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SCDRM MAHARASHTRA

MUMBAI

O.W. NO.: 5532

DATE: 12.09.2025

CC/22/98

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**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
MAHARASHTRA, MUMBAI.**

Consumer Complaint No. CC/22/98

Mr. Kanji Vagha Vaviya

An adult Indian Inhabitant, aged 40 years,

Occupation:

Mr. Rahul Kanji Vaviya

An adult Indian Inhabitant, aged 44 years,

Occupation:

Having Residence At: 402, Om Vastu,

Thakur Complex,

Kandivali (E) Mumbai - 400 097.

Versus

1. ERA Realtors Pvt. Ltd.
2. Omkar Realtors & Developers P. Ltd.

Both having their office at:

Omkar House, Eastern Express Highway

Opp. Sion Chunabhatti Signal

Sion (East), Mumbai - 400 022.



.....Complainants

.....Opposite Party

BEFORE:

Hon'ble Mr. Mukesh V. Sharma, Presiding Member

Hon'ble Ms. Poonam V. Maharshi, Member

APPEARANCE:

For the Complainant: Advocate Sulaiman Bhimani

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For Opposite Party : Advocate Kinjay Upadhyay

Advocate Jayesh Vyas

JUDGMENT

(29-07-2025)


Per: Hon'ble Ms Poonam V. Maharshi, Member.

1. The Complainant has filed the present Consumer Complaint under Section 47 of the Consumer Protection Act, 2019, seeking reliefs against the Opposite Parties for deficiency in service and unfair trade practices. The Opposite Party No. 1 is the Promoter and Opposite Party No. 2 is the absolute Land owner and both are engaged in the business of construction & development of land.
2. The case of Complainant in short is that the complainant, a resident of Mumbai, booked a residential flat—Flat No. B-2404 the 24th floor of Wing "B", in the project "Omkar Alta Monte", situated at Shantaram Talao, Siddheshwar Nagar, Konkanipada, Malad (East) admeasuring 66.68 sq.mtr. Mumbai being developed by the Opposite Parties, namely the Promoter and the Landowner. The total agreed consideration for the said flat was Rs.1,73,00,000/-, out of which the Complainant paid Rs.10,970,037.7/- (inclusive of discounts), through a combination of self-funding and home loan facilities. Both the Parties entered into Agreement dtd 26/03/2018. The Complainant alleges that the possession of the flat was contractually agreed to be delivered by June 2019, as per Clause 28 of the Agreement for Sale dated 09.03.2018. Despite assurances, advertisements, brochures, and repeated follow-ups, the Opposite parties failed to deliver possession even after the

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lapse of several years. As of the date of filing the complaint, no possession or Occupancy Certificate has been handed over. The Complainant continues to bear the burden rent for alternative accommodation. It is further alleged that the Opposite Parties misrepresented facts about L&T being the construction contractor, but later replaced it without notice. The RCC structure of the project has been left exposed for years, raising structural safety concerns. It is further contended that False promises, evasive communications, and unilateral changes in RERA possession timelines reflect unfair trade practices. Further the Opposite Parties updated the Maha RERA website with revised possession dates till December 2024, without buyer consent. Also the Architect's certifications reveal partial construction contrary to full slab-wise demand notices raised by the Opposite parties. The Complainant served a legal notice dated 08.11.2021, to Opposite parties. Though duly received by the Opposite Parties they failed to reply the said notice. Hence Complainant has filed the present complaint with a prayer to direct the Opposite Parties to hand over possession of the flat with all promised amenities along with 18 % interest on paid Consideration or In the alternative, refund of Rs.1,07,19,594/- with interest along with Compensation and cost.

3. The Complaint was admitted, Notice was issued to the Opposite Parties .The Opposite Parties appeared and resisted the Complaint by filing written statement and has Contended that the complaint is barred by limitation, having been filed beyond the statutory period without valid justification. It is further contended that the Agreement for Sale contains an arbitration clause, binding the parties to resolve disputes through arbitration under Clause 112-



