

Ref. No. MCHI/PRES/17-18/067

November 23, 2017

2ND BULLETIN OF SUMMARY OF MAHARERA CASES OCTOBER 2017

BRIEF SUMMARY | ORDERS PASSED BY MAHA RERA

Nilesh Kudalkar vs. Proprietor, Kings Builders & Developers [ES3011](#)

Complaint:

Nilesh Kudalkar ("**Nilesh**") has filed a complaint against Proprietor, Kings Builders & Developers ("**Kings**") alleging that Kings and Nilesh had entered into a joint development agreement to develop a society named Anandam Co-operative Housing Society Limited, however, Kings while registering the project with Maha RERA gave incorrect information and failed to give adequate information.

Argument of Kings:

Kings contended that some incompleteness was due to some disputes between the directors of Kings and sought time to upload all pending information pertaining to the project on the website of Maha RERA. As per the statement given by Kings, they updated the details of the project on the website of Maha RERA, save and except the name of Nilesh could not be added as one of the directors of Kings due to certain technical issues on the website.

Order of MAHA RERA:

Maha RERA disposed the matter vide its order dated 26 September 2017 by directing Kings to upload the name of Nilesh as a director of Kings on the website of Maha RERA within a period of 2 days ending 28 September 2017.

Vishal Kamble vs. Amol Lalchand Bhilare and Kiran Ambadas Gote [ES3013](#)

Complaint:

Vishal Kamble ("**Vishal**") filed a complaint against Amol Lalchand Bhilare and Kiran Ambadas Gote ("**Amol and Kiran**") *inter-alia* seeking a direction against Amol and Kiran to give his 50% share in the real estate project as per the development agreement executed between them wherein Vishal is the land owner. Vishal contended that Amol and Kiran had forged the development agreement and mentioned the area in square feet instead of 50% share.

Arguments of Amol and Kiran:

Amol and Kiran contended that there was no merit in the complaint filed by Vishal as the development agreement clearly mentions area in square feet.

Order of MAHA RERA:

Maha RERA disposed of the matter vide its order dated 26 September 2017, by *inter-alia* stating that the Vishal is seeking directions for specific performance of the development agreement executed between him and Amol and Kiran and therefore, Maha RERA has no jurisdiction to try and entertain such civil disputes. Maha RERA, also observed that Vishal is one of the co-owner alongwith 40 co-owners and all are having area share in the project. However, their names as co-promoters is not uploaded with Maha RERA. Therefore, Maha RERA directed Vishal to provide details such as bank account, declaration in form B of co-promoters, aadhar card etc to Amol and Kiran. Maha RERA also directed Amol and Kiran to correct and update the relevant information in the registered project with Maha RERA by joining Vishal and other co-owners as co-promoters within a period of 5 days.

Raisa Mohammed Iqbal Gour vs. Tejpal Madhukar Rupji (Rupji Constructions) [ES3016](#)

Complaint:

Raisa Mohammed Iqbal Gour ("**Raisa**") has filed a complaint against Tejpal Madhukar Rupji (Rupji Constructions) ("**Rupji**") for directing Rupji to execute and register agreement for sale. Raisa had booked Flat No 302 on 28 February 2013 and paid a sum of Rs 41,64,600 from and out of the total consideration of Rs 53,12,500 to Rupji

but Rupji has failed to execute and register an agreement for sale. However, during the hearing of the complaint, an Raisa and Rupji executed and registered an agreement for sale on 31 August 2017.

Thereafter, the grievance of Raisa was that the date of completion mentioned in the agreement for sale was December 2022, which did not match with the date of completion mentioned in the registration details filed with Maha RERA. Therefore, Raisa contended that a deed of rectification be executed so that the date of completion in the agreement for sale is consistent with the date provided to Maha RERA.

Argument of Rupji:

It was contended that Rupji was arrested for a police investigation in another matter and would be released on bail by 3 October 2017 and it was also contended that Rupji would execute a deed of rectification with Raisa.

Order of MAHA RERA:

Maha RERA disposed the matter vide its order dated 29 September 2017 and stated that it was binding on Rupji to complete the project by December 2019, which is the date provided by Rupji to Maha RERA at the time of registration of the project. Further, Maha RERA directed Rupji to submit an affidavit stating that he would execute a deed of rectification with Raisa correcting the date of possession of the flat, within a period of one week from the date he is released from police custody.

