

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

1. Complaint No. CC006000000194290

Anindya Purnendu Mitra and Pooja Mitra Complainants

Versus

1. M/s Glomore Constructions and
2. Acme Housing India Pvt Ltd. Respondents

Along with

2. Complaint No. CC006000000195183

1. Urmi Ghosh
2. Sharmi Ghosh Complainants

Versus

1. M/s. Glomore Constructions
2. Acme Housing India Pvt. Ltd Respondents

Along with

3. Complaint No. CC006000000195187

1. Singh Tara Shivdhari
2. Singh Pradeep Shivdhari Complainants

Versus

1. M/s. Glomore Constructions
2. Acme Housing India Pvt. Ltd Respondents

Along with

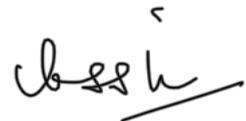
4. Complaint No. CC006000000195142

Brihaspati Singh Complainants

Versus

M/s. Glomore Constructions Respondents

Along with



5. Complaint No. CC006000000195186

1. Eamil Makwana

2. Urvi Parmar

Complainants

Versus

1. M/s. Glomore Constructions

2. Acme Housing India Pvt. Ltd

Respondents

Along with

6. Complaint No. CC006000000195186

Vibhor Modi

Complainant

Versus

M/s. Glomore Constructions

Respondent

Along with

7. Complaint No. CC006000000195504

Vanish Bhansali And Arti Bhansali

Complainants

Versus

M/s. Glomore Constructions

Respondent

Along with

8. Complaint No. CC006000000195637

Milind Kandalkar and Vrunda Kandalkar

Complainants

Versus

M/s. Glomore Constructions

Respondent

Along with

9. Complaint No. CC006000000195705

Manish Balkrishna Lokhande

Complainant

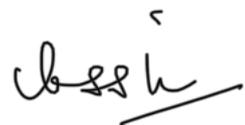
Versus

M/s. Glomore Constructions

Respondent

Along with

10. Complaint No. CC006000000196543



1. Jimit Doshi
2. Jigna Doshi

Complainants

Versus

1. M/s. Glomore Constructions
2. Acme Housing India Private Limited

Respondents

Along with

11. Complaint No. CC006000000196546

Jimit Doshi

Complainant

Versus

1. M/s. Glomore Constructions
2. Acme Housing India Private Limited

Respondents

MahaRERA Project Registration No. **P51800006404**

Coram: Dr. Vijay Satbir Singh, Hon'ble Member – 1/MahaRERA

Ld. Adv. Ajit Anekar appeared for the complainant at Sr No. 1.

Ld. Adv. Shraddha Dubepatil appeared for the complainant at Sr No. 2, 3 and 5.

Ld. Adv. Sushil Mishra appeared for the complainant at Sr No. 4, 6, 7, 8 and 9.

C.A. Mr. Dilip Agarwal appeared for the complainants at Sr No. 10 and 11.

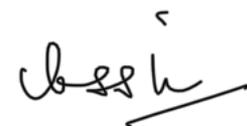
Ld. Adv. Harshad Bhadbhade appeared for the respondents.

ORDER

(Tuesday 28th September, 2021)

(Hearing Through Video Conferencing)

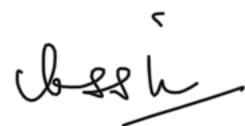
1. The complainants above named have filed these 11 separate complaints seeking directions from the MahaRERA to the respondent to pay the interest for the period of delay in handing over the possession of their flats under the provisions of Section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as RERA) with respect of the booking of their flats in the respondent's registered project known as "**Oasis - Tower 1**"



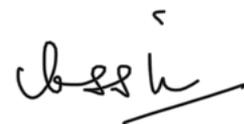
bearing MahaRERA registration No. **P51800006404** located at Kandivali East, Mumbai.

