THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI.

COMPLAINT NO: **CC006000000023059**

Nijam F. Pathan ... Complainant.

Versus

M/s. Unity Land Consultancy .....Respondents.
M/s. M.M. Developers
M/s. Spenta Infrastructure and
Development Pvt. Ltd.

COMPLAINT NO: **CC006000000056223**

Tabrez Mandviwala ... Complainant.

Versus

M/s. Unity Land Consultancy .....Respondents.
M/s. M.M. Developers
M/s. Spenta Infrastructure and
Development Pvt. Ltd.

COMPLAINT NO: **CC006000000055582**

Rizwan S. Ansari ... Complainant.

Versus

M/s. Unity Land Consultancy .....Respondents.
M/s. M.M. Developers
M/s. Spenta Infrastructure and
Development Pvt. Ltd.

COMPLAINT NO: **CC006000000055859**

Pravin Kadam ... Complainant.

Versus

M/s. Unity Land Consultancy .....Respondents.
M/s. M.M. Developers
M/s. Spenta Infrastructure and
Development Pvt. Ltd.

MahaRERA Regn: **P51800006382**

Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

Appearance:
Complainants: Adv.Nirav Joshi.
Respondent No.1 : Mr. P.P. Pisal.
Respondent No.2 : Jayakar & Partners
Respondent No. 3 : Absent/ exparte.

Common Final Order.
22nd November 2018.

Complainants are the allottees of respondents' M.M. Residency project situated at Kurla, Mumbai. Their necessary information is as follows.

Name	Amount paid.	Flat No.	Date of Possession
Nijam F. Pathan	Rs. 21,70,000/-	B-504	31.12.2012
Tabrez Mandviwala	Rs. 24,10,800/-	B-302	31.12.2012
Rizwan S. Ansari	Rs. 85,000/-	B-1404	31.12.2013
Pravin Kadam	Rs. 31,10,000/-	B-205	31.12.2012

Respondents have failed to deliver possession of the flats till the date of complaints. Complainants want the possession of their flats. They request to award interest on their investments till they get the actual possession of their flats and compensation also u/s. 18 of the Real Estate (Regulation and Development) Act, 2016 (for short, RERA).

2. Pleas of M/s. Unity Land Consultancy and M/s. M.M. Developers have been recorded in these cases, they have pleaded not guilty. However, M/s Spenta Infrastructure and Development Pvt. Ltd. have failed to remain present and contest the complaints.

3. Unity Land Consultancy (Mr. Pisal) have not filed their reply. M/s. M.M. Developers have filed the reply containing the following facts:

a. Slum dwellers occupied C.T.S. Nos. 6(P) and 7(P) of village Kurla and they formed Kurla Kadam SRA CHS Ltd. The said society entered

into a development agreement with M/s. Unity Land Consultancy, a proprietary concern of Mr. Pramod Pisal and gave him power of attorney to give him development rights of the said land.

b. The slum rehabilitation authority (for short, SRA) approved slum scheme and issued letter of intent dated 25.03.2004 in the name of M/s. Unity Land Consultancy.

c. M/s. Unity Land Consultancy were not able to carry out the construction and therefore they entered into a joint venture agreement with M/s. M.M. Developers on 15.12.2004 to develop the project.

d. The slum rehabilitation authority approved the plan of rehab building on 09.07.2004 and gave commencement certificate on 15.03.2007.

e. M/s. M.M. Developers constructed 300 rehab tenements out of 458, and transit tenements also.

f. The slum rehabilitation authority issued intimation of approval of building plan of sale building on 27.11.2007 and issued commencement certificate on 22.12.2007 upto plinth level. M/s. M.M. Developers constructed 8 slabs of sale building.

g. M/s. M.M. Developers entered into the joint venture agreement with M/s. Spenta Infrastructure Pvt. Ltd. on 12.08.2008 and M/s. Unity Land Consultancy signed it as a confirming party.

h. There were 85 complaints including that of the respondents' project with Anti-Corruption Bureau and as per the order of the Hon'ble High Court, they were transferred to High Power Committee for investigation and hearing.

i. The High Power Committee granted ex parte stay to 50% sale component and entire TDR on 19.05.2010 and it had been vacated on 31.12.2014. The respondents contend that the order had been communicated to them on 25.03.2015. The construction activities of sale component were stayed during this period of 4 years and 10 months.

j. M/s. M.M. Developers took the bookings of the complainants during this period of stay and received their money.

k. The registered deed of cancellation of development agreement had been executed by M/s. M.M. Developers and M/s. Unity Land Consultancy on 22.07.2015 showing M/s. Unity Land Consultancy shall make the remaining construction. M/s. M.M. Developers shall be entitled to receive the balance of consideration from the allottees to whom they sold the flats. M/s. Unity Land Consultancy shall hand over the possession of those flats only through M/s. M.M. Developers to the allottees.