Joan Disouza vs. Deepak Karnik and Others [ES3056](#)

Complaint:

Joan Disouza ("**Joan**") filed a complaint against Deepak Karnik and others ("**Karnik**") *inter-alia* seeking a refund of a sum of Rs 9,50,300 being the amount paid by her to Karnik in respect of a project known as Karnik's Exotica Project, a sum of Rs 11,11,760 in respect of Plot No 96 and Rs 24,60,747 paid towards construction cost, aggregating to Rs 45,22,747 plus interest as per provisions of MOFA and Section 18 of RERA. Joan has filed the complaint on the following grounds:

1. Karnik along with his marketing team advertised his scheme known as Karnik Exotic situated at Murbad, Thane District as a weekend luxury villas. Further, the marketing material stated that Karnik Developers Private Limited has a 100% marketable title, fully developed N.A. plots, ready for immediate possession, etc.
2. Relying on the aforesaid representations of Karnik, Joan purchased Plot No 96 on 19 September 2013 and Plot No 97 on 2 April 2014 under registered sale deed.
3. Karnik informed Joan that Karnik shall construct bungalows on the plots as it is a weekend luxury project and in pursuance thereof, Joan executed a construction contract dated 2 December 2013 for constructing a bungalow on Plot No 96, wherein Karnik agreed to construct the bungalow as per specifications agreed and handover the same by 31 August 2014, however, Karnik has failed to handover possession till the date of complaint filed by Joan.
4. Joan has sustained loss and damage by reason of incorrect and false statements of Karnik that the plans were sanctioned by the competent authority and further, Karnik failed to rectify the defects in workmanship, quality, structural defects though there were brought to the attention of Karnik.

Arguments of Karnik:

Karnik denied all allegations and stated that he is ready and willing to carry out repair works, at his own costs. Karnik also raised a contention that Maha RERA does not have jurisdiction to entertain the complaint.

Order of MAHA RERA:

Maha RERA disposed of the complaint vide its order dated 4 October 2017, by ordering Karnik to pay to Joan a sum of Rs 45,22,807 with interest at the rate of marginal cost of lending of SBI, i.e. 8.15% plus 2% from 1 September 2014 plus a sum of Rs 1,00,000 to Joan for compensation and cost of the complaint. Further, Maha RERA directed Joan to executed documents of reconveyance of Plot Nos 96 and 97 in favour of Karnik on satisfaction for her claim, within a month. Maha RERA while disposing of the aforesaid complaint of Joan, recorded the following critical observations:

1. Maha RERA has jurisdiction to entertain the complaint if a cause of action survives after RERA coming into force with respect to real estate projects which are liable to be registered or have been registered with Maha RERA. Further, Section 79 of RERA bars jurisdiction of civil court from entertaining any suit or proceeding in respect of any matter which the authority or adjudicating officer is empowered to hear under RERA. Maha RERA can take cognisance of the agreements executed under MOFA also and is equally competent to grant relief. Further, provisions of MOFA have not been repealed as provisions of RERA are in addition and not in derogation of MOFA.;

2. The project cannot be said to be a simple sale of N.A. Plots as the sale deeds contemplate that Karnik would develop the property known as Karnik Exotica consisting of various building comprising bungalows.
3. Karnik has failed to complete the amenities in the project;
4. Karnik has failed to provide possession by 31 August 2014 and the project is still incomplete and hence it is registered with Maha RERA as an ongoing project.

Sunil Mayekar vs. Aryaman Infratech India Private Limited [ES3029](#)

Complaint:

Sunil Mayekar ("**Sunil**") filed a complaint against Infratech India Private Limited ("**Infratech**") seeking refund from Infratech of advance amount of Rs 52,59,000 with 10% interest per month with respect to Flat booked by Sunil in a project of Infratech at Andheri (West). It is contended by Sunil that it had purchased the aforesaid Flat for a sum of Rs 98,00,000 and paid Rs 42,00,000 to Infratech, however, Infratech failed to execute and register an agreement for sale with Sunil. Therefore, Sunil cancelled the booking of the aforesaid Flat and now seeks a refund of the monies paid with interest from Infratech as per the provisions of RERA.

Argument of Infratech:

Infratech contended that Sunil was no longer an allottee in the project as he had cancelled his booking on 19 May 2016 and thereafter, Infratech had refunded to Sunil Rs 13,00,000 and the balance amount would be paid by deducting 20% administrative charges as provided in clause 5 of the allotment letter. Infratech further stated that the agreement for sale could not be registered as Sunil did not pay stamp duty and registration charges, though Infratech had repeatedly requested him to pay.

Order of MAHA RERA:

Maha RERA disposed the matter vide its order dated 4 October 2017 by stating that Sunil was no longer an allottee of the project and Infratech is willing to refund the balance amount after deducting the administrative charges. Maha RERA directed Infratech to refund the outstanding amount to Sunil within a period of 15 days.

Modern Abodes Private Limited vs. Balsam Developers Private Limited [ES3023](#)

Complaint:

Modern Abodes Private Limited ("**Modern**") had acquired two open plots from Balsam Developers Private Limited ("**Balsam**") and had thereafter, given a contract to a sister concern of Balsam to construct bungalows on the open plots of land. However, it is the contention of Modern that Balsam had failed to handover possession of one of the bungalows constructed on the plot of land and that Balsam has since 2014 given that bungalow on rent.

Argument of Balsam:

Balsam contended that the complaint of Modern is not maintainable as the matter did not fall within the jurisdiction of Maha RERA.

