

909

CC/21/172

SCDR MAHARASHTRA

MUMBAI

O.W. NO.: 6295

DATE: 17.10.2025

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**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
MAHARASHTRA, MUMBAI.**

Consumer Complaint No. CC/21/172

1. Vivek Saxena

An adult Indian Inhabitant, aged 49 years,

Occupation: Service

Represented through his Attorney

Neeraj Saxena

2. Mayadevi Saxena

An adult Indian Inhabitant, aged 76 years,

Occupation: Housewife

3. Shaily Saxena

An adult Indian Inhabitant, aged 45 years,

Occupation: Housewife

Both residing at 301, Sankalp Garden,

Jankalyan Nagar, Off. Marve Road,

Malad (West), Mumbai- 400095.



..... Complainant

Versus

1. ERA Realtors Pvt. Ltd.

2. Omkar Realtors & Developers P.Ltd.

Both having its office at:

Omkar House, Eastern Express Highway,

Opp. Sion Chunabhatti Signal,

Sion (East), Mumbai - 400 022.

3. ICICI Home Finance Company Ltd.

Having address at,

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RPG Tower, Andheri Kurla Road,
J.B. Nagar Metro Station,
Andheri East, Mumbai – 400059.

.....Opposite Parties

BEFORE:

Hon'ble Mr. Mukesh V. Sharma, Presiding Member
Hon'ble Ms. Poonam V. Maharshi, Member

APPEARANCE:

For the Complainant: Advocate Sulaiman Bhimani
For Opposite Party : Advocate Kinjay Upadhyay
Advocate Jayesh Vyas

JUDGMENT

(29-07-2025)



Per: Hon'ble Ms. Poonam V. Maharshi, Member

1. The Complainants has filed the present Consumer Complaint under Section 47 read with Section 2(6) of the Consumer Protection Act, 2019, seeking reliefs against the Opposite Parties for deficiency in service and unfair trade practices. The Opposite Party No. 1 is the Promoter and Opposite Party No. 2 is the absolute Land owner and both are engaged in the business of construction & development of land. The opposite party no.3 is the Real Estate Agent duly Registered under RERA website Page ALTA MONTE –TOWER B.

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2. The case of Complainants in short is that the complainants are residents of Mumbai, were desirous having a flat in Mumbai received a E mail from Opposite party no.3 reffering themselves as agents for the project ALTA MONTE after discussion and perusing the brochure the complainants booked a residential flat—Flat No. 1103 , on the 11th floor of Wing “B”, in the project “Omkar Alta Monte”, situated at Shantaram Talao ,Siddheshwar Nagar, Konkanipada , Malad (East), Mumbai being developed by the Opposite Parties, namely the Promoter and the Landowner. The total agreed consideration for the said flat was Rs.1,67,30,500/-, out of which the Complainants had paid Rs.1,42,25,627/- (inclusive of taxes), through a combination of self-funding and home loan facilities. being nearly 80% of the total flat price. Despite repeated requests, the Opposite Parties failed to execute the Agreement for Sale and deliver possession within the stipulated time. The Complainants were instead issued multiple draft Allotment Letters, unilaterally extending the date of possession ,as per the verbal promise assurance of opposite party no.1 & 2 March 2018 was the date of possession than it got extended to March 2019 and thereafter to December 2020.

3. It is the grievance of the Complainants that such extensions were unilateral, made without consent, and amounted to deficiency in service and unfair trade practice. Despite assurances, advertisements, brochures, and repeated follow-ups, the Opposite parties failed to deliver possession even after the lapse of several years. As of the date of filing the complaint, no possession or Occupancy Certificate has been handed over. The Complainants



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further alleged that the Opposite Parties changed the project's construction contractor from Larsen & Toubro (L&T) to a local contractor, compromising the quality of construction. The RCC structure of the project has been left exposed for years, raising structural safety concerns. It is further contended that False promises, evasive communications, and unilateral changes in RERA possession timelines reflect unfair trade practices. Further the Opposite Parties updated the Maha RERA website with revised possession dates till December 2020, without buyer consent. Also the Architect's certifications reveal partial construction contrary to full slab-wise demand notices raised by the Opposite parties. The Complainant served a legal notice dated 16.03.2021, to Opposite parties. Though duly received by the Opposite Parties they failed to reply the said notice. Hence, the present complaint was filed seeking possession of the flat with amenities or, alternatively, an equivalent flat, together with interest @18% p.a., Rs.20,00,000/- towards mental agony, and Rs.1,00,000/- as litigation cost.