4. On the facts mentioned above, M/s. M.M. Developers contend that after cancellation of joint venture agreement dated 15.12.2004 on 22.07.2015 M/s. M.M. Developers are not concerned with the project and they are not promoters or co-promoters, hence, MahaRERA does not get any jurisdiction to entertain these complaints against them. They further contend that as per the agreement dated 15.12.2004, they discharged their liability by constructing 300 flats of rehab building and also constructed the sale component to the extent of 8 slabs. M/s. Unity Land Consultancy allowed them to sell 85 flats in the sale component in lieu thereof. According to them, the project could not be completed within time because of the stay granted by the High Power Committee, during the period from 19.05.2010 to 25.03.2015. This period of stay should be excluded from the period of so called delay. They further contend that, if the period of stay is excluded, the complainants are entitled to get possession on or before 30.10.2017. However, they have filed complaints before the said date. Hence, they are premature. They further contend that as per the deed of cancellation dated 22.07.2015, M/s. Unity Land Consultancy have taken the responsibility of the remaining project but M/s. Unity Land Consultancy wrongly mentioned them as promoters while registering the project. Hence they are not liable to pay any interest or compensation to the complainants who happen to be the investors. M/s. Unity Land Consultancy in the Arbitration Petition No. 302 of 2015 filed an affidavit agreeing that he will construct the sale component within 18 months and the said undertaking was given on 26.06.2015. M.M. Developers further contend that some allottees filed their complaints which were taken to the Maharashtra Real Estate Appellate Tribunal. Nine allottees settled their dispute before the Appellate Tribunal and on the basis of the consent terms the Appellate Tribunal passed an order wherein those nine allottees gave up interest of four months that is, they agreed to compute the interest from 1st October 2017 instead of 1st June 2017 as directed by this Authority. Mr. Pisal took the responsibility to complete the project. M.M. Developers have relinquished their rights to receive Rs.88,03,255/-. The liability of Mr. Pisal shall continue till the completion of the project and it shall be completed within 18 months from 1st May 2018. All the amounts payable by Mr. Pisal shall be adjusted towards the amount payable by the allottees and that order shall not act as precedent. Therefore, M.M. Developers

submit that they are relieved from the liability of completing the project and to satisfy the allottees. Hence they pray to dismiss the complaints filed against them.

5. Unity Land Consultancy rely upon Appeal No. AT006000000000030 Mr. Pramod Pandurang Pisal-v/s-Abdul Rahim Thakur to submit that in the group of Appeals the allottees (of those appeals) gave up interest of four months and agreed to take interest from 01.10.2017 and agreed to extend the period of completion by 18 months from 01.05.2018. Hence, Mr. Pisal requests to decide these matters on the same line.

6. Following points arose for determination. I record my findings therein as under: -

POINTS.	**FINDINGS.**
1.Whether MahaRERA has jurisdiction to entertain complaints against M/s. M.M. Developers?	Affirmative.
2. Whether promoters delayed the possession of the flats booked by the complainants?	Affirmative.
3. Whether the promoters prove that the stay Order of HPC was in force from 19.05.2010 to 31.12.2014 and it delayed the project?	Affirmative.
4.Whether the complainants are entitled to get interest and/or compensation under Section 18 of RERA?	Affirmative.
5. Who is liable to pay interest/compensation to complainants?	All the respondents.

REASONS.

Jurisdiction.

7. M/s. M.M. Developers have taken the stand that since the deed of cancellation of development agreement dated 15.12.2004. has been executed on 22.07.2015, they have no concern with the project and they

cease to be promoter. It has been argued before me that M/s. Unity Land Consultancy brought the necessary permissions and approvals at initial stage, thereafter M/s. M.M. Developers & M/s. Unity Land Consultancy entered into the agreement on 15.12.2004 to develop the land of the society. On its perusal, I find that M/s. M.M. Developers undertook responsibility of bringing remaining approvals, sanctions and to make the construction of rehab component and sale component as well.

