

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

**1. Complaint No. CC006000000195081**

Rajendra Kumar Kantilal Shah

Rajendra Kumar Shah

.... Complainants

**Versus**

Sky Star Buildcon Pvt Ltd

.... Respondent

Along with

**2. Complaint No. CC006000000195280**

Arjunsingh Mehta

Shweta Sanklecha

.... Complainants

**Versus**

Skystar Buildcon Pvt Ltd

.... Respondent

Along with

**3. Complaint No. CC006000000195372**

Gaurav Pandey

.... Complainant

**Versus**

Skystar Buildcon Pvt Ltd

.... Respondent

Along with

**4. Complaint No. CC006000000196272**

Mr. Vijay Poddar

Ms. Preeti Poddar

.... Complainants

**Versus**

Skystar Buildcon Pvt Ltd

.... Respondent

Along with

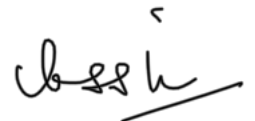
**5. Complaint No. CC006000000197150**

Garry Ashar

Tejal Ashar

.... Complainants

**Versus**



Skystar Buildcon Pvt Ltd

.... Respondent

**MahaRERA Project Registration No. P51800001281**

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

The complainants appeared in person at Sr. No. 1, 2, & 3.

Ld. Adv. Neha Mehta appeared for the complainants at Sr. No. 4.

Ld. Adv. Purvi Asher appeared for the complainants at Sr. No. 5.

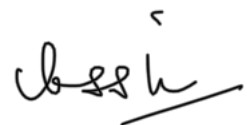
Ld. Adv. Preet Chheda appeared for the respondent.

**ORDER**

(Monday, 14<sup>th</sup> March 2022)

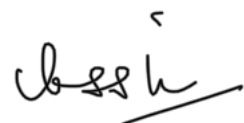
(Through Video Conferencing)

1. The complainants above named have filed these separate complaints seeking direction from MahaRERA to the respondent to handover the possession of their booked flats and also to pay interest for the delayed possession with compensation under the provisions of section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of their respective flats in the respondent's registered project known as "**Sunteck City Avenue 1**" bearing MahaRERA registration No. **P51800001281** situated at Goregaon, Mumbai.
2. Few 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 referred back to the MahaRERA for further necessary action on 18-06-2021. Thereafter the other complaints have also been transferred to this Bench from the Hon'ble Chairperson/ MahaRERA on 14-07-2021.

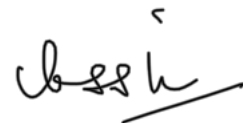


3. Thereafter, these complaints were heard finally on 22-12-2021 as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions if any. Accordingly, the parties appeared for the hearing and made their submissions. During the course of hearing, both the parties were allowed to file their respective written submissions/ replies/ rejoinders on record of MahaRERA within a period of two weeks. With these directions, the matters were reserved for the order.
4. Pursuant to the said direction, the respondent has filed its written submissions/ reply on record of MahaRERA on 17-01-2022 in few of the complaints and the complainant at sr. no. 2 have also filed their rejoinder on 19-01-2022. The said submissions are taken on record. MahaRERA heard the submissions made by both the parties and also perused the available record. However, it was not possible to decide the matter expeditiously since the office work was severely impacted by Covid 19 pandemic, heavy workload of the subordinates and shortage of staff.
5. 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:

