

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

Virtual Hearing held through video conference as per
MahaRERA Circular No.: 27/2020

1. COMPLAINT NO. CC006000000193927

SALBEER SINGH RANA ...COMPLAINANT/S

VS

M/S BLUE BARON REALTORS ...RESPONDENT

A/W

2. COMPLAINT NO. CC006000000197955

MR FRANKLYN BAPTISTA & ...COMPLAINANT/S
MRS. REBECCA DMELLO

VS

BLUE BARON REALTORS, ...RESPONDENT
MR RITESH KISAN JHUNJHUNWALA

A/W

3. COMPLAINT NO. CC006000000209422

PARESH BIPIN GODA ...COMPLAINANT/S

VS

BLUE BARON REALTORS ...RESPONDENT

MAHARERA PROJECT REGISTRATION NO. P99000003182

Order

February 28th, 2025

(Date of hearing - 04.02.2025 matter was reserved for order)

Coram: Manoj Saunik, Chairperson, MahaRERA

S. K Pandey present for complainant at Sr. No. 1

Complainant present in person at Sr. No. 2

Adv. Amit Parekh present for complainant at Sr. No. 3

Adv. Nikhil Rajeshirke present for respondents at Sr. No. 1 to 3

1. The complainants are home buyers and allottees within the meaning of Section 2(d) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "Act") of Real Estate Regulatory Authority (hereinafter referred to as the "RERA") and the respondents are promoters within the meaning of Section 2 (zk) of the said Act who has registered the project namely "ZEAL REGENCY" under section 5 of the said Act bearing MAHARERA Project Registration No. P99000003182 (hereinafter referred to as the "Project").
2. On the MahaRERA Project registration webpage the proposed date of completion is 31.12.2015, revised date of completion is 31.12.2018 and the extended date of completion is 31.03.2024. The Project has not received OC (Occupation Certificate).
3. The complainants are seeking the following reliefs:

Sr. No.	Complaint No.	Relief sought
1	CC006000000193927	<i>"The Respondent is therefore liable to pay the amount of Rs. 54,63,169/- (Rupees Fifty Four Lakhs Sixty Three Thousand One Hundred Sixty Nine Only) as a total of refund and compensation to the said Complainant. The Respondent is further liable to pay interest at the rate of 18% p.a. till realization of the said amount as the same rate of interest would have been charged to the Complainant by the Respondent in case of delay of payment. The same is evident on perusal of Clause 5 of the said Registered Agreement for Sale. The present Compensation is demanded in accordance to Sections 18 of the RERA Act. It is further stated that the said Respondent is also in breach of Section 19 of the RERA Act and hence the said Respondent is liable to pay compensation along with the prescribed rate of interest as stipulated herein. The said compensation is payable as the said Complainant had to bear all the losses due to delay in possession as caused by the said Respondent"</i>
2	CC006000000197955	<i>"a) the Respondents to handover the possession of the said Flat to the Complainants within a reasonable period of time with proper occupation certificate and promised amenities; b) the Respondents to pay interest at the prescribed rate to the Complainants for every month of delay from 1st January 2019 till the actual date of handover of possession of the said Flat No.401, on 4th Floor, Wing "C" of building No.3 known as "Zeal Regency" bearing RERA Registration No. P99000003182, being constructed on plot of land bearing Plot Bearing / CTS / Survey / Final Plot No.: : 45, H. Nos. 2,3,5 at VasaiVirar City (Municipal Corporation), Vasai, Palghar, 401303, on the amounts more particularly stated in Annexure B attached hereto; c) For mental agony/harassment; d) For cost of this complaint be provided for; e) Such other and further reliefs as deem fit. "</i>
3	CC006000000209422	<i>a) that the present complaint be admitted;</i>