2. Some of these complaints were referred to the MahaRERA Conciliation Forum for further necessary action. However, the parties could not arrive at any mutually agreeable terms and hence those complaints were returned to the MahaRERA for further necessary action on 18-06-2021. Thereafter, some other complaints have also been transferred to this Bench on 14-07-2021.
3. Accordingly, all these complaints were clubbed together and heard on several occasions and same were heard finally on 22/09/2021 in presence of both the parties as per the standard operating procedure dated 12th June 2020 issued by MahaRERA for hearing of complaints through video conferencing. Both the parties were issued prior notification and were asked to file their respective submissions before MahaRERA. Accordingly, both the parties appeared through their respective advocates/ representatives and made their submissions. The MahaRERA has perused the available record.
4. The complainants have filed these complaints mainly seeking relief under section 18 of RERA and have provided the following information in their complaints in support of their claims.

Names of the complainants	Flat Numbers, Total Consideration & Amount paid towards flat cost	Date of registered AFS And Date of possession therein	Reliefs
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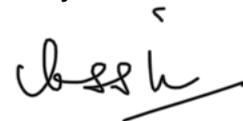


Anindya Purnendu Mitra and Pooja Mitra	2805 1,34,40,742/- 1,26,65,342/-	17-11-2018 31-12-2018	Refund along with interest and
Urmi Ghosh Sharmi Ghosh	2903 1,83,26,730/- 1,63,28,868/-	23-02-2018 30-06-2018	Interest / compensation for the delayed possession
Singh Tara Shivdhari Singh Pradeep Shivdhari	3502 1,29,52,412/- 1,20,97,554/-	04-10-2019 31-12-2019	Interest / compensation for the delayed possession
Brihaspati Singh	3305 1,54,08,538/- 1,34,60,898/-	15-02-2019 30-06-2019	Interest / compensation for the delayed possession
Eamil Makwana Urvi Parmar	3504 1,50,56,042/- 1,33,99,977/-	07-12-2019 31-12-2019	Interest / compensation for the delayed possession
Vibhor Modi	2905 1,49,07,420/- 1,12,83,400/-	24-01-2018 30-06-2018	Interest / compensation for the delayed possession
Vanish Bhansali And Arti Bhansali	3101 1,25,92,031/- 1,24,10,706/-	26-03-2019 30-06-2019	Interest / compensation for the delayed possession



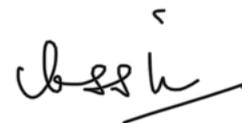
Milind Kandalkar and Vrunda Kandalkar	3103 1,83,25,543/- 1,82,36,176/-	21-08-2019 31-12-2019	Interest / compensation for the delayed possession
Manish Balkrishna Lokhande	3104 1,41,82,732/- 1,23,90,034/-	27-11-2018 30-06-2019	Interest / compensation for the delayed possession
Jimit Doshi Jigna Doshi CC0060000001965 43	2702 56,15,800/- 48,11,221/-	04-11-2019 31-12-2019	Interest / compensation for the delayed possession
Jimit Doshi CC0060000001965 46	2701 56,15,800/- 41,66,525/-	09-11-2017 30-06-2018	Interest / compensation for the delayed possession

5. The complainants have stated that the respondent No. 1 is the promoter who has registered this project with MahaRERA (hereinafter referred to as the respondent promoter) and the respondent No. 2 is the sister concern of the respondent No. 1. The complainants have mainly contended that the respondent promoter has failed and neglected to handover possession of the said flats to them on the agreed dates of possession mentioned in the said agreements and thereby violated the provisions of section 18 of the RERA. The complainants further stated that they tried to contact the promoter, however respondent promoter has not responded. However, the respondent has also issued illegal demands to some of the complainants, which they were not liable to pay and the same was issued just because the



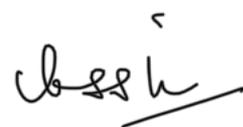
complainants have approached it for possession. Till date the respondent promoter has failed to complete the project and to obtain the occupancy certificate. Due to the said delay, they suffered from financial loss as they had to pay rent / EMI for bank loan. Hence they prayed for the reliefs as sought for in these complaints.