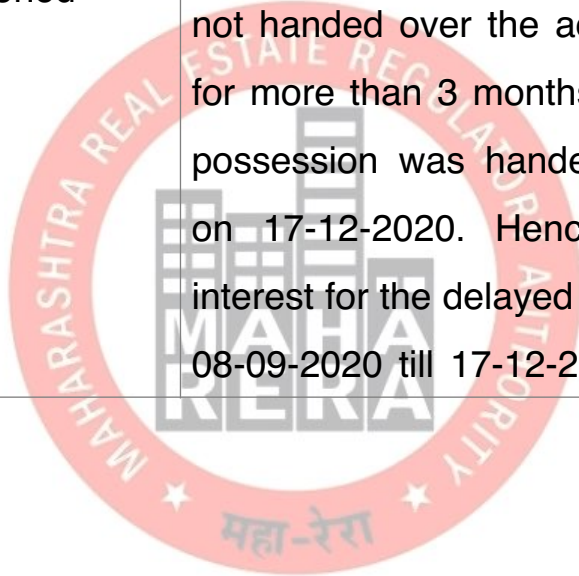
Sr. No.	Name of the Complainants/ Flat No./ Cost/ Date of AFS/ DOP	Reliefs Sought
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1	<p>Rajendra Kumar Kantilal Shah Rajendra Kumar Shah 1202 Rs. 1,29,14,080/- 04-12-2013 54 months with grace period of 9 months from the agreement i.e., June 2018</p>	<p>The complainants have stated that they have booked a flat for a total consideration amount of Rs. 1,29,14,080/- in the year 2011. At that time, the respondent had agreed to hand over the possession of the flat on or before 31-12-2015. Thereafter, the registered agreement for sale was executed on 04-12-2013. As per clause no. 16 of the said agreement, the date of possession was mentioned as 54 months from the execution of the agreement which comes to June 2018. The possession was not handed over to him though the respondent received the part occupancy certificate in the month of September 2020. The possession was not handed over to him till 31-12-2020 i.e., 28 months. Hence, the complainant mainly sought relief from MahaRERA to allow them to take inspection of their flat and the interest of Rs. 1,80,000/- be adjusted with the outstanding amount payable by them and also pay interest for the delayed</p>
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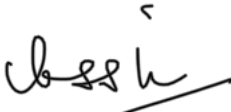


2	Arjunsingh Mehta & Shweta Sanklecha C-1103 Tower C Not mentioned	<p>The complainants have stated that they have booked the said flat wherein the respondent has agreed to handover the possession of the said flat within a period of 54 months from the execution of the agreement plus a grace period of 9 months. Though the respondent has obtained the occupancy certificate in the month of September 2020, it has not handed over the actual possession for more than 3 months and finally, the possession was handed over to them on 17-12-2020. Hence, they sought interest for the delayed possession from 08-09-2020 till 17-12-2020 for a period</p>
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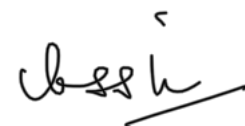


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3	<p>Gaurav Pandey 2801 Rs. 2,68,18,525/- Rs.3,08,28,651/- 25-01-2018 31-03-2020</p>	<p>The complainants have stated that they have booked the said flat bearing no. 2801 on the 28<sup>th</sup> floor in wing C for a total consideration amount of Rs. 2,68,18,525/- exclusive of taxes. The registered agreement for sale was executed on 25-01-2018. According to clause no. 24 of the said agreement the respondent was liable to handover the possession of the said flat to them on 31-03-2020. The complainants stated that various communications were exchanged between the parties between July 2020 till September 2020. However, the possession was not handed over to them. Thereafter, on 05-11-2020, the respondent informed them about the part occupancy certificate and called upon the complainant to take possession of the said flat by completing the formalities. However, the respondent has levied interest of Rs. 15,01,838/- and also levied 12% GST which is not applicable</p>
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4	<p>Mr. Vijay Poddar and Ms. Preeti Poddar 802 Rs. 1,66,58,760/- 03-05-2014 54 months from the agreement with further 9 months 3-05-2019</p>	<p>The complainants have stated that they have booked the said flat bearing no. 802 on the 8<sup>th</sup> floor in wing B of the said project for a total consideration amount of Rs. 1,66,58,760/-. The registered agreement for sale was executed on 03-05-2014, wherein the respondent has agreed to handover the possession of the said flat within a period of 54 months from the execution of the agreement with a grace period of 9 months. There is a 13 months' delay in handing over the possession of the flat to the complainants and the respondent has obtained the occupancy certificate in the month of September 2020 and informed the complainants to take possession by issuing the demand letter, whereby the respondent has charged the interest at the rate of 21% which the complainants are not liable to</p>
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5	<p>Garry Ashar Tejal Ashar 204 in Building A Rs. 2,21,96,500/- 28-05-2015 54 months from the agreement 28-05-2020</p>	<p>It is the case of the complainants that, by the registered agreement for sale dated 28-05-2015, they booked the said flat no. 204 in building A of the respondent's project for a total consideration amount of Rs. 2,21,96,500/-. As per clause no. 16 of the said agreement, the respondent was liable to hand over the possession of the said flat within 54 months with a grace period of 9 months. However, the possession was not handed over to them till August 2020. The complainants further stated that the respondent has misrepresented them by issuing the advertisement brochure and images provided to them at the time of said booking. However, the respondent has failed to handover the possession of the said flat to them on 25-08-2020, and</p>
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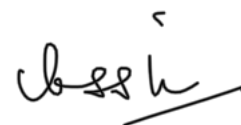
6. The respondent has filed its reply on record of MahaRERA in all the complaints and has denied all the contentions and allegations raised by the complainants. The respondent has further submitted that, the complaints are devoid of merits and the complainants have resorted to misrepresenting and concealing the aspects of the matter. The respondent further submitted that, the complainants have already taken possession of their flats and now they