		<p>b) that this Hon. Forum may be pleased to hold and declare that the Respondent is guilty of not handing over the possession of the Said Premises i.e. Flat No. 1406, admeasuring area of 37.86 sq. mtrs. [carpet], on 14th Floor, of 'C' Wing, in Building No. 3, Sector - VII of the building known as "Zeal Regency", situate at Sector No. 7, Chikaldongri Road, Narangal, Virar (West), Palghar, within the committed Possession Date i.e. 30th June 2015 and accordingly, direct the Respondent to refund a total sum of Rs. 45,12,418/- (Rupees Forty-five Lakhs Twelve Thousand Four Hundred and Eighteen Only) [i.e. Rs. 24,32,880/- (Rupees Twenty Four Lakhs Thirty two Thousand Eight Hundred & Eighty Only) by way of the refund of the amount paid along with Rs. 20,79,538 (Rupees Twenty Lakhs Seventy-Nine Thousand Five Hundred and Thirty-eight Only) being the accrued interest at the rate of 10.75% p.a., till 30th November 2021 which is as per Statement of Claim at Exhibit - G] along with further whatever accrued interest at the rate of 10.75% p.a. from 1st December 2021, till actual realization;</p> <p>c) that this Hon. Forum may also be pleased to direct the Respondent to pay to the Complainant, a sum of Rs. 12,00,000/- (Rupees Twelve Lakhs Only) being the estimated amount in respect of the mental agony afflicted by the Respondent to the Complainant arising out of not handing over the possession of the Said Flat within the committed Possession Date or anytime thereafter and also expenditure incurred towards rent for alternate accommodation beyond the Possession Date;</p> <p>d) that this Hon. Forum may also be pleased to direct the Respondent to pay to the Complainant, a sum of Rs. 1,92,920/- (Rupees One Lakh Ninety Two Thousand Nine Hundred & Twenty Only) towards the stamp duty and registration fees paid along with accrued interest at the rate of 10.75% p.a.;</p> <p>e) that this Hon. Forum may also be pleased to direct the Respondent to pay to the Complainant, Rs. 30,000/- (Rupees Thirty Thousand Only) towards the legal expenses in pursuing the refund of the amount as claimed hereunder in perusing the present complaint; any such further relief/s or order/s as this Hon. Forum deem fit and proper in the facts and circumstances of the complaint.</p>
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4. The complaint was heard on 04.02.2025 wherein the following roznama was recorded by this Authority:

Sr. No.	Complaint No.	Roznama
1	CC006000000193927	<i>The matters reserved for orders.</i>
2	CC006000000197955	
3	CC006000000209422	

5. The brief facts of the case are as follows:

Sr. No.	Complaint No. / Date of Filing	Flat / Wing / Building no.	Date Of AFS	Date of possession	Total Consideration (INR)	Amount Paid (INR)	Relief sought
1	CC006000000193927 09.09.2020	C / 304 / 03	20.10.2014	31.12.2015	25,35,000	24,19,780	Refund + Compensation + Interest

2	CC006000000197955 11.08.2021	C 401 / 03	12.11.2018	31.12.2018	25,62,220	27,01,000	Possession + Amenities + Interest
3	CC006000000209422 31.12.2021	C 1406	29.07.2013	30.06.2015	27,56,000	10,08,052	Refund + Interest

6. The submissions of the complainants at **Sr. No. 1 to 3** are as follows:

Sr. No.	Submissions
1.	That the complainant has availed loan from GIC Hosing Finance on the respondent's representation and purchased the flat. Despite of several notices being issued to the respondent requesting him to cancel the flat however he has failed to reply to the same.
2.	The complainant states that consent terms dated 13.01.2023 were signed by both the parties wherein the respondent agreed to handover the possession of the flat along with amenities. The complainant has received possession of the flat. However, despite the complainant paying for a year's maintenance, the respondent has not handed over the amenities to the complainant.
3.	The complainant had availed loan from HDFC Ltd for the flat. That several legal notices were issued to the respondent however he failed to reply the same. The complainant has not received possession till date.

7. The submissions of the respondents at **Sr. No. 1 to 3** are as follows:

- a. That Housing Development and Infrastructure Limited (HDIL) have amalgamated the land along with other land. A registered development agreement dated 15.06.2012 was executed between the HDIL and the respondents wherein HDIL agreed to sell FSI of building no. 3.
- b. In **Sr. No. 1 and 3** the respondent states that the project was completed in 2020 and an application for OC was made on 05.11.2020. That due to delay in getting environment clearance from the sanctioning authority the respondent was unable to handover the possession of the flats.

- c. Consent terms were signed by the parties in **Sr. No. 2**, and the complainant has undertaken to withdraw the complaint in light of the consent terms. The complainant should be directed to file a fresh complaint for infringement of the consent terms, if any, as the current complaint is inapplicable to the relief he is seeking.
8. From the facts and submissions of the complainants the issue that needs to be examined is *Whether the complainant is entitled to seek relief under the Act?*
9. Before moving ahead with the matters, the following observations are noteworthy:
 - a. A legal notice dated 26.06.2020 and 27.07.2020 were issued by the complainant at **Sr. No. 1** requesting the respondents to refund the amounts paid along with interest. The amount paid by the complainant towards the flat and the payment receipts provided by him does not match.
 - b. The consent terms executed by both the parties in **Sr. No. 2** are on record. A letter of fit out possession dated 16.05.2023 is signed by both the parties and the complainants have received possession of the flat. That amenities are mentioned in schedule IV of the agreement for sale.
 - c. A legal notice
 - d. dated 12.07.2021, 20.09.2021 and 30.11.2021 were issued by the complainant at **Sr. No. 3** requesting the respondents to refund the amounts paid along with interest