Order of MAHA RERA:

Maha RERA has vide its Order dated 4 October 2017 dismissed the matter stating that Balsam had handed over open developed plots to Modern and thereby the role of Modern as a promoter had ceased to exist. The dispute vis-à-vis the construction contract given by Modern to the sister concern of Balsam to construct the bungalows on the plots of land does not fall within the purview of Maha RERA.

Megha Bhike vs. Rohidas Chavan and 2 others [ES3028](#)

Complaint:

Megha Bhike ("**Megha**") filed a complaint against Rohidas Chavan and 2 others ("**Rohidas and Others**") *inter-alia* seeking a direction against Rohidas and Others for giving possession of the flat purchased by Megha and pay interest for the delayed possession as the date of possession in the agreement for sale was mentioned as December 2015.

Arguments:

Respondent No 2 and 3 appeared before Maha RERA and informed that Rohidas was the original allottee of the flat who after obtaining their NOC sold the flat to Megha and the occupation certificate of the flat has been received and they are ready to handover possession of the same on Megha paying the outstanding dues.

Order of MAHA RERA:

Maha RERA disposed of the complaint vide its order dated 5 October 2017, by *inter-alia* directing Respondent Nos 2 and 3 to provide details of outstanding monies to Megha within a period of one week and directed Megha

to pay the same and Respondent Nos 2 and 3 to handover the possession of the flat immediately to the complainant.

Raju Bana vs. Kailas Patil [ES3057](#)

Complaint:

Raju Bana ("**Raju**") has filed a complaint against Kailas Patil ("**Kailas**") seeking compensation on account of failure of Kailas to handover possession of Flat No 503 in its project known as Kailas Heights at Kalwa, Dist Thane. Raju and Kailas had executed an agreement for sale on 17 November 2011 in which it was agreed that Kailas will handover possession of the flat within 18 months from the date of the agreement. However, Kailas failed to handover possession to Raju and hence Raju has claimed compensation of Rs 10,00,000 towards house rent for last 5 years and Rs 20,000 per month till Raju gets possession of the flat.

Argument of Kailas:

Kailas admitted that he has not handed over possession to Raju as in the year 2008 a bridge constructed on a stream collapsed and therefore, construction could not continue till the year 2012, as the bridge was reconstructed in 2012. Kailas further contended that in the records of rights of Survey No 48/4 the area is shown as 2,230 square meters, however, in the record of inspector of land records the area of Survey No 48/4 was lesser than that. The rectification of the same happened only on 30 December 2014 and only thereafter Kailas submitted the amended plan for construction of additional floors instead of only 7 floors, which process took one year. Thereafter, in the year 2015, the L.B.T rules were brought into effect by Thane Municipal Corporation and the issue took some time to settle. Further, Kailas contended that he had to wait till the record of inspector of land records / city survey office was corrected regarding the transfer of land used for D.P. Road. Only after these rectifications Kailas could submit the amended plan on 20 July 2017 for further construction of work and the sanction of the same is still awaited. Therefore, Kailas contended that the project was delayed due to reasons beyond his control.

Order of MAHA RERA:

Maha RERA disposed the matter vide its order dated 5 October 2017 and *inter-alia* noted that the reasons stated by Kailas cannot be said that they were beyond his control and hence Kailas is in violation of Section 18 of the RERA Act and awarded interest at the rate of marginal cost of lending of SBI which is currently at 8.15% plus 2% per annum on the amounts paid by Raju to Kailas from the default i.e. from 17 May 2013 till Kailas delivers possession of the flat to Raju. Maha RERA further directed Kailas to clear the arrears of interest accrued to Raju till 30 September 2017 within one month from the date of this order together with Rs 20,000 towards cost of the complaint to Raju. Maha RERA rejected the contention of Raju seeking compensation as Maha RERA was not convinced that Raju is entitled to get any compensation separately.

Aashish Gurav vs. Kailas Patil [ES3055](#)

Complaint:

Aashish Gurav ("**Aashish**") has filed a complaint against Kailas Patil ("**Kailas**") seeking compensation on account of failure of Kailas to handover possession of Flat No 301 in its project known as Kailas Heights at Kalwa, Dist Thane. Aashish and Kailas had executed an agreement for sale on 13 May 2011 in which it was agreed that Kailas will handover possession of the flat within 18 months from the date of the agreement. However, Kailas failed to handover possession to Raju and hence Aashish has claimed compensation of Rs 15,00,000 towards house rent for last 5 years and Rs 18,000 per month till Aashish gets possession of the flat.

Argument of Kailas:

Kailas failed to appear before Maha RERA.

Order of MAHA RERA:

Maha RERA disposed the matter vide its order dated 5 October 2017 and *inter-alia* awarded interest at the rate of marginal cost of lending of SBI which is currently at 8.15% plus 2% per annum on the amounts paid by Aashish to Kailas from the default i.e. from 13 November 2012 till Kailas delivers possession of the flat to Aashish. Maha RERA further directed Kailas to clear the arrears of interest accrued to Aashish till 30 September 2017 within one month from the date of this order together with Rs 10,000 towards cost of the complaint to Aashish. Maha RERA rejected the contention of Aashish seeking compensation as Maha RERA was not convinced that Aashish is entitled to get any compensation separately.