8. M/s. M.M. Developers entered into joint venture agreement with M/s. Spenta Infrastructure and Development Pvt. Ltd. on 12.08.2008 and inducted M/s. Spenta Infrastructure and Development Pvt. Ltd. to which I have referred to while narrating the facts of the case. Thereafter, M/s. M.M. Developers & M/s. Unity Land Consultancy have entered into the deed of cancellation of the agreement dated 15.12.2004. It is very surprising to note that though M/s. M.M. Developers constructed only 300 rehab units and 8 floors of building no. 1, they sold 98 flats to the purchasers whose names have been mentioned in Annexure-A appended to the agreement. It is also agreed between M/s. M.M. Developers & M/s. Unity Land Consultancy that M/s. M.M. Developers shall collect the balance amount of consideration from those 98 purchasers. M/s. Unity Land Consultancy shall not hand over the possession of those flats directly to those purchasers but possession thereof shall be handed over to them through M/s. M.M. Developers. Notice clause-2(j) of the agreement shows that M/s. Unity Land Consultancy undertook the responsibility of constructing entire sale building within 24 months of the agreement. In clause-14 thereof it is mentioned that M/s. M.M. Developers shall not be liable to construct and allot additional area of any nature to M/s. Unity Land Consultancy and M/s. Spenta Infrastructure and Development Pvt. Ltd. etc. So on the basis of this deed of cancellation, M/s. M.M. Developers claim that they cease to be a promoter as they have "ousted themselves from the project"

9. The agreements of sale have been executed by M/s. M.M. Developers & M/s. Unity Land Consultancy, the deed of cancellation has not been entered into by them with the consent of the allottees and therefore this deed of cancellation is not binding on the allottees. Section 2 (zk) of the Act defines promoter. Promoter means a person who constructs or causes to be constructed an independent building or a building consisting of apartments. The definition also mentions that a

person who develops the land into project also comes within the definition of promoter. By applying these yardsticks to the facts of the case, I do not have any doubt to hold that the M/s. M.M. Developers come under the definition of promoter. They cannot oust themselves from the project with the help of deed of cancellation of the development agreement.

10. In this context, it is necessary to note that the dispute between the M/s. Spenta Infrastructure and Development Pvt. Ltd. and the respondents reached to the Arbitrators. The copy of application filed under Section – 17 of the Arbitration and Conciliation Act, 1996 in the Arbitration Proceeding has been brought to my notice. The learned Arbitrators have passed an order thereon recently on 28.04.2017. They have held that the joint venture agreement of the respondents with M/s. Spenta Infrastructure and Development Pvt. Ltd. still holds the field. In view of these developments, I find that M/s. M.M. Developers continue to be the promoter of the project and hence, this authority has jurisdiction to entertain these complaints.

Delayed possession:

11. There is no dispute between the parties that M/s. M.M. Developers & M/s. Unity Land Consultancy entered into agreements for sale with the complainants before 2012 and to Rizwan S. Ansari before 2013. The respondents do not dispute the fact that when they entered into agreements for sale with complainants, they agreed to deliver the possession of their flats as contended by the complainants. It is also not in dispute that the building is incomplete and the possession of the flats has not been given to the complainants till the date of complaints. Section 18 of RERA clearly mentions that if promoter fails to complete or he is unable to give possession of apartment, plot or building - (a) in accordance with the terms of the agreement for sale or, (b) as the case may be, duly completed by the date specified therein, where the allottee does not intend to withdraw from the project, allottee shall be paid by the promoter, interest of every month of delay till handing over of the possession at such rate as may be prescribed. On plain reading of this provision the relevant date of possession would be the agreed date for delivery of possession mentioned in the agreement for sale. Therefore, I record my finding that the respondents have failed to deliver the possession of the complainants' booked flats on the agreed date of possession.

Reason of delay:

12. The respondents have brought to my notice that the complaint in respect of their project was referred for its enquiry to High Power Committee by Anti-Corruption Bureau as per the order of the Hon'ble High Court. Order of High Power Committee has been placed on record, it shows that the stay order was passed on 19.05.2010 and it remained in force till 31.12.2014. According to the respondents, it was communicated to them on 25.03.2015 but I do not find any proof showing that the stay order was communicated to them on 25.03.2015. Therefore, for all practical purposes, I hold that the order was in force from 19.05.2010 to 31.12.2014. I find that it was in force for four years and seven months and it caused the delay.

Whether complaints are premature?