4. The Complaint was admitted, Notice was issued to the Opposite Parties. Though opposite Parties were duly served with notice of the complaint. However, despite service, Opposite Party Nos. 1 , 2 & 3 failed to file their Written Version within the statutory period prescribed under the Act, hence NO Written version order was passed on 25/11/2022 against Opposite party no.1 & 2, and against Opposite Party No. 3 on 04/10/2022.

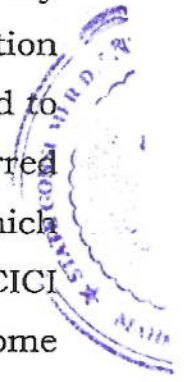
5. The Opposite Parties filed their written arguments on law Points. The opposite party no. 1 & 2 argued that the Date of Possession as per draft Allotment letter dtd 10th may 2017 is

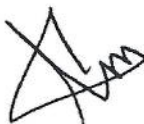
march 2020 (including grace period of 1 year). It is argued that the complaint was filed by the complainants on 15th July 2021 which is beyond limitation. It is further argued that the extension in possession timelines is due to force majeure conditions, including government directions, litigation, and orders from competent authorities. It is further Contended that Delay in environmental clearance caused further procedural hold-ups. The State MOEF Committee was dissolved, requiring a shift to the Central EAC and causing a delay of 1245 days. It is further Contended that COVID-19 pandemic led to shutdown of construction, raw material shortage, and labour migration, halting progress between 2020-2022. Several buyers, including the Complainant, have allegedly defaulted in payment, causing severe fund shortages in the RERA escrow account. It is further contended that that under Section 4(D) of RERA, 70% of collected funds must be used for construction, and delays in payments from buyers have directly affected project timelines. The Opposite Parties have submitted that the Complainant's claim of 18-24% interest is excessive and not supported by any statutory provision. The Opposite Parties urged the Commission to balance equity, allow them to complete the project, and defer financial liabilities till issuance of the Occupancy Certificate. Hence Prayed for dismissal of complaint as not maintainable and Exclusion of moratorium and litigation periods while computing delay or interest Set-off of interest due from both sides at the time of possession, Also deferment of any liability till OC is obtained, in line with past Maha RERA orders.



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6. The Advocate for opposite party no. 3 argued that there is no contractual or consumer relationship between the Complainants and this Opposite Party. Hence, the Complainants cannot maintain the present complaint against it. It is further argued that the Complainants have wrongly impleaded Opposite Party No. 3, who has no role or participation in the impugned transaction. The complaint, therefore, suffers from misjoinder of parties and deserves dismissal on this ground alone. It is stated that Opposite Party No. 3 has not provided any service to the Complainants, nor has it received any consideration from them. Therefore, no deficiency of service can be attributed to it. It is further argued that the complaint, even otherwise, is barred by limitation. It is also emphasized that ICICI Direct.com — which allegedly issued promotional mails — is a division of ICICI Securities Ltd., a company separate and distinct from ICICI Home Finance Company Ltd. The promotional mail referred to by the Complainant clearly mentioned that the offer was made by *Omkar Realtors and Developers Pvt. Ltd.* for ICICI Direct.com customers. Hence, no nexus exists between that promotional mail and Opposite Party No. 3. Also Dealings Were done directly With the Builder: The Complainants dealt directly with the builder and developer, and not through this Opposite Party. The Complainants neither booked the flat through Opposite Party No. 3 nor made any payment to it. No correspondence, document, or communication is produced by the Complainants to establish any relationship with Opposite Party No. 3. All documents annexed with the complaint relate only to the dealings between the Complainants and the



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Builder/Developer. Hence, Opposite Party No. 3 prayed that the complaint be dismissed with costs.

7. Upon going through the complaint, Affidavit of Evidence, Written Arguments and documents and citations filed on record by both the parties and also hearing the oral arguments of the learned advocate for the Complainants and the Opposite Parties following issues arose for our consideration. We have recorded our findings there on for the reasons stated below –



Sr.no	Issues	Findings
1.	Whether the said Complaint is barred by limitation?	In Negative
2.	Whether there is misjoinder of party ?	In negative
3.	Whether there is deficiency in service and unfair trade practice on the part of the Opposite Parties?	In Affirmative
4.	What Order?	As per final order.

REASONS

As to Issue No.1 :

8. Though the Opposite Parties have contended that the complaint is barred by limitation but as regards to limitation, the cause of action is continuous and recurring since possession is not yet delivered. The delay is ongoing. Hence we answer point No.1 in affirmative.

As to Issue No. 2:

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9. The Opposite Party No. 3 has contended that it has been wrongly impleaded in the present complaint, as it had no role or participation in the impugned transaction between the complainants and the builder. It is argued that there exists no privity of contract between the complainants and the Opposite Party No. 3, and therefore, the complaint against it is liable to be dismissed for misjoinder of parties.