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113. Hence, the Commission has no jurisdiction. The Complainant has approached this forum despite similar directions by Maha RERA in other matters to resolve disputes via arbitration. The Opposite Parties has Contended that the Date of Possession as per Agreement is June ,2020 (including grace period of 1 year) and not june 2019 as alleged by the complainant. Also as per Clause 14 of the Agreement, the Opposite Parties are entitled to extension in possession timelines due to force majeure conditions, including government directions, litigation, and orders from competent authorities. The Opponent has further contended that a dispute was raised by one Dattaram Birari, leading to litigation before the City Civil Court and the National Commission for Scheduled Tribes, which resulted in the SRA issuing stop work notices dated 26.08.2024 and 11.09.2024. These notices were challenged in the Delhi High Court, which granted a stay on 23.01.2025 in Writ Petition No. 897/2025. The Opposite Parties submitted that any claim for interest/refund should exclude the period from 26.08.2024 to 23.01.2025. Also the Maha RERA circular dated 13.12.2022 permits exclusion of periods where stay or injunction orders affected project completion. Circulars dated 02.04.2020, 18.05.2020, and 06.08.2021 declared a moratorium period due to COVID-19, which should be excluded when computing delays or awarding interest. Maha RERA recognized this principle in earlier rulings, including Manish Bhawani vs. Era Realtors (Order dated 06.02.2024) and Pratik Sinha & Ors vs. Era Realtors (Order dated 20.11.2023), where it allowed set-offs and directed interest only till the date of Occupancy Certificate. It is further Contended that Delay in environmental clearance caused further procedural hold-



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ups. The State MOEF Committee was dissolved, requiring a shift to the Central EAC and causing a delay of 1245 days. It is further Contended that COVID-19 pandemic led to shutdown of construction, raw material shortage, and labour migration, halting progress between 2020-2022. Several buyers, including the Complainant, have allegedly defaulted in payment, causing severe fund shortages in the RERA escrow account. The Opposite Party state and submit that the Complainant has till date paid part consideration of Rs.1,10,75,013/- towards the subject Flat. The Opposite Parties submitted that they had further raised demands upon the complainant aggregating an amount of Rs.6,64,594/- from time to time. However, the Complainant failed and neglected to make payment of Rs.6,64,594/- against aforesaid amount and the same is due and pending till date. It is further contended that under Section 4(D) of RERA, 70% of collected funds must be used for construction, and delays in payments from buyers have directly affected project timelines. The Opposite Parties have submitted that the Complainant's claim of 18-24% interest is excessive and not supported by any statutory provision. The Opposite party is relying upon the judgment passed by the Hon'ble Supreme Court of India in the matter **Ghaziabad Development Authority V/s. Union of India** reported in AIR 2000 SC 2003, wherein paragraph 5 of the said judgement records the observation of the Hon'ble Supreme Court that no damages in such contract will be awarded or injury to the Complainants feeling or his mental distress, anguish, annoyance, loss of reputation or social discredit caused by the breach of contract. Clause 13 of the Agreement allows for 9% interest, and RERA prescribes MCLR + 2% as the standard. It




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is further submitted that the project is a slum rehabilitation scheme, and any coercive order could jeopardize completion, adversely impacting multiple buyers and slum dwellers. The Opposite Parties urged the Commission to balance equity, allow them to complete the project, and defer financial liabilities till issuance of the Occupancy Certificate. Hence Prayed for dismissal of complaint as not maintainable and Exclusion of moratorium and litigation periods while computing delay or interest Set-off of interest due from both sides at the time of possession, Also deferment of any liability till OC is obtained, in line with past Maha RERA orders.

4. Upon going through the complaint, Affidavit of Evidence, Written Arguments and documents and citations filed on record by both the parties and also hearing the oral arguments of the learned advocate for the Complainants and the Opposite Parties following issues arose for our consideration. We have recorded our findings there on for the reasons stated below -

Sr.no	Issues	Findings
1.	Whether the said Complaint is barred by limitation?	In Negative
2.	Whether the complaint is maintainable before this Commission in view of the arbitration clause in the Agreement for Sale?	In Affirmative
3	Whether there is deficiency in service and unfair trade practice on the part of the Opposite Parties?	In Affirmative



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4	What Order?	As per final order.

REASONS

As to Issue No.1 :

5. Though the Opposite Parties have contended that the complaint is barred by limitation but as regards to limitation, the cause of action is continuous and recurring since possession is not yet delivered. The delay is ongoing. Also, the Complainant had previously withdrawn a complaint with liberty to refile, which preserves limitation. Hence we answer point No.1 in affirmative.

As to Issue No.2:

6. The Opposite Parties have raised a preliminary objection regarding the maintainability of the complaint on the ground that the Agreement for Sale dated 26.03.2018 contains an arbitration clause (Clause Nos. 112 and 113). According to them, this clause mandates that disputes arising between the parties are to be resolved through arbitration in accordance with the Arbitration and Conciliation Act, 1996. The Opposite Parties therefore contend that the present complaint filed under the Consumer Protection Act, 2019 is not maintainable and is liable to be dismissed or referred to arbitration. It is now well-settled law that the presence of an arbitration clause in an agreement does not bar a consumer from invoking the jurisdiction of the Consumer Fora constituted under the Consumer Protection Act. The Adv. for complainant has




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filed the citation of the Hon'ble Supreme Court in *Emaar MGF Land Ltd. v. Aftab Singh*, (2019) 12 SCC 751, the Court held that: *"Despite the existence of an arbitration agreement, the consumer fora constituted under the Consumer Protection Act, 1986 can entertain complaints filed by consumers."*

Hence the existence of an arbitration clause does not oust the jurisdiction of Consumer Commission. Also as per the Consumer Protection Act, 2019 the jurisdiction of Consumer Commissions is in addition to and not in derogation of any other remedy available under law (Section 100 of the Act). In view of the settled legal position, and considering the objective of consumer protection legislation, the existence of an arbitration clause in the Agreement for Sale does not bar the jurisdiction of this Commission. Hence we answer issue no.2 in affirmative.