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cannot coerce the respondent with unlawful demands. The respondent thereafter relied upon the order passed in CC006000000196360 in matter of Bijon Talukdar Vs. Dhruva Wooden Mills Pvt. Ltd. wherein the complaint was dismissed since the project was complete with occupancy certificate on the date of filing of the said complaint. The respondent applied to the MMRDA for occupancy certificate on 20/03/2020 and received the part occupancy on 08/09/2020 and the same has been informed to the complainants.

7. The respondent stated that although the date of possession in the said agreement for sale is 31-03-2020, it is entitled to a grace period of six months on equitable ground on account that the construction of the said project has been duly completed and is nearing completion of the said units and thus this is a fit case where a grace period of six months can be granted. Further, the MahaRERA had issued Order no. 14 of 2020 dated 18-05-2020 whereby a blanket force majeure period was declared for all projects in Maharashtra owing to global pandemic of Covid – 19 and in such a situation it not only proceeded with the completion of the project but was successful in procuring part occupation certificate for A Wing till 25 storeys. The respondent stated that the prolonged pandemic of Covid – 19 has put it under stress due to non-availability of labour, increased costs and market uncertainty and it will be in the interest of all stakeholders not to burden the project financially by way of imposition of any penalties or compensation. Further, it has stated that it has completed the said project and applied for OC in the month of March 2020, however it has got the same on 08-09-2020. The respondent stated that hence the complainants is not entitled for any interest / compensation as prayed for and the complaints are liable to be dismissed with heavy costs. The respondent further submitted that, occupancy certificate application was done before filing of the complaints and hence the complaints are not maintainable. Further the



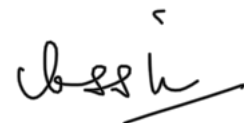
complainants are also liable to pay interest under section 19 (6) of RERA for delay in payment. The respondent further submitted that, the complainants have purchased the said flats by executing the agreements for sale and for various considerations as per the agreements and now seeking interest for delayed possession. The respondent further submitted that, the MahaRERA has issued circular for force majeure till September 2020. In such circumstance, the respondent completed the project and also received the occupancy certificate.

8. Further with regard to the claim of the complainants the respondent has mainly stated the following submissions:

i) **Rajendra Kumar Kantilal Shah**- Occupancy certificate has already been obtained on 8-09-2020. The possession was offered to the complainants on 15-09-2020. However, the complainants have taken possession on 19-02-2021 and now claiming interest for the delayed possession after taking possession of their flat.

ii) **Arjunsingh Mehta & Shweta Sanklecha**- Occupancy certificate has already been obtained on 8-09-2020. The possession was offered to the complainants on 15-09-2020. However, the complainants have taken possession on 16-12-2020 and now claiming interest for the delayed possession after taking possession of their flat.

iii) **Gaurav Pandey**- Occupancy certificate has already been obtained on 8-09-2020. The possession was offered to the complainants on 5-11-2020. However, the complainants have taken possession on 16-02-2021 and now claiming interest for the delayed possession after taking possession of their flat.



iv) **Mr. Vijay Poddar and Ms. Preeti Poddar**- Occupancy certificate has already been obtained on 8-09-2020. The possession was offered to the complainants on 22-09-2020. However, the complainants have not taken possession of their flat. The complainants have not paid entire consideration and as on date an amount of Rs. 14,82,282/- is due and payable by the complainants.

v) **Garry Ashar and Tejal Ashar**- Occupancy certificate has already been obtained on 25-08-2020. The possession was offered to the complainants on 15-09-2020. However, the complainants have not taken possession and filed this complaint after the possession was offered to them. Further the main grievance of the complainants is not delayed interest but the interest charged on the outstanding dues by it.

9. In view of these facts, the respondent therefore submitted that, it has not violated any provisions of RERA and the complainants are not entitled for any relief of interest for delay. The respondent therefore sought dismissal of these complaints.