We have carefully considered the said contention and perused the documents placed on record. The email communications annexed at Exhibits C-9 and C-10 reveal that the said emails were sent by ICICI Direct.com to its customers, introducing the very project in question. The said email also mentioned the proposed date of possession as March 2018. The disclaimer appearing at the end of the email states that ICICI Home Finance Company Ltd. (ICICI HFC) is acting merely as a *marketing partner* and does not undertake any liability or responsibility for the information contained therein.

However, despite such disclaimer, the fact remains that the said email was admittedly issued by the Opposite Party No. 3 as a marketing partner, and it was through this marketing communication that the project was introduced to the complainants. By virtue of the said act, Opposite Party No. 3 has actively participated in the promotion and marketing of the project and has played a material role in inducing potential consumers, including the complainants, to purchase in the project.



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It is a settled principle that a person or entity engaged in marketing, promotion or advertisement of a project cannot absolve itself of responsibility merely by issuing a disclaimer, when the promotional material forms the basis of a consumer's decision to purchase. The said promotional email, having been sent by the Opposite Party No. 3 in its capacity as a marketing partner, falls within the ambit of a "misleading advertisement" as defined under Section 2(28) of the Consumer Protection Act, 1986, which includes any advertisement that falsely describes a product or service or gives a misleading representation concerning it.



Therefore, the contention of Opposite Party No. 3 that it is not a necessary party and has been wrongly impleaded is devoid of merit. Its participation as a marketing partner introducing the project to consumers clearly establishes its involvement in the transaction leading to the grievance of the complainants. Hence, we hold that Opposite Party No. 3 cannot be said to have been wrongly impleaded, and the complaint does not suffer from misjoinder of parties. Accordingly, we answer Issue No. 3 in the negative.

As to Issue NO.3 :

10. Admittedly, the Flat was booked by the Complainants for total agreed consideration of Rs.1,70,60,872/-, out of which the Complainant paid Rs.1,44,83,085/- (inclusive of taxes) .The promised date of Possession as per Allotment letter was of December 2018. There has been a significant delay beyond the agreed date of possession December 2018 without any possession being delivered till date. The Opposite Parties cited force majeure events including COVID-19, and environmental clearance delays.



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While these factors explain part of the delay, they do not justify a delay of nearly 5 years. As the Possession date is of December 2018 the Opposite Parties cannot take the shield of COVID crisis to be the reason for delay. The Careful perusal of these two circulars issued by Maha RERA, reveals that validity dates of project registration of various registered projects have been extended on account of the then, prevailing COVID-19 pandemic, the perusal of drafts of Allotment letter shows that the possession delivery dates have been stipulated. including its agreed timeline for the delivery of the possession mentioned therein cannot be changed without the prior expressed consents of all the parties. It is pertinent to note that registration validity dates of the projects and the possession delivery dates are two different and distinct aspects. In this regard, the advocate for Complainant has relied on the the judgement of Hon'ble Supreme Court in **M/s Imperia Structures Ltd. Vs. Anil Patni and Another** [AIR (2021) SC 70] has laid down as; -

" We may now consider the effect of the registration of the Project under the RERA Act. In the present case the apartments were booked by the Complainants in 2011-2012 and the Builder Buyer Agreements were entered into in November 2013. As promised, the construction should have been completed in 42 months. The period had expired well before the Project was registered under the provisions of the RERA Act. Merely because the registration under the RERA Act is valid till 31.12.2020, does not mean that the entitlement of the concerned allottees to maintain an action stands deferred, It is relevant to note that even for the


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purposes of Section 18, the period has to be reckoned in terms of the agreement and not the registration. Condition no. (x) of the letter dated 17.11.2017 also entitles an Allottee in same fashion. Therefore, the entitlement of the Complainants must be considered in the light of the terms of the Builder Buyer Agreements and was rightly dealt with by the Commission."

11. Further the Advocate for complainant has in the context of extension of project registration date, has filed the The Hon'ble Bombay High Court landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. And Anr. Vs. Union of India** (supra) in para 256 has categorically laid down as: "*Section 4 (2) (1) (C) enables the Promoter to revise the date of Completion of project and hand over possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale. Section 4 (2) (1) (C) enables the Promoter to give fresh timeline independent of the time period stipulated in the agreements for sale entered into between him and the Allottees so that he is not visited with penal consequences laid down under RERA. In other words, by giving opportunity to the Promoter to prescribe fresh timeline under Section 4(2) (1) (C) he is not absolved of the ability under the agreement for sale.*"

Also Project Completion date and date of handing over of the possession of the flat are distinct subjects and cannot be interchanged. Promoter cannot be absolved of its liabilities without requisite prior mutual expressed consents of all the parties.