6. The respondent No. 1 is a promoter who has registered the project with MahaRERA, and the respondent No. 2 is the sister concern of the respondent No. 1 (respondent promoter). There is no privity between the complainants and the respondent No. 2.
7. The respondent promoter has refuted the claim of the complainants by filing written replies on record of MahaRERA and denied the claim of the complainants in toto. It has mainly stated that it has substantially completed the said project and obtained part occupancy certificate up till 26th floor on 02-08-2021, and it has filed an application before the competent authority for full occupancy certificate on 26-08-2021 and the same is awaited. It has also stated that it has also taken steps for formation of society and same is operational. It has further stated that as per clause No. 12.1 of the agreements signed with the complainants the date of possession was agreed as 30-06-2018 with grace period of 6 months i.e., 31-12-2019 etc subject to force majeure and other factors as specified therein. Even as per clause No. 12.5 of the said agreements it was entitled for reasonable extension of time on the said dates of possession in the event of occurrence of any of the circumstances specified therein.
8. The respondent further stated that the project got delayed mainly due to: i) delay in resolving the TDR issue, ii) Demonetization , it could not pay money

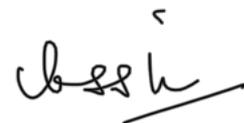


in cash to labours and to normalize the situation it took around 4 months' time, iii) Media widely broadcasted that third wave of the Covid pandemic is awaited, due to which the labour never returned, iv) implementation of RERA from 1-05-2017 to 14-08-2017 when it registered this project with MahaRERA, v) implementation of GST, vi) shortage of sand and cement and ready mix- concrete during the period of 2017-2018, vii) suspension of work due to covid-19 pandemic, viii) delay in obtaining part OC as it was applied on 30-05-2019 and same is obtained on 2-08-2021, ix) substantial delay caused due to amendment in Development Control Regulation, x) Supreme Court judgement- Act has been introduced to complete the project Financial though not part of the reply, but is uploaded on MahaRERA web page. The respondent promoter further stated that there is no intentional delay on its part in completion of this project. Therefore, it prayed to the MahaRERA not to grant the reliefs as mentioned in these complaints.

9. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, these complaints have been filed mainly seeking refund/possession of the flats along with the interest/compensation for the delayed possession under section 18 of the RERA. Admittedly, there are registered agreements for sale entered into between the complainants and the respondent promoter on various dates as mentioned in para 4 hereinabove. According to the said agreements, the respondent promoter was liable to handover possession of the said flats to the complainants on the dates mentioned in the above-mentioned table. The complainants have submitted the relevant pages of the agreements for sale on record of MahaRERA to substantiate their claim. Admittedly, possession of the flats was not given to the complainants on the said dates of possession mentioned hereinabove, it shows that the respondent promoter has violated the provision of section 18 of the RERA.

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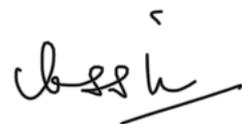
10. The respondent though has filed its reply on record, has failed to explain the delay caused in this project. It has merely stated that the project got delayed due to the reasons cited in aforesaid para no.9 such as demonetization, implementation of RERA and GST, Covid-19 pandemic, shortage of sand and cement, amendment in Development Control Regulation etc.
11. The aforesaid contentions of the respondent promoter cannot be accepted at this stage as most of the reasons of delay cited by the respondent are not covered under the force majeure clause. Moreover, reasons like the Covid-19 pandemic occurred in the year 2020, i.e. after the date of possession in the agreements for sale got expired. Hence the respondent would not be entitled to seek benefit of the said ground for extending the dates of possession mentioned in the agreements for sale.
12. As a promoter, having sound knowledge in the real estate sector, the respondent was fully aware of the market risks when it had launched the project and signed the agreements with the home buyers. Hence it was the duty of the respondent promoter to get all permissions in time and to complete the project in a time bound manner. If the project was getting delayed for the reasons cited by the respondent, in that event, the respondent should have approached the complainant allottees and should have informed the said delay to them and should have revised the date of possession mentioned in the agreements for sale. However, no such steps seem to have been taken by the respondent. Hence the reasons for delay cited by the respondent cannot be accepted as plausible explanation.



13. In this regard, it is necessary to peruse the provision of section 18 of the RERA, which reads as under:

“18 (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottee, 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.”

14. The aforesaid explicit provision under section 18 of the RERA clearly state that on failure of the promoter to handover possession of the flat to the allottee on the agreed date of possession mentioned in the agreements for sale, the allottee has two choices either to withdraw from the project or to continue in the project. If the allottee intends to withdraw from the project, the promoter on demand of the allottee is liable to refund the entire amount paid by the allottee along with interest and compensation as prescribed under RERA. If the allottee is willing to continue in the project, in that event, the promoter is liable to pay interest for the delayed possession.



