC.
- j) The Respondent No. 2 submits that as per the said Notification issued by the Government of Maharashtra, MHADA has constituted a Technical Expert Committee under the chairmanship of retired Bombay High Court Judge to expedite the obtaining of OC, the Respondent had submitted letters

dated 11.08.2021, 27.09.2021 & 26.10.2021 to MHADA seeking opportunity to make representation basis the said Notification.

- k) Also, the Allottees of the Kalpataru Radiance have formed an Association i.e. Radiance Welfare Association (registered) who have appeared before the Technical Expert Committee and filed their Submissions and prayed for directions to MHADA to issue OC of all Buildings. Even, the Respondent as well as MHADA and the other parties had made submissions before the Technical Expert Committee and that the same is pending at the stage of committee report, however, as mentioned above, in view of the Bombay High Court order, the Respondent received the full OC for A, C and D and Part OC for B wing on 10.04.2023.
- l) The Respondent No. 2 submits that the said Complex, as stated hereinabove, has more than 500 allottees as on date. The allottees are all keen on taking possession. The Respondent has so far concentrated all its resources towards completion of the project. Going forward also, the Respondent will require all the funds in its project accounts, to ensure the present building gets completed and all formalities for the OC are complied with. If the present complaint is allowed, which is a complaint of interest, the order will set a precedent and have a domino effect. Any precedent of monetary amount of any nature whatsoever, at this critical juncture would all create a financial strain and turn the project into a stressed one. The purpose of the constitution of the Authority is to ensure projects are completed.
- m) The Respondent No. 2 submits that vide a Joint Development Agreement dated 10.04.2008 GACPL, a sister concern of Housing Development and Infrastructure Limited (HDIL) was granted development rights by MHADA in respect of the larger Land, of which MHADA is the owner.
- n) Respondent No. 2 submits that subsequently vide resolution dated 26.07.2011 followed by a Deed of Confirmation and Modification dated 09.11.2011, MHADA permitted GACPL to create third party rights in respect of the free sale component.

- o) The Respondent No. 2 submits that he has filed a discharge application in Sr. Nos. (12 to 14 & 16) pointing to the Limited Liability Act that he is a partner in the LLP and that cannot be used to drag him in this case as he is not shown as the Promoter in the RERA registration, nor he is developing the project. There is no privity of contract between Respondent No. 2 and the Complainants neither there are monies paid to Respondent No. 2.
8. From the facts and the submissions made by the Parties herein, the primary issue that needs to be considered is that *Whether the Complainants herein are entitled to seek reliefs under Section 18 of the said Act?*
9. In order to answer the above issue – firstly the Authority observes the issue of maintainability in complaint filed at Sr. No. 16 and in this regard the following observations are noteworthy:
- a. It is pertinent to note that the Complainants at Sr. No. 16 have filed the captioned complaint on 25.04.2023. The Complainants are seeking possession along with interest and compensation, the interest for delayed possession, a cause of action which event is now over.
 - b. The said flat was already complete as OC for the same was in place on 10.04.2023.
 - c. From the MahaRERA records, it is observed that the Respondent No. 1 has uploaded OC copy and Form 4 on the said Project registration webpage prior to the filing of the complaint.
 - d. Further the Respondent No. 1 offered the said flat for possession vide letter dated 24.01.2024 and the Complainants have taken the Possession of their said flat. Hence the question of delay in possession cannot be raised after the receipt of OC (10.04.2023) and also after lapse of large time period since the date of promised possession (31.12.2019).
 - e. Thus, the question of delay in possession cannot be raised at any later stage after the documents being put up in the public domain. Further pleading ignorance cannot be a ground to claim reliefs under Section 18 as this section

clearly does not contemplate an afterthought at any point in time. In this regard section 18 is reproduced hereinbelow:

“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.”

- f. Thus, interest for delay or compensation for delay in possession only triggers when the Promoter (*Respondent No. 1 herein*) fails to complete the project or is unable to give possession as per the date specified in the agreement for sale which was way back in the year 2019. The present complaint was filed after the OC being received by the Respondent No. 1 on 10.04.2023 and also after the same was put up in the public domain by the Respondent No. 1 on the MahaRERA said Project registration webpage.
- g. Thus, the Complainants cannot plead to be ignorant about this fact and claim reliefs under Section 18 as it is not left open to claim violation at any later point in time during the lifetime of a real estate project. The very essence of this section is that the violation is evident on the date of filing of the complaint and is not something that comes to notice at an unforeseeable date in the future.
- h. Thus, in the present case it is pertinent to note that once the OC for any real estate project is received from the relevant Planning Authority (*MHADA*); the project is assumed to be complete in all aspects as per the sanctioned plan approved by the aforesaid Authority. It is important that every business transaction sees a final closure both physically and financially for it to be viable. No business proposal can remain open with unlimited liabilities for all times to come. In a real estate project once an OC is received, the project achieves closure. At this point both the Promoter / Developer and the Allottee should be able to conclude their transactions and close their books of account.