Vasant Jadhav vs. Kailas Patil [ES3059](#)

Complaint:

Vasant Jadhav ("**Vasant**") filed a complaint against Kailas Patil ("**Kailas**") seeking compensation on account of failure of Kailas to handover possession of Flat No 404 in its project known as Kailas Heights at Kalwa, Dist Thane. Vasant and Kailas had executed an agreement for sale on 28 August 2015 in which it was agreed that Kailas will handover possession of the flat within 18 months from the date of the agreement. However, Kailas failed to handover possession to Raju and hence Raju has claimed compensation of Rs 10,000 per month of last five years towards house rent and mental harassment. Further, Vasant claims a sum of Rs 10,000 per month till he gets possession of the flat from Kailas.

Argument of Kailas:

Kailas admitted that he has not handed over possession to Raju as in the year 2008 a bridge constructed on a stream collapsed and therefore, construction could not continue till the year 2012, as the bridge was reconstructed in 2012. Kailas further contended that in the records of rights of Survey No 48/4 the area is shown as 2,230 square meters, however, in the record of inspector of land records the area of Survey No 48/4 was lesser than that. The rectification of the same happened only on 30 December 2014 and only thereafter Kailas submitted the amended plan for construction of additional floors instead of only 7 floors, which process took one year. Thereafter, in the year 2015, the L.B.T rules were brought into effect by Thane Municipal Corporation and the issue took some time to settle. Further, Kailas contended that he had to wait till the record of inspector of land records / city survey office was corrected regarding the transfer of land used for D.P. Road. Only after these rectifications Kailas could submit the amended plan on 20 July 2017 for further construction of work and the sanction of the same is still awaited. Therefore, Kailas contended that the project was delayed due to reasons beyond his control.

Order of MAHA RERA:

Maha RERA disposed the matter vide its order dated 5 October 2017 and *inter-alia* noted that the reasons stated by Kailas cannot be said that they were beyond his control and hence Kailas is in violation of Section 18 of the RERA Act and awarded interest at the rate of marginal cost of lending of SBI which is currently at 8.15% plus 2% per annum on the amounts paid by Vasant to Kailas from the default i.e. from 28 February 2017 till Kailas delivers possession of the flat to Raju. Maha RERA further directed Kailas to clear the arrears of interest accrued to Raju till 30 September 2017 within one month from the date of this order together with Rs 20,000 towards cost of the complaint to Raju. Maha RERA rejected the request of Vasant seeking compensation as Maha RERA was not convinced that Vasant is entitled to get any compensation separately.

Rajive Kumar E.K. vs. M/s Universal Infra Developers [ES3038](#)

Complaint:

Rajive Kumar E.K. ("**Rajive**") has filed a complaint against M/s Universal Infra Developers ("**Universal**") seeking compensation and earlier possession of flat booked by Rajive with Universal in their project Universal Infra Developers vide agreement for sale dated 27 November 2013, wherein it was agreed that the possession would be handed over to Rajive on or before 30 October 2014, however, till date possession has not been handed over. Further, Universal has in the registration with Maha RERA stated that the possession would be handed over by 31 March 2018.

Argument of Universal:

Universal explained that they could not handover possession as circumstances existed which were beyond their control. Further, Universal stated that it had applied for occupation certificate and the same is expected in 45 days. Therefore, he is ready to give possession to Rajive on or before 30 November 2017 on Rajive paying the balance amount of consideration for the flat.

Order of MAHA RERA:

Maha RERA disposed the matter vide its order dated 10 October 2017 by directing Universal to handover possession of the flat to Rajive before the period ending 30 November 2017, failing which Universal shall be liable to pay interest at SBI, highest marginal cost of lending rate prevailing at such time plus 2% to Rajive from 1 December 2017 till the date of actual possession being handed over, on the entire amount paid by Rajive to Universal.

Surekha Tushar Gaikwad vs. Universal Infra Developers [ES3036](#)

Complaint:

Surekha Tushar Gaikwad ("**Surekha**") filed a complaint against Universal Infra Developers ("**Universal Developers**") seeking early possession, compensation on instalments of consideration paid to Universal Developers and interest on such instalments paid. It is contended that Surekha booked a flat in the project of Universal Developers being Universal Infra Developers and in that regard executed and registered an agreement

for sale dated 27 November 2013. It was agreed in the agreement for sale that possession of the flat would be given on or before 30 October 2014, however, till date possession has not been received.

Argument of Universal Developers:

Universal Developers explained that they could not handover possession as circumstances existed which were beyond their control. Further, Universal Developers stated that it had applied for occupation certificate and the same is expected in 45 days. Therefore, he is ready to give possession to Surekha on or before 30 November 2017 on Surekha paying the balance amount of consideration for the flat. Further, Universal Developers agreed to waive the interest levied by them on Surekha for delayed payment of the instalment.

Order of MAHA RERA:

Maha RERA disposed the matter vide its order dated 10 October 2017 by directing Universal Developers to handover possession of the flat to Surekha before the period ending 30 November 2017, failing which Universal Developers shall be liable to pay interest at SBI, highest marginal cost of lending rate prevailing at such time plus 2% to Rajive from 1 December 2017 till the date of actual possession being handed over, on the entire amount paid by Surekha to Universal Developers.

Ravi Nair vs. Nirmal Lifestyle (Kalyan) Private Limited [ES3041](#)

Complaint:

Ravi Nair ("**Ravi**") has filed a complaint against Nirmal Lifestyle (Kalyan) Private Limited ("**Nirmal Lifestyle**") seeking interest for delayed possession in respect of Flat No 303 admeasuring 600 square feet in the building known as Glory situated in Kalyan being developed by Nirmal Lifestyle. Ravi had purchased from Nirmal Lifestyle the aforesaid flat vide agreement for sale dated 22 February 2013 for a consideration of Rs 22,09,300 out of which Ravi has paid Nirmal Lifestyle Rs 20,00,000 by obtaining a loan of Rs 17,00,000. According to the aforesaid agreement for sale the date of possession was June 2016 with a grace period of 6 months. However, Nirmal Lifestyle has till date not handed over possession to Ravi.

Argument of Nirmal Lifestyle:

Nirmal Lifestyle made a request to settle the matter amicably, however, Ravi refused to enter into any settlement with Nirmal Lifestyle.

Order of MAHA RERA:

Maha RERA disposed the matter vide its order dated 10 October 2017 by directing Nirmal Lifestyle to pay an interest equal to the State Bank of India highest Marginal Cost of Lending Rate plus 2% as prescribed in Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agent, Rates of Interest and Disclosures on Website) Rules, 2017 from May 2017 onwards till the date of handing over of the possession of the flat to Ravi. Further, Nirmal Lifestyle was directed to pay the interest within a period of 30 days from the date on which such interest becomes due and payable to Ravi and to submit a compliance report to Maha RERA within 30 days from the date of payment.

Pravin Utam Hiwale vs. Darode Jog Homes Private Limited [ES3042](#)

Complaint:

Pravin Utam Hiwali ("**Pravin**") and Aanand Muttha ("**Aanand**") have filed complaints against Darode Jog Homes Private Limited ("**Jog Homes**") seeking a refund of the monies paid by Pravin and Aanand to Jog Homes towards purchase of Flat No B2-808 and B1-202 respectively in Padamnabh at Moshi being the project of Jog Homes. The contention of Pravin is that he had executed an agreement for sale with Jog Homes on 10 October 2014, wherein Jog Homes had agreed to deliver possession of the Flat No B2-808 on or before December 2016 or within two and a half years from the date of the agreement, i.e. April 2017, whichever is later. Further, Aanand had executed an agreement for sale with Jog Homes on 28 November 2014 wherein Jog Homes had agreed to deliver possession of Flat No B1-202 on or before December 2016 or within two and a half years from the date of the agreement, i.e. May 2017. Jog Homes has in its registration of the project with Maha RERA states that the possession of flats in the Padamnabh project at Moshi would be handed over on 31 December 2018.

In light of the above, Pravin and Aanand wish to withdraw from the project and are seeking a refund of the monies paid by them to Jog Homes.

Argument of Jog Homes:

Jog Homes agreed that they had failed to handover possession of the flats of Pravin and Aanand on the dates agreed with them under their respective agreements for sale and submitted themselves to the order of Maha RERA.

Order of MAHA RERA:

Maha RERA disposed the matter vide its order dated 11 October 2017 and stated that Pravin and Aanand are entitled to get a refund of the monies paid by them to Jog Homes. Further, Maha RERA stated that provisions of Section 18 of the RERA Act confers the right on the allottees to seek a refund of paid to the promoter with specified interest. In light of the above, Maha RERA directed Jog Homes to refund to Pravin a sum of Rs 17,44,291 being the amounts paid by Pravin to Jog Homes and a sum of Rs 23,03,630 being the amounts paid by Aanand to Jog Homes with interest at MCLR of SBI, i.e. 8.15% plus 2% from 1 May 2017 till such date Jog Homes makes the payment to Pravin and Aanand.

Further, Maha RERA also directed Jog Homes to pay a compensation to Pravin and Aanand at the rate of 9% from the date of their respective payments to Jog Homes till 30 April 2017, on the grounds that Jog Homes had used the monies paid by Pravin and Aanand from the year 2014 and therefore Jog Homes had an unfair advantage and that Pravin and Aanand had suffered loss as a result of the default of Jog Homes in delivering possession.

Maha RERA also directed Jog Homes to pay to Pravin and Aanand a sum of Rs 20,000 as a cost of the complaint and granted Jog Homes time of 2 months from the date of the order to pay the aforesaid sums to Pravin and Aanand.

Bivash Chandra Biswas and others vs. Sir George P Joseph [ES3039](#)

Complaint:

Bivash Chandra Biswas ("**Bivash**") filed a complaint against Sir George P Joseph ("**George**") seeking early possession of the flat purchased by Bivash from George vide agreement for sale executed in 2013. It was contended that no date of possession is stipulated in the agreement for sale, it is only contemplating that possession will be handed over within 3 years from issuance of a commencement certificate. However, presently the commencement certificate is issued only for the first few floors and further commencement certificate has been held up by the competent authority. George has provided the date of possession as December 2022 during the registration of the project with Maha RERA.

Order of MAHA RERA:

Maha RERA disposed of the matter vide its order dated 11 October 2017, by *inter-alia* proposing that the parties mutually agree to a reasonable date of possession earlier than December 2022. The parties mutually agreed to a possession date of December 2020. Maha RERA directed George to handover possession by December 2020, failing which he shall be liable to pay interest to Bivash from January 2021 till date of handing over of actual possession, at the rate of State Bank of India highest marginal cost of lending rate prevailing then plus 2%.

Avinash Saraf and Neha Duggar Saraf vs. Runwal Homes Private Limited [ES3046](#)

Complaint:

Avinash Saraf and Neha Duggar Saraf ("**Sarafs**") filed a complaint against Runwal Homes Private Limited ("**Runwal Homes**") *inter-alia* seeking a refund of consideration paid by Saraf to Runwal Homes for acquiring Flat No 3204, Tower No 7, Wing G, in the building known as Redwood in Runwal Green's project registered with Maha RERA as Runwal Homes failed to handover possession of the aforesaid flat by **August 2016** as was agreed in the agreement for sale executed between Sarafs and Runwal Homes. Sarafs further contended that they had opted for a subvention scheme for which Runwal Homes paid interest upto August 2016 thereafter, the instalments with interest was recovered by the bank from Sarafs.

Arguments of Runwal Homes:

Runwal Homes stated that the real estate project is at an advanced stage and are ready to handover possession to Sarafs for interior works by December 2017. Runwal Homes further contended that the agreement for sale with Sarafs was executed on 10 November 2014 whereas RERA came into force from 1 May 2017 and hence Maha RERA has no jurisdiction to entertain the complaint. Further, in accordance with the aforesaid agreement for sale, it is the responsibility of Sarafs to pay stamp duty and registration charges and as the same has been paid to the Government the same cannot be recovered from Runwal Homes. Further, in accordance with the tripartite agreement for the subvention scheme Runwal Homes was liable to pay only till 31 August 2016 and thereafter Sarafs were liable to service the loan. The date of possession envisaged in the agreement for sale was subject to various reasons mentioned in clause 17 of the agreement for sale which were beyond the control of Runwal Homes. There was a delay on the end of the authorities to grant permission and hence there was delay in complete ting construction. Runwal Homes offered to refund the monies to Sarafs, however, Sarafs claimed interest at the rate of 21% and hence Runwal Homes could not settle the matter with Sarafs.

Order of MAHA RERA:

Maha RERA disposed of the complaint vide its order dated 13 October 2017, by ordering Runwal Homes to pay to Sarafs a sum of Rs 1,94,04,986 (which amount includes consideration paid plus stamp duty and registration charges) alongwith interest at the rate of marginal cost of lending of SBI plus 2% from 1 May 2017 till the date of payment. Further, Maha RERA directed Runwal Homes to pay compensation at the rate of 9% on the amounts mentioned therein from respective dates of payment by Sarafs to Runwal Homes till 30 April 2017 plus a sum of Rs 20,000 being the cost of the complaint. Maha RERA directed Sarafs to execute deed of cancellation of agreement for sale at the costs of Runwal Homes. Maha RERA while disposing of the aforesaid complaint of Sarafs, recorded the following critical observations:

1. The real estate project is an ongoing project and hence it is registered with Maha RERA;
2. The cause of action of claiming possession after lapse of the agreed date of possession is a recurring cause of action and hence right of Sarafs to claim the money back or to claim possession continues from August 2016 (i.e the date agreed in the agreement for sale for handing over possession) till the date of filing of the complaint.
3. Maha RERA has jurisdiction to entertain the complaint if a cause of action survives after RERA coming into force with respect to real estate projects which are liable to be registered or have been registered with Maha RERA. Further, Section 79 of RERA bars jurisdiction of civil court from entertaining any suit or proceeding in respect of any matter which the authority or adjudicating officer is empowered to hear under RERA. Maha RERA can take cognisance of the agreements executed under MOFA also and is equally competent to grant relief. Further, provisions of MOFA have not been repealed as provisions of RERA are in addition and not in derogation of MOFA;
4. Section 12,14,18 and 19 of RERA are retroactive in light of the fact that any person whose complaint in respect of matters covered by Sections 12, 14, 18 and 19 is pending before the Consumer Disputes Redressal forum, State Consumer Disputes Redressal Commission or National Consumer Dispute Redressal Commission on or before the commencement of RERA, he may with the permission of such forum withdraw the complaint pending before it and file the same before the adjudicating officer under RERA.
5. Section 18 provides for rights of allottees to claim amounts paid to a promoter and on perusal it is clear that the date of completion referred to in Section 18 means the date specified in the agreement and therefore, the argument that Maha RERA has jurisdiction only if a promoter breaches the date of possession provided during registration of the project with Maha RERA is not acceptable as Section 18 contemplates date of possession provided in an agreement and not during the process of registration with Maha RERA.
6. Argument advanced by Runwal Homes that the approvals were delayed by the competent authority, is not reasonable as it was the duty of the developer to plan in advance, obtain necessary approvals and thereafter promise to deliver the possession of the flat in the stipulated time. It would be unfair trade practice on part of the developer to collect money without obtaining required permission.

Sagar Nikam and Sonia Nikam vs. Spenta Builders Private Limited [ES3061](#)

Complaint:

Sagar Nikam and Sonia Nikam ("**Nikams**") filed a complaint against Spenta Builders Private Limited ("**Spenta Builders**") seeking interest for delayed possession in respect of Flat No D903 in the building known as Palazzio situated in Kurla being developed by Spenta Builders. Nikams contended that one Edelweiss Investment Advisor Limited had purchased the aforesaid Flat from Spenta Builders vide Agreement for Sale dated 24 May 2011 in which it was agreed that the possession of the aforesaid Flat would be handed over by Spenta Builders by 31 December 2013 with a reasonable extension not beyond 31 March 2014. Nikams have purchased the aforesaid Flat from Edelweiss Investment Advisor Limited vide tripartite agreement dated 12 January 2017 for a consideration of Rs 84,56,115 in which even Spenta Builders was a party. Nikams paid a sum of Rs 79,84,467 and the balance sum of Rs 4,71,648 is payable on receipt of possession of the aforesaid Flat. The possession date in the tripartite agreement was mentioned as 31 March 2017, which was extended further till July 2017. However, Spenta Builders have till date not handed over possession of the aforesaid Flat and hence Nikams are claiming interest for delayed possession from 31 March 2014.

Argument of Spenta Builders:

Spenta Builders contended that the Nikams cannot seek interest from 31 March 2014, as their agreement was executed on 12 January 2017 being a second sale in which the date of possession was March 2017 which was extended till July 2017. Further, an application has been made for issuance of the occupancy certificate *inter-alia* for the aforesaid Flat, however, the same has not been granted as there is a status-quo order of the Hon'ble High Court of Judicature at Bombay in Public Interest Litigation No 86 of 2014 directing the concerned planning authorities to maintain status quo and not to issue occupation certificates to some project which includes the

present project of Spenta Builders. Therefore, the delay in handing over possession was beyond the control of Spenta Builders. However, Spenta Builders has committed to handover possession in the month of December 2017 which is also the date of completion mentioned in the registration details with Maha RERA.

Order of MAHA RERA:

Maha RERA disposed the matter vide its order dated 13 October 2017 stating that it would be difficult to hold that the delay was due to reasons attributable to Spenta Builders and further Nikams had already given consent for revised date of possession upto July 2017 and Spenta Builders has agreed to handover possession of the aforesaid Flat by 31 December 2017. Therefore, Maha RERA directed Spenta Builders to submit an undertaking with Maha RERA in a week confirming that it shall handover the possession of the aforesaid Flat to Nikams on or before 31 December 2017, failing which Spenta Builders shall be liable to pay interest from 1 January 2018 till date of handing over actual possession on the entire amount paid by Nikams to Spenta Builders at the rate of the State Bank of India highest Marginal Cost of Lending Rate prevailing at such time plus 2% as prescribed in Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agent, Rates of Interest and Disclosures on Website) Rules, 2017. Spenta Builders shall pay such interest within a period of thirty days from the date on which such interest becomes due and payable to Nikams and also submit a compliance report in that regard to the Maha RERA.

Harshad Patel vs. Jayant Mehta [ES3060](#)

Complaint:

Harshad Patel ("**Harshad**") filed a complaint on behalf of his family members against Jayant Mehta ("**Jayant**") for seeking directions against Jayant and seeking possession of flats purchased vide agreements executed on 25 July 2017 as Harshad contended that Jayant has been selling the same flat to more than one person and he may sell their family members flat to others.

Argument of Jayant:

Jayant argued that Harshad is an investor in another project of Jayant and in lieu of the investment for security purpose, Jayant had given four agreements to Harshad and a power of attorney dated 20 May 2017. Jayant contended that Harshad misused the aforesaid power of attorney and registered four agreements for sale in favour of various family members. Jayant therefore requested the authority to cancel the aforesaid four agreements.