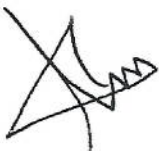


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12. The Advocate for complainant has submitted that during the COVID Pandemic and the restrictions given thereunder, the Opposite Parties had made demands for payments and also sent reminders thereafter to the Complainant during the subsistence of the pandemic and expecting the Complainant to honour the payments the Complainant has filed on record the Application Ledger at Exhibit-D of the Complaint , thus expecting a waiver for payment of interest for delayed possession owing to pandemic is completely unjustified.

13. Furthermore, the use of misleading promotional materials (including naming L&T as contractor and subsequent substitution) amounts to unfair trade practice under Section 2(47) of the Consumer Protection Act, 2019. Opposite Parties have failed to adhere to RERA timelines and have unilaterally extended possession dates without buyer consent. These actions fall squarely within the ambit of *deficiency in service* as defined under Section 2(11). The Advocate for Complainant has relied on the following citation:

Arifur Rahman Khan and Ors. vs. DLF Southern Homes Pvt. Ltd. and Ors. reported at 2020 (3) RCR (Civil) 544, wherein the Hon'ble Apex Court has held in para 24 that "*A failure of the developer to comply with the contractual obligation to provide the flat to a flat purchaser within a contractually stipulated period amounts to a deficiency. There is a fault, shortcoming or inadequacy in the nature and manner of performance which has been undertaken to be performed in pursuance of the contract in relation to the service*"



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14. However the Opposite party no.1 & 2 after accepting more than 70 % of balance Consideration failed to execute the Agreement for sale as per Section 4 of MOFAA Act. The Opposite Party failed to deliver the possession of the said flat within reasonable time amounting to deficiency in service . In View of the aforesaid discussion it is clear that Opposite Parties are guilty of deficiency in service and unfair trade practices .Hence we direct the Opposite Party no.1&2 to execute the registered agreement for sale and hand over possession of Flat No. 1103, 11th Floor, Wing B, in the "Omkar Alta Monte" project, Shantaram Talao, Siddheshwar Nagar, Konkanipada , Malad (East), Mumbai to the Complainant , along with Occupancy Certificate and amenities mentioned in the brochure shared by the opposite Party no.1&2. The Opposite Party no.1 & 2 shall jointly and severally pay to the Complainant Interest at 8% per annum on the amount of Rs.1,42,25,627/-, from 01.04.2018 till the date of actual possession. We further direct Opposite Party no. 1,2& 3 to severally and jointly pay Rs. 100,000/- (Rupees one lakh only) as compensation and Rs.25000/- as to litigation costs. The Complainant is directed to pay any outstanding balance consideration (if due) at the time of possession. Both the parties are directed to adjust/ set off mutual dues at the time of possession. Hence we answer point no.3 in affirmative and pass the following order.

ORDER

1. The complaint is partly allowed.
2. The Opposite Party No.1 & 2 are Jointly and severally directed to execute the registered agreement

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for sale in favour of Complainants and hand over possession of Flat No. 1102, 11th Floor, Wing B, in the "Omkar Alta Monte" project, Shantaram Talao, Siddheshwar Nagar, Konkanipada, Malad (East), Mumbai to the Complainant along with Occupancy Certificate and amenities mentioned in brochure within 2 months from the date of receipt of copy of this order. Complainant to pay the balance consideration at the time of handing over the possession by the Opposite Parties.

3. The Opposite Party no.1 & 2 shall Jointly and severally pay to the Complainant Interest at 8% per annum on the amount of Rs.1,42,25,627/-, from 01.04.2018 till the date of actual possession.

4. The Opposite Party no. 1,2 & 3 are Jointly and severally directed to pay the Complainant Rs 1,00,000/- (One lakh only) towards Compensation and Rs,25000/- as to litigation costs.

5. The copy of this order be furnished to both the parties free of cost.



FREE CERTIFIED COPY

Serial No. of the Application _____
 Date of receipt of Application 14.10.2025
 Name of the applicant Sulajman Bhimani
 Date of Disposal 29.07.2025
 Date of Preparation of copy 17.10.2025
 Date of dispatch of free certified copy of Order 17.10.2025
 By Hand / By Post _____

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m.v. sharma
[Mukesh V. Sharma]

Presiding Member

[Signature]
[Poonam V. Maharshi]

Member

FREE CERTIFIED COPY

[Signature]
 27/10/2024
 Registrar (Legal),
 State Consumer Disputes Redressal
 Commission Maharashtra Mumbai