It cannot be a case that either the Promoter or the home buyer / Allottee keep their account books open and running in eternity to take care of liabilities that may arise under the said Act.

- i. It is thus, clear that any claim for reliefs under Section 18 of the said Act will have to be raised on or before the date of OC. Further one of the very purposes of creation of RERA is transparency in order to protect the interest of consumers.
- j. In view of the same, the complaint is not maintainable as on date of filing i.e. 25.04.2023 as the OC for said Project was received on 10.04.2023 and was in the public domain, which date is before the date of filing of the present complaint. Thus, the complaint is **dismissed** as not maintainable for seeking reliefs under Section 18 of the said Act. Hence the **issue at para No.8** hereinabove is answered as **negative** for the Complainants at Sr. No. 16.

10. Moving further, in order to answer the issue mentioned in para No.8 hereinabove for all the remaining complaints (*except for complaint at Sr. No. 16*), the following observations are noteworthy:

- a. it is pertinent to examine “**possession**” as contemplated under section 18 of the said Act which is reproduced at para No. 9(e). 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 Allotees (*all the Complainants herein*) have a choice either to withdraw from the said Project or stay with the said Project. Further, in case the Allotees (*Complainants at Sr. Nos 1 to 8 herein*) chooses to withdraw from the said Project, they are entitled to claim interest from the Promoter (*Respondent herein*) at such rate as may be prescribed including compensation. Further in case the Allotees (*Complainants at Sr. Nos. 9 to 16 herein*) 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.
- b. Thus, it is admittedly clear that there is a delay on part of the Respondent No. 1 with regard to the handover of possession with OC as per the agreements of

each of the Complainants herein. In view thereof, the actual specific date of possession as per each agreement is tabulated hereinbelow:

Sr. No.	COMPLAINT NOS.	DATE OF AFS	DATE OF POSSESSION AS PER AFS/PDC ³	SPECIFIC DATE OF POSSESSION	INTEREST TO BE PAID FROM
1.	CC006000000193698	01.01.2018	31.12.2018	31.12.2018	01.01.2019
2.	CC006000000192216	21.05.2018	30.06.2018 PCD in absence of AFS	30.06.2018	01.07.2018
3.	CC006000000192221	21.05.2018	30.06.2018 PCD in absence of AFS	30.06.2018	01.07.2018
4.	CC006000000192305	25.10.2017	31.12.2019	31.12.2019	01.01.2020
5.	CC006000000192306	25.10.2017	31.12.2019	31.12.2019	01.01.2020
6.	CC006000000192307	25.10.2017	31.12.2019	31.12.2019	01.01.2020
7.	CC006000000193699	31.12.2018	30.06.2018 PCD in absence of AFS	30.06.2018	01.07.2018
8.	CC006000000192308	09.11.2017	31.12.2019	31.12.2019	01.01.2020
9.	CC006000000195412	17.03.2018	31.12.2019	31.12.2019	01.01.2020
10.	CC006000000198191	06.10.2017	31.12.2020	31.12.2020	01.01.2021
11.	CC006000000221085	08.11.2017	31.12.2019 PCD in absence of AFS	31.12.2019	01.01.2020
12.	CC006000000221129	07.10.2017	30.06.2020	30.06.2020	01.07.2020
13.	CC006000000292807	11.10.2017	31.12.2019 PCD in absence of AFS	31.12.2019	01.01.2020
14.	CC006000000292573	19.09.2017	30.06.2018 PCD in absence of AFS	30.06.2018	01.07.2018
15.	CC006000000303578	22.05.2018	31.12.2020	31.12.2020	01.01.2021

- c. Here, it is important to note that all the agreements have been executed after the advent of RERA and the specific date of possession for all the Complainants is mentioned in their respective agreements and the same is tabulated as above. However, it is pertinent to note that complaints at Sr. Nos. 2, 3, 7, 11, 13 & 14 have failed to upload the copy of agreements for sale/uploaded incomplete copy of agreement for sale. Further it is observed that the Complainants (Sr. Nos 2, 3, 7, 11, 13 & 14) have not uploaded the relevant page for the possession clause of the said agreements and the Authority has no way to confirm the date of possession promised by the Respondents. Thus, in the absence of the said agreement copy for the promised date of possession the Authority shall rely on the proposed completion date (PCD) (for complaints at Sr. Nos. 2, 3, 7, 11, 13 & 14) mentioned by the Respondent No. 1 on the said Project No. 1 & 2 registration webpage i.e. **30.06.2018** and **31.12.2019** for Project No. 3. The date of proposed completion has been declared by the Respondent No. 1 while seeking the said Project registration. Thus, this date shall be the relevant date for completion

³ PCD- Proposed date of completion

of the said Project and for examining the delay in handover of possession to the Complainants in absence of agreement for sale. Thus, the date mentioned in the column namely 'SPECIFIC DATE OF POSSESSION' shall be considered as the date of possession promised by the Respondent No. 1 to the Complainants. Further, the interest in delay in handover of possession shall be applicable from the date mentioned in the column namely 'INTEREST TO BE PAID FROM' in the table hereinabove.