Order of MAHA RERA:

Maha RERA dismissed the matter vide its order dated 13 October 2017, Maha RERA noted that there was no possession date in the four agreements for sale and hence since no date of possession is mentioned there is no cause of action for Harshad and further that the four agreements for sale are not in accordance with the format prescribed under RERA and Rules made thereunder. Further, Maha RERA directed Jayant to file an undertaking with Maha RERA stating that he shall not register multiple agreements for the same flat.

Mahesh Pariani vs. Monarch Solitaire LLP [ES3054](#)

Complaint:

Mahesh Pariani ("**Mahesh**") filed a complaint against Monarch Solitaire LLP ("**Monarch**") *inter-alia* seeking a direction against Monarch to refund the monies invested by Mahesh with Monarch in its project Monarch Solitaire in 2014. Mahesh contended that it had invested monies with Monarch and reserved four apartments. However, neither has Monarch given the money back with interest neither has Monarch given possession of the apartments.

Order of MAHA RERA:

Maha RERA dismissed the complaint vide its order dated 16 October 2017, by *inter-alia* stating that the dispute between Mahesh and Monarch is of a civil nature between a promoter and co-promoter, it does not pertain to any contravention of the RERA Act on the basis that Mahesh and Monarch had executed a memorandum of understanding dated 12 March 2014 which showed that Mahesh was an investor in the project and not an allottee and it also contemplated that when Mahesh sells the apartments in the market then the profit from such sale shall be shared between Mahesh and Monarch in the ratio of 70:30%, which gives Mahesh a status of a co-promoter of the Project as is clarified by Maha RERA vide its circular.

Pratiksha Thakur vs. Mahendra Mhatre [ES3064](#)

Complaint:

Pratiksha Thakur ("**Pratiksha**") being the secretary of Niwara Co-operative Housing Society Limited ("**Society**")

has filed a complaint against Mahendra Mhatre ("**Mhatre**") for terminating a development agreement entered into between Society and Mhatre for redevelopment of the land and building belonging to the Society, alleging that Mhatre had violated provisions of the development agreement.

Order of MAHA RERA:

Maha RERA dismissed the complaint vide its order dated 23 October 2017 stating that the dispute between Pratiksha and Mhatre is of a civil nature being dispute between land owner and promoter and does not pertain to any contravention or violation of the provisions of the RERA Act or the rules and regulations made thereunder.

Sukhmani Juhu Himalaya CHSL vs. Moonland Builders Private Limited [ES3093](#)

Complaint:

Sukhmani Juhu Himalaya CHSL ("**Sukhmani Society**") filed a complaint against Moonland Builders Private Limited ("**Moonland Builders**") contended that it has executed a development agreement as a land owner with Moonland Builders to develop the land, however, Moonland Builders have violated various provisions of the development agreement.

Order of MAHA RERA:

Maha RERA dismissed the matter vide its order dated 24 October 2017, *inter-alia* stating that dispute between the Sukhamni Society and Moonland Builders cannot be adjudicated by Maha RERA as it is not the correct forum for settlement of disputes regarding development agreement with a promoter and also the disputes do not pertain with any contravention or violation of provisions of the RERA Act or rules or regulations made thereunder.

Dilip Pursuhottam Shirke vs. Kumar Builders Consortium [ES3068](#)

Complaint:

Dilip Pursuhottam Shirke ("**Dilip**") filed a complaint against Kumar Builders Consortium ("**Kumar Builders**") under Section 18 of the RERA Act and requested Maha RERA to direct Kumar Builders to handover possession of Flat No 203 Wing A3 situated in Kumar Shanti Niketan Phase II, Haveli Pune within a period of 3 months. Dilip contended that Kumar Builders failed to adhere to the terms of the Consent Terms filed in Civil Court of Pune wherein possession was to be delivered by December 2016. Therefore, Dilip seeks compensation at the rate of 10% per annum on the amounts paid by him to Kumar Builders. Dilip further contended that Kumar Builders failed to disclose at the time of registration of the project with Maha RERA about the decree passed in Suit No 5780 of 2012 by the Civil Judge, Pune as well as proceedings in the consumer forum.

Order of MAHA RERA:

Maha RERA dismissed the matter vide its order dated 26 October 2017 by stating that Kumar Builders has not violated any provision of RERA by not disclosing the decree passed by the Civil Judge, Pune or the consumer forum proceedings, as neither of these matters were pending at the time of registration of the project with Maha RERA. Further, Maha RERA stated that as the consent terms filed with the Civil Judge, Pune itself provides for consequences, i.e. payment of Rs 10,000 per month on default of Kumar Builders from handing over possession by December 2016 and therefore Dilip cannot take recourse to Section 18 of RERA Act.

Summarised by the Real Estate Team of Khaitan & Co, Mumbai

<u>Mr Sudip Mullick, Partner</u>	E: sudip.mullick@khaitanco.com
<u>Mr Devendra Deshmukh, Principal Associate</u>	E: devendra.deshmukh@khaitanco.com
<u>Mr Harsh Parikh, Principal Associate</u>	E: harsh.parikh@khaitanco.com

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