As to Issue No.3:

7. Admittedly, the Flat was booked by the Complainant for total agreed consideration of Rs.1,73,00,000/-, out of which as per Opposite Party's written statement, they have received Rs.1,10,75,013/- from Complainant. The promised date of Possession as per Agreement is of June 2019. There has been a significant delay beyond the agreed date of possession (June 2019) without any possession being delivered till date. The Opposite Parties cited force majeure events including COVID-19, third-party litigation (Dattaram Birari's complaints and the SRA Stop Work Notices), and environmental clearance delays. While these factors explain part of the delay, they do not justify a delay of nearly 5 years. As the Possession date is of June 2019 the Opposite Parties


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cannot take the shield of COVID crisis to be the reason for delay. The Careful perusal of these two circulars issued by Maha RERA, reveals that validity dates of project registration of various registered projects have been extended on account of the then, prevailing COVID-19 pandemic without any change in the agreement for sale, executed between the parties, wherein possession delivery dates have been stipulated. Moreover, the provisions as well as the terms/conditions of the duly executed and registered agreement of sale including its agreed timeline for the delivery of the possession mentioned therein cannot be changed without the prior expressed consents of all the parties. It is pertinent to note that registration validity dates of the projects and the possession delivery dates are two different and distinct aspects. In this regard, the advocate for Complainant has relied on the the judgement of Hon'ble Supreme Court in **M/s Imperia Structures Ltd. Vs. Anil Patni and Another** [AIR (2021) SC 70] has laid down as; -

" We may now consider the effect of the registration of the Project under the RERA Act. In the present case the apartments were booked by the Complainants in 2011-2012 and the Builder Buyer Agreements were entered into in November 2013. As promised, the construction should have been completed in 42 months. The period had expired well before the Project was registered under the provisions of the RERA Act. Merely because the registration under the RERA Act is valid till 31.12.2020, does not mean that the entitlement of the concerned allottees to maintain an action stands deferred, It is relevant to note that even for the purposes of Section 18, the



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period has to be reckoned in terms of the agreement and not the registration. Condition no. (x) of the letter dated 17.11.2017 also entitles an Allottee in same fashion. Therefore, the entitlement of the Complainants must be considered in the light of the terms of the Builder Buyer Agreements and was rightly dealt with by the Commission."

8. Further the Advocate for complainant has in the context of extension of project registration date, has filed the The Hon'ble Bombay High Court landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. And Anr. Vs. Union of India** (supra) in para 256 has categorically laid down as: "*Section 4 (2) (1) (C) enables the Promoter to revise the date of Completion of project and hand over possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale. Section 4 (2) (1) (C) enables the Promoter to give fresh timeline independent of the time period stipulated in the agreements for sale entered into between him and the Allottees so that he is not visited with penal consequences laid down under RERA. In other words, by giving opportunity to the Promoter to prescribe fresh timeline under Section 4(2) (1) (C) he is not absolved of the ability under the agreement for sale.*"




Also Project Completion date and date of handing over of the possession of the flat are distinct subjects and cannot be interchanged. Promoter cannot be absolved of its contractual liabilities as stipulated under the agreement for sale without requisite prior mutual expressed consents of all the parties.

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The advocate for complainant has argued that even the RERA Act under which the project of the Opposite Parties is registered, the Opposite Parties are obligated to fulfil its contractual commitments in terms of the agreement for sale as per the provisions of the Act and more specifically Section 18 which awards interest and compensation for delay in possession. Allottee's rights accrued under Section 18 of the RERA Act to seek refund/claim interest for delay is unconditional & absolute, regardless of unforeseen events or stay orders of the Court/Tribunal to support the said contention has been held by the Hon'ble Supreme Court in the case of **M/s. Newtech Promoter and Developers Pvt. Ltd. vs. State of Uttar Pradesh & Ors.** Thus these accrued rights would remain unaffected by the purported Circulars/Notification on moratorium period, even for the present case.

