

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

1. Complaint No. CC006000000079224

Mrs. Shakshi Agrawal
Mr. Dilipkumar Agrawal

.... Complainants

Versus

M/s. Raj Arcades & Enclaves Private Limited
Project Registration No. P51800008454

.... Respondent

Along With

2. Complaint No. CC006000000079226

Mr. Dilipkumar B. Agrawal

.... Complainant

Versus

M/s. Raj Arcades & Enclaves Private Limited
Project Registration No. P51800008454

.... Respondent

Along With

3. Complaint No. CC006000000089575

Mr. Kailash Batra

.... Complainant

Versus

M/s. Raj Arcades & Enclaves Private Limited
Project Registration No. P51800008454

.... Respondent

Along With

4. Complaint No. CC006000000089599

Mrs. Rina Tulsyan
Mr. Rajeev Kumar Tulsyan

.... Complainants

Versus

M/s. Raj Arcades & Enclaves Private Limited
Project Registration No. P51800008454

.... Respondent

Along With

5. Complaint No. CC006000000089640

Mr. Mukundkumar P Chouhan

.... Complainant

Versus

M/s. Raj Arcades & Enclaves Private Limited
Project Registration No. P51800008454

.... Respondent

Asu

Along With

6. Complaint No. CC006000000089894

Mr. Sanjay Batra

Mr. Kailash Batra

.... Complainants

Versus

M/s. Raj Arcades & Enclaves Private Limited

.... Respondent

Project Registration No. **P51800008454**

Along With

7. Complaint No. CC006000000089905

Mrs. Sangeet Kariwala

.... Complainant

Versus

M/s. Raj Arcades & Enclaves Private Limited

.... Respondent

Project Registration No. **P51800008454**

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

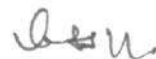
CA Ramesh Prabhu & CA Mr. Dilip Agarwal appeared for the complainants.

Adv. Yogesh Bandal appeared for the respondent.

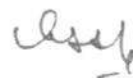
ORDER

(24th December 2019)

1. The complainants have filed these seven complaints seeking directions from the MahaRERA to the respondent to pay interest for the delayed possession under section-18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA"), in respect of booking of their respective flats in the respondent's project known as "**Raj Shivganga**" situated at Borivli, Mumbai, bearing MahaRERA registration No. P51800008454. The complainants further prayed for early possession of their flats by the respondent.
2. In these complaints, the complainants sought identical reliefs and even facts of the all the complainants are identical and hence, these seven complaints were clubbed together and heard on several occasions and the same were heard finally on 06/12/2019, when both the parties appeared and made their respective oral as well as written submissions.



3. During the hearings, the respondent has raised an issue that the complainants are not the allottees and they are investors and the interest amount on the loan obtained from the complainants have been partly repaid to them. Hence, after hearing the matter at length, the respondent was directed to file an affidavit on oath stating that the said facts on record within a period of one week and copies thereof be given to the complainants. The complainants further directed to file their re-joinder, if any, within the next one week. Accordingly, the respondent has filed notarised affidavit affirmed on oath on record.
4. It is the case of the complainants that, they have purchased flats in the respondent's project between the years 2013 & 2015. Thereafter, the parties entered into registered agreements for sale with respect to their flats. According to the said agreements, the respondent was liable to hand over the possession of their respective flats along with occupancy certificate between the years 2014 and 2016. However, till date the respondent has not handed over the possession of the flats to the complainants. The complainants have, therefore, filed these complaints against the respondent for the reliefs sought therein under section-18 of the RERA.
5. The respondent contested the accusations of the complainants and stated that, the complainants are not genuine allottees in the said project and are mere investors. Therefore, they are not entitled to seek reliefs under the RERA as they are not allottees as defined under section-2(d) of the RERA. Further, they had entered into a Memorandum of Understanding(MoU) in the year 2013, wherein it was mentioned that the complainants were to invest certain amounts in the respondent's project as loan and the respondent was to execute agreements for sale with them.
6. The respondent stated that, it has executed the registered agreements for sale with the complainants pursuant to the MoU between the parties. As per



the said MoU, the parties had agreed to cancel the said agreements for sale on the full repayment of the dues by the respondent. Till date, the respondent has made part payment towards the said investment. The respondent further stated that the agreements for sale executed with the complainants were to be cancelled on repayment of the amount to the complainants by them. The respondent therefore prayed for the complaints to be dismissed on the grounds that the complainants are investors and not allottees in the project of the respondent.


7. The MahaRERA has examined the submissions made by both the parties, as well as the available record. The complainants by filing these complaints are seeking interest for the delayed possession under section-18 of the RERA for the delayed possession of their flats. The complainants have contended that the respondent has failed to handover possession of their flats on the agreed date of possession mentioned in the agreements for sale entered into between the parties. However, the respondent has produced affidavits solemnly affirmed on oath stating that the complainants are not allottees as defined under section-2(d) of the RERA ; they actually are the investors. The respondent has produced the MoU signed by both the parties on record along with their affidavits. On perusal of the said MoUs, prima facie, it appears that the said MoUs were signed by both the parties towards the investments done in the said project by the complainants as investors. The various clauses of the said MoUs are read as under:

- "1. The builder agreed for agreement to sell for flat No. 30, 1 ----- Kandivli (West) Mumbai.400 067.***
- 2. The builder agreed not to charge any development charges, society formation or maintenance charges, transfer fees or other charges regarding the same flat.***
- 3. The builder agreed to buy back the said flat at Rs.....(.....).....at the end of 36 months from the date of registration of the flat and the sale***



proceeds will be paid within one month thereof which will be subject to interest at 3-% p.a. compoundable on quarterly basis on the aforesaid amount in case of default. The investor will be at liberty to sell the flat after 6 months, if the builder defaults without any dispute by the builder.

4. *The builder will pay compensation of Rs..... to the investor at the end of one year immediately of the registration date of the flat and Rs.....at the end of two years immediately of the registration date of flat failing which interest at 30% p. a. compoundable on quarterly basis be paid for default period."*
8. The respondent has submitted the copies of MoU on record along with their affidavits. However, the complainants have not submitted any cogent documentary proofs on record to show that they have never signed the MoUs with the respondent. The said MoUs clearly shows that there was financial arrangements between the complainants as well as the respondent and the agreements for sale have been signed pursuant to the terms and conditions of the said MoUs. Hence, the MahaRERA is of the view that the complainants are not an allottees and they are the investors.
9. In view of the aforesaid facts, the MahaRERA feels that being investors, the complainants can not seek any relief under section-18 of the RERA. Hence, the complaints filed by the complainants are devoid of merit.
10. Consequently, all the seven complaints stand dismissed for want of merit.


(Dr. Vijay Satbir Singh)
Member – 1/MahaRERA