10. The MahaRERA has examined the arguments advanced by both the parties and perused the available record. By filing these complaints, the complainants being allottees of this project have approached MahaRERA mainly seeking 3 main reliefs i) Possession of their flats, ii) interest for the delayed possession and iii) waving of the interest charged by the respondent on the outstanding dues payable by them. The said claim has been refuted by the respondent promoter by filing its reply/ written submissions on record of MahaRERA mainly on the ground that the claim of the complainants is an afterthought as same is agitated after OC is being received for this project and after possession been offered/ taken

possession of the flats by the complainants. To support its contention, the respondent has mainly relied upon the order dated 7-09-2021 passed in Complaint No. CC006000000196360, whereby the claim of the said allottee was rejected only on the ground that the possession of their flats along with interest on account of the delayed possession under section 18 of the RERA. There are registered agreements for sale entered into between the complainant allottees and the respondent promoter on various dates mentioned in the table mentioned hereinabove. According to the said agreements for sale, the respondent agreed to handover possession of the said flats to the complainants within 54 months from the dates of execution of the said agreements for sale with grace period of 9 months i.e., the possession was to be handed over to the complainants within a period of 60 months from the date of execution of the said agreements. To substantiate its contention, most of the complainants have produced the relevant pages of the agreements for sale on record of MahaRERA. Admittedly, the possession has not been handed over to the complainants in accordance with the agreements for sale.

11. With regard to the contention raised by the respondent, the MahaRERA has perused the online complaints filed by the complainant. The record shows that these complaints are filed on 14-12-2020, 18-12-2020, 29-12-2020, 06-03-2021, 31-05-2021 respectively. It, prima facie shows that these complaints are filed after completion of this project and even after possession was offered to the complainants and even the few of the complainants have already taken possession of their flats and thereafter filed these complaints agitating their claim for interest for the delayed possession under section 18 of the RERA.

12. In the present case, out of 5 complainants 3 complainants have already

taken possession of their flats and since the OC has already been obtained the other complainants are also entitled to get possession of their flats.

13. As far as the claim of interest sought by the complainants, the MahaRERA has noticed that in this project the MahaRERA has already decided the identical issue of interest by passing an order dated 28-01-2022 in complaint No. CC006000000196029 filed by the other allottee of this project viz Mr. Ankush Ghadi. In the said order the MahaRERA by considering all these grounds cited by the respondent has granted interest to the said allottee from 31-03-2020 till the actual date of possession. Further, the respondent has also been granted the benefits of the "moratorium period" as mentioned in the Notifications / Orders nos. 13 and 14 dated 2<sup>nd</sup> April 2020 and 18<sup>th</sup> May, 2020 respectively issued by the MahaRERA and the Notification/ Order which may be issued in this regard from time to time. The complainants being the allottees of this project are also entitled to seek similar reliefs at par with the other allottee.

14. However, in the present case, the MahaRERA has noticed that the respondent promoter has completed the construction and obtained occupancy certificate (OC) on 08-09-2020 and also offered the possession of the said flats to the complainants. It shows the respondent promoter has complied with its statutory duty cast upon it under section 18 of the RERA towards interest for the delayed possession on the date of OC and the possession was offered to the complainants. Hence the MahaRERA is of the view that the complainants are not entitled to seek any interest after the date of OC obtained for this project.

15. As far as the claim agitated by the complainants for 21% interest charged by the respondent, the MahaRERA is of the view that after commencement of

RERA, the interest rate is prescribed under the RERA and hence the respondent promoter is not entitled to charge interest other than what is prescribed i.e., Marginal Cost Lending Rate (MCLR) of SBI plus 2%.

16. Considering these facts, the following order is passed:

- a) The respondent promoter is directed to handover possession of the said flats to the complainant/ allottees to whom possession is not handed over till date.
- b) The respondent promoter is also directed to pay interest for the delayed possession to the complainants from the agreed date of possession mentioned in the agreements for sale including the grace period till the date of part OC i.e., 08-09-2020 for every month 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) The complainant/ allottees are also liable to pay interest for the period of delayed payment, if any, to the respondent at the time of possession, which may be set off against the interest amount payable by the respondent to the complainants.
- d) The issue of GST amount raised by few of the complainants is rejected since, the same does not fall within the jurisdiction of MahaRERA. Hence, the complainants can agitate the same before the appropriate forum.
- e) 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 2<sup>nd</sup> April 2020 and 18<sup>th</sup> May, 2020 respectively issued by the MahaRERA and the Notification/Order which may be issued in this regard from time to time.

17. With these directions, all 5 complaints stand disposed of.

18. The Certified copy of the order will be digitally signed by concerned Legal Assistant of MahaRERA, and it is permitted to send the same to both the parties through email.





(Dr. Vijay Satbir Singh)

**Member – 1/MahaRERA**