

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

COMPLAINT No: CC005000000011296

Mr. Shirish Vithalrao Borate

..... Complainant

Versus

M/s. Shivshankar Associate

..... Respondent

Along with

COMPLAINT No: CC005000000011327

Mrs. Bhavana Nilesh Borate

Mr. Nilesh Shirish Borate

..... Complainants

Versus

M/s. Shivshankar Associates.

..... Respondent

Along with

COMPLAINANT No: CC005000000011329

Ms. Kshitija Shirish Borate

..... Complainant

Versus

M/s. Shivshankar Associates.

..... Respondent

Along with

COMPLAINT No: CC005000000011331

Mrs. Utkarsha Pravin Borate

..... Complainant

Versus

M/s. Shivshankar Associates.

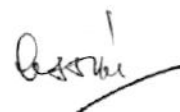
..... Respondent

MahaRERA Registration No. P52100014350.

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

Adv. Nilesh Borate appeared for the complainants.

Mr. Manoj Shah appeared for the respondent.



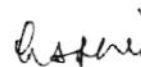
## **ORDER**

(6<sup>th</sup> June, 2018)

1. The above complaints have been filed by four complainants, who are the allottees in the project registered with MahaRERA bearing No. P52100014350 known as "Radhika Royale" at Pune. They have prayed for directions from this Authority to the respondents under Section-18 of the Maharashtra Real Estate (Regulation and Development) Act, 2016 to pay them interest for the delayed period of possession in respect of their flats in the said project.
2. This matter was finally heard on 29<sup>th</sup> May 2018. During the hearing, Adv. Nilesh Borate appeared for all the complainants and Mr. Manoj Shah appeared for the respondent. The complainants stated that they have booked their flats in the respondent's project and the agreements were also executed and registered in the year 2014. According to the agreement, the respondent was liable to hand over possession of their flats in December, 2016. Though the complainants have already paid 90 - 95% of the amount to the respondent, till date the possession of the flats has not been given. Hence the present complaint has been filed.
3. However, the respondent has argued that two of their partners are unwell and are bed-ridden. Therefore, they could not complete the project on time. Due to this reason, the respondent had to take up the mantle of completing the project and handing over the possession to the allottees. He also stated that the complainants had a meeting with the ailing partners at their residence where they were suggested to reduce some amount from the balance payment and settle the matter but in vain.
4. The arguments given by both the parties have been examined by this Authority. Admittedly, the respondent could not handover the possession of the flats to the complainants within the stipulated time period mentioned in the registered agreements for sale dated 11<sup>th</sup> August, 2014 & 13<sup>th</sup> Aug. 2014 respectively and there is delay in handing over possession of the flats to the complainants. Therefore, the complainant is entitled to seek relief under Section-18 of the Real Estate (Regulation & Development) Act, 2016. Even all the factors pointed out by the respondent, like ill health of the partners, are taken into consideration, there was enough time for the respondent to complete the project before the

relevant provisions of Real Estate (Regulation & Development) Act, 2016 came into force on 1<sup>st</sup> May, 2017. The respondent is, therefore, liable to pay interest to the complainants for delay in accordance with the provision of Section-18 of the RERA Act, 2016.

5. According to Sec 18(1) of the Act, if the promoter fails to complete a project or unable to give possession of an apartment, plot or building, the allottee shall be paid interest for the period of delay till handing over of the possession at such rate as may be prescribed. The Act has provided interest for delay to the home buyer if he wants to continue in the project. This relief was not available under the MOFA. The complainants are, therefore, entitled to claim interest on the amount paid by them. Moreover, this Authority also feels that the payment of interest on the money invested by the home buyers are not the penalty, but a type of compensation for delay as has been clarified by the Hon'ble High Court of Judicature at Bombay in above cited judgment dated 6<sup>th</sup> December, 2017 passed in W.P. No. 2737 of 2017. The respondent is liable to compensate the home buyers accordingly.
6. In the light of the above facts and circumstances of this case, this Authority directs the respondent to pay interest to the complainants for the delayed possession at the prescribed rate under RERA Act, 2016, and the Rules made there under from 1<sup>st</sup> May, 2017 till the actual date of possession on the total amount paid by the complainants. The said interest shall be payable for every month of delay as prescribed under the Real Estate (Regulation & Development) Act, 2016 and Rules made there under.
7. With the above directions, all the four complaints are disposed of.



(Dr. Vijay Satbir Singh)  
**Member -1, MahaRERA**