9) It is also pertinent to note that these circulars are issued by Maha RERA for extending the validity for registration period by 3 months/6 months for all Maha RERA Projects where, completion date had expired on or after March 2020 on account of the then prevailing COVID-19 pandemic. While in the case under reference, agreed timeline for delivery of possession was June, 2019 itself and the COVID started only from the end of March 2020, which was after the agreed date of possession. Therefore, this circular is not applicable in the instant case.

10. The Advocate for complainant has submitted that during the COVID Pandemic and the restrictions given thereunder, the Opposite Parties had made demands for payments and also sent

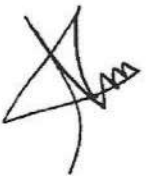


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reminders thereafter to the Complainant during the subsistence of the pandemic and expecting the Complainant to honour the payments the Complainant has filed on record the Application Ledger at Exhibit-D of the Complaint , thus expecting a waiver for payment of interest for delayed possession owing to pandemic is completely unjustified.

11. Though it is the contention of the opponents that as per clause 28 of agreement for sale the grace period is of one year .The advocate for complainant has submitted that the agreement for sale was executed without previously sharing the draft and the documents and annexures were brought directly at the registration office and the same were signed on the dotted lines by keeping the complainant in dark and such agreements are held as unfair and thus not binding as per the view laid down by the honble Supreme Court in **Pioneer urban Land Infrastructure Ltd. Vs. Govindan Raghvan** 2019 5 SCC 725 where in it is held that “ *Having a grace period of One year is untenable ,One sided and even frivolous in nature*”

12. Furthermore, the use of misleading promotional materials (including naming L&T as contractor and subsequent substitution) amounts to unfair trade practice under Section 2(47) of the Consumer Protection Act, 2019. Opposite Parties have failed to adhere to RERA timelines and have unilaterally extended possession dates without buyer consent. These actions fall squarely within the ambit of *deficiency in service* as defined under Section 2(11).The Advocate for Complainant has relied on the following citation:



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Arifur Rahman Khan and Ors. vs. DLF Southern Homes Pvt. Ltd. and Ors. reported at 2020 (3) RCR (Civil) 544, wherein the Hon'ble Apex Court has held in para 24 that *"A failure of the developer to comply with the contractual obligation to provide the flat to a flat purchaser within a contractually stipulated period amounts to a deficiency. There is a fault, shortcoming or inadequacy in the nature and manner of performance which has been undertaken to be performed in pursuance of the contract in relation to the service"*

13. In View of the aforesaid discussion it is clear that Opposite Parties are guilty of deficiency in service and unfair trade practices. Hence we direct the Opposite Parties to hand over possession of Flat No. 2404, 24th Floor, Wing B, in the "Omkar Alta Monte" project, Shantaram Talao ,Siddheshwar Nagar, Konkanipada , Malad (East), Mumbai to the Complainant , along with Occupancy Certificate and amenities mentioned in the Agreement for sale. The Opposite Parties shall jointly and severally pay to the Complainant Interest at 8% per annum on the amount of Rs.1,10,75,013/- from 01.07.2019 till the date of actual possession and Rs 100,000/- (Rupees one lakh only) as compensation and Rs.25,000/- as to litigation costs. The Complainant is directed to pay any outstanding balance consideration (if due) at the time of possession. Hence we answer point no.3 in affirmative and pass the following order.

ORDER

1. The complaint is partly allowed.



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2. The Opposite Parties are Jointly and severally directed to hand over possession of Flat No. 2404, 24th Floor, Wing B, in the "Omkar Alta Monte" project, Shantaram Talao, Siddheshwar Nagar, Konkanipada, Malad (East), Mumbai to the Complainant along with Occupancy Certificate and amenities mentioned in the Agreement for sale within 2 months from the date of receipt of copy of this order. Complainant to pay the balance consideration at the time of handing over the possession by the Opposite Parties.
3. The Opposite Parties shall Jointly and severally pay to the Complainant Interest at 8% per annum on the amount of Rs.1,10,75,013/-, from 01.07.2019 till the date of actual possession.
4. The Opposite Parties are Jointly and severally directed to pay the Complainant Rs.1,00,000/- (One lakh only) towards Compensation and Rs.25000/- litigation costs.
5. The copy of this order be furnished to both the parties free of cost.

**FREE CERTIFIED COPY**

Serial No. of the Application _____
 Date of receipt of Application 12.09.2025
 Name of the applicant Adv. Gulabman Bhimani
 Date of Disposal 29.07.2025
 Date of Preparation of copy 11.09.2025
 Date of dispatch of free certified copy of Order _____
 By Hand / By Post 12.09.2025

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Registrar (Legal),
 State Consumer Disputes Redressal
 Commission Maharashtra Mumbai

[Mukesh V. Sharma]

Presiding Member

[Poonam V. Maharshi]

Member