- d. It is clear that the Respondent No.1 has failed to handover possession of the apartments (flats) on the agreed date and thus, violated the provision of section 18 mentioned hereinabove. The Respondent No.1 has cited delay in the issue of MHADA and GACPL, as the reason for delay in the completion of the said Project. It is to be understood here that when a Developer / Promoter contracts with a home buyer to deliver a completed apartment as per the said Act, then the contract essentially involves obtaining all clearances/permissions that would entitle the said Project to get a completion certificate as defined in section 2(q) of the said Act. The said section 2(q) is reproduced below for ease of reference:

"Completion certificate means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;"

- e. Thus, from the above section it is clear that the obligation of handing over a project with completion certificate essentially means that the Developer / Promoter / Respondent No.1 herein not only carries the responsibility of physically completing the said Project and also ensuring that the said Project complies with all the statutory building laws. Physical completion of the building and responsibility of obtaining statutory compliances cannot be divorced. Thus, there is a clear delay on part of the Respondent No.1 in handover of possession of the apartments purchased by the Complainants and hence the answer to the issue at **para No.8** is in **affirmative** for all the Complainants (*except for complaint at Sr. No. 16*).

- f. With regard to the issue at para No. 8, it is pertinent to note that as per section 18 once there is delay in handover of possession as per the specified date of the agreements for sale entered between the Parties herein the choice to withdraw or stay in the said Project is clearly that of the Allottees (*all the Complainants herein*). In this case, the (*Complainants at Sr. Nos 1 to 8 herein*) have chosen to withdraw from the Project and hence are entitled to claim interest for delay in handover of possession from the date mentioned in the **para No.10 (b)** hereinabove till the amounts are refunded.
- g. It is also important to note 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 their 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.
- h. Further the (*Complainants at Sr. Nos. 9 to 15 herein*) have chosen to stay in the said Project and hence are entitled to claim interest for delay in handover of possession from the date mentioned in the **para No.10 (b)** hereinabove till the handover of possession with OC / completion certificate from the Competent Authority i.e. full OC **10.04.2023** for (*Complainants at Sr. Nos. 9 & 14 herein*) and till the handover of possession with OC / completion certificate from the Competent Authority for (*Complainants at Sr. Nos. 10 to 13 & 15 herein*). Thus, the **issue at para No. 8** hereinabove is answered in **affirmative**.
11. Further the provisions of section 18 are clear that if the Respondent No.1 fails to handover possession by the specified date as mentioned in the agreements for sale, they shall be liable to pay interest to the Complainants and this provision does not provide for any waiver or disclaimer or exception or force majeure event happening. It is an absolute provision. Reasons for delay as stated by the Respondent No.1 can be grounds for consideration with regard to seeking

extension of the completion date under the said Act for the said Project and not otherwise.

12. Further, while perusing the details updated by the Respondent No.1 on the MahaRERA Project registration webpage of the said Project No. 3 it is observed that the said Project has just recently lapsed i.e. 30.12.2023. The Respondent No.1 is directed to take steps to revalidate the same further till the full OC/completion certificate for the said Project is received.

FINAL ORDER

In view of the observations hereinabove, the following order is passed:

- A. The **complaint at Sr. No. 16** is **dismissed** as not maintainable.
- B. Thus, the complaints at **Sr. Nos 1 to 8** are **allowed** and the Complainants are entitled to withdraw from the said Project and seek refund of the amounts paid by them towards the consideration of the said apartment purchased in the said Project. The interest on refunded amounts shall be applicable from the date mentioned in column namely 'INTEREST TO BE PAID FROM' in the table at **para No.10 (b)** hereinabove at the rate 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* till the amounts are realized.
- C. The complaints at **Sr. Nos. 9 to 15** are **allowed** and all the Complainants are entitled to claim interest for delay in handover of possession from the date mentioned in column namely 'INTEREST TO BE PAID FROM' in the table at **para No.10 (b)** hereinabove at the rate 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* till the handover of possession with OC/completion certificate for (Complainants at Sr. Nos. 10 to 13 & 15 herein) and till **10.04.2023** for (Complainants at Sr. Nos. 9 & 14 herein).

- D. Further, with regard to the payment of interest to all the Complainants herein, it is further directed that the Respondent No.1 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. The moratorium period shall be deducted from the total period for which interest is payable.
- E. The Respondent No.1 is directed to take necessary steps for seeking extension of the said Project within 30 days from the date of this order failing which the Respondent shall be liable to a penalty under section 63 of the said Act.
- F. Further the payments of interest for delay shall be set off against the payments of balance dues if any under each agreement for sale of the Complainants herein at the time of handover of possession with OC/completion certificate for those Complainants whose possession is still pending.
- G. However, 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, it is directed that the amounts of refund and the interest thereupon shall be paid by the Respondent No.1 to the Complainants on or before 31.05.2024.
- H. The Respondent No.1 is also duty bound to cancel the agreement for sale of the Complainant herein upon the refund of the amounts with interest to the Complainant.
- I. No order as to costs.

(Ajoy Mehta)
Chairperson, MahaRERA