15. It is very clear from the above discussion that the reasons cited by the respondent for the delay in completion of the project do not give any plausible explanation for the said delay caused in the project. Moreover, all reasons of delay cited by the respondent promoter occurred either prior to the execution of the said agreements for sale with the complainants or after the date of possession mentioned in the said agreements. Hence, the said reasons of delay are not acceptable. Moreover, most of the reasons cited by the respondent promoter such as demonetization, TDR issue, implementation of RERA /GST etc are not covered under the force majeure clause mentioned in the said agreements for sale executed between the complainants and the respondent promoter. Hence, the MahaRERA prima facie feels that the respondent promoter has violated the provisions of section 18 of the RERA.

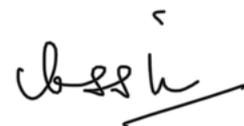
16. In view of the aforesaid explicit provisions of section 18 of the RERA, in the present case, the complainants at Sr. No. 1 have decided to withdraw from the project. Hence, they are entitled to seek entire amount paid by them towards the consideration amount along with interest as prescribed under RERA and the relevant Rules, made thereunder. Further, since rest of the complainants are willing to be in the project, they are entitled to seek interest for the delayed period of possession.

17. In view of the above facts and discussion, the following order is passed:

- a. The respondent promoter is directed to refund the entire amount paid by the complainants at Sr. No.1 towards the consideration of the said flat along with interest at the rate of SBI's Highest Marginal Cost Lending Rate (MCLR) plus 2% as prescribed under the provisions of section-18 of

the Real Estate (Regulation and Development) Act, 2016 and the Rules made there under, from the date of payment till the actual realisation of the said amount to the complainants.

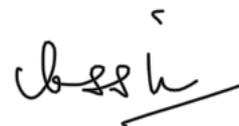
- b. The respondent promoter is further directed to pay interest for the delayed possession to the complainants at Sr. Nos. 2 to 11 from the agreed dates of possession mentioned in the agreements for every month till the actual date of possession with occupancy certificate on the actual amount paid by the complainants towards the consideration of their flats at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2% as prescribed under the provisions of section 18 of the RERA and the Rules made thereunder.
- c. However, in view of the mitigating circumstances beyond the control of the respondent promoter and also to ensure that the said project is not jeopardised due to the outflow of finances and is completed keeping in mind the interest of the other buyers of the said project at large, it is directed that the respondent promoter will have the liberty to pay interest to the complainants after obtaining the full occupancy certificate. The respondent promoter, at the time of possession of the flats to the complainants at Sr. Nos. 2 to 11, may set off the outstanding dues with the interest amount payable by it to the said complainants and pay the balance amount if any to them.
- d. Regarding the claim of the compensation sought by the complainants at Sr No. 1, the MahaRERA is of the view that no documentary proofs of mental agony have been produced on record of MahaRERA. Hence the claim of the said complainants stands rejected.



- e. So far as the claim of compensation raised by the complainants at Sr. Nos. 2 to 11 is concerned, the MahaRERA is of the view that since the complainants are willing to continue in the project, they are only entitled to seek interest for the delayed possession as provided under section 18(1) of the RERA. Hence, their claim towards compensation stands rejected.
- f. Needless to state here that the actual amount as provided under section 18 of the RERA means the amount paid by the complainants towards the consideration of their respective flats only, excluding the stamp duty, registration charges and taxes etc. paid to the government. The complainants at Sr. no 1 no 1 may seek refund of the stamp duty amount by approaching the concerned authorities by obtaining the requisite challans from the respondent promoter.
- g. With regard to the payment of interest to the complainants, the MahaRERA further directs that the respondent promoter is entitled to claim the benefit of "moratorium period" as mentioned in the Notifications /Orders nos. 13 and 14 dated 2nd April, 2020 and 18th May, 2020 issued by the MahaRERA and the Notification/Order which may be issued in this regard from time to time.

18. With the above directions, all these complaints stand disposed of.

19. The certified copy of this order will be digitally signed by the concerned legal assistant of the MahaRERA. It is permitted to forward the parties a copy of this order by e-mail.



(Dr. Vijay Satbir Singh)

Member – 1/MahaRERA