13. The respondents contend that if this period of stay is excluded from computation, then the complaints are pre-mature. I do not accept this submission because I have mentioned that, in the proceedings filed under Section 18 of RERA the date mentioned in the agreement for sale will have to be taken into consideration for the purpose of deciding the starting point of the promoters default in handing over the possession. So far as the stay order is concerned, this can be considered as mitigating circumstance under Section-72 of the Act but it cannot be considered for the purpose of postponing the date of delivery of possession.

14. The respondents appear to be very mischievous persons. They want to take help of this stay order for postponing the date of delivery of possession but they have executed the agreements for sale during the continuation of stay order only. They collected huge money from the allottees. When as per the stay order they were restrained from making 50% construction i.e. sale building and using entire TDR, they booked the flats which were to be constructed in future knowing it well that they were restrained from making construction of sale building. In view of these facts, I do not find that the complaints are pre-mature as contended by M/s. M.M. Developers.

Entitlement of the complainants:

15. I have already referred to Section 18 of the Act. The complainants want the possession of booked flats, therefore, they are entitled to get the interest at prescribed rate on their investments for every month of delay

till they get possession of their flats. This is their statutory right and they cannot be deprived of it. Stay granted by High Power Committee was in force till 31.12.2014. I consider it as the mitigating circumstance. Unity Land Consultancy undertook to complete the project within 18 months as has been referred to above. Hence I hold that complainants' entitlement starts after 18 months from 01.01.2015. This date comes to June 2016. Liability of respondents to pay interest starts from this date.

16. The respondents have not disputed the receipt of monies paid by complainants. Complainants are entitled to get interest on their amounts as per the provision of Section 18 of RERA and rules framed thereunder. The prescribed rate of simple interest is marginal cost of lending rate of interest of SBI which is now 8.50 + 2 % p.a. Complainants are entitled to get the interest on their amounts mentioned below from 01.07.2016 and the interest shall be payable on each month of default.

Compensation:

17. Compensation depends upon the facts of each case. It appears in these cases that since beginning the respondents have been playing mischief. They have not made it clear to the complainants while entering into the agreements for sale that the project was the stayed by the High Power Committee. They have not completed the rehab component. They are taking undue advantage of their own wrong by contending that since rehab component has not been completed they are not getting additional FSI and TDR also. They have also failed to keep their promise given to SRA while taking the project. They have been avoiding responsibility of completing the project in time. Therefore, in view of the peculiar circumstances of these cases, the allottees have been undergoing mental stress because of all the uncertainties. They have paid their money to respondents long back and now they cannot book other flats also. They have suffered from loss of opportunity. Hence I find that the respondents must pay Rs. 1,00,000/- to each complainant on account of aforesaid grounds. They should pay Rs. 20,000/ towards the cost of the complaints to each complainant.

18. Mr. Pisal relies upon Appeal No. AT006000000000030 Mr. Pramod Pandurang Pisal-v/s-Abdul Rahim Thakur to submit that in the group of Appeals the allottees (of those appeals) gave up interest of four months and agreed to take interest from 01.10.2017 and agreed to extend the period of completion by 18 months from 01.05.2018.I have gone

through the order passed by the Hon'ble Appellate Tribunal. It is passed on the basis of the settlement arrived at between the parties of the said group of litigation. However, in these matters the complainants have not agreed to those terms hence these matters cannot be decided on the line of said Appeal.

Liability of respondents.

19. M/s. M.M. Developers contend that after cancellation of development agreement, they were not responsible for the construction of the flat. They also point out that M/s. Unity Land Consultancy have taken the responsibility of making construction. M/s. Unity Land Consultancy accepts its liability to complete the building and their right to receive the further payment from the complainants. This is the internal arrangement made by the respondents. All the three respondents are the promoters defined by section 2(zk) of RERA. The explanation provides that all the promoters shall be jointly liable as such for functions and responsibilities specified under RERA or the Rule and Regulations made thereunder. Therefore, I find that all the three respondents are jointly or severally liable to satisfy the award passed against them.

Hence, following order.

ORDER

A. The respondents shall pay the complainants interest at the rate of 8.5 + 2 percent per annum on the complainants' investments mentioned in para 1 of this order from June 2017 for every month of delay till they get possession of their flats.

B. The respondents shall pay complainants for each flat Rs.1,00,000/- towards compensation and Rs. 20,000/- towards the cost of complaint to each complainant.

C. The respondent nos.1 and 2 shall complete the project within the period of one year from 19.12.2017 as ordered in **CC006000000000300.**

Mumbai.
Date: 22.11.2018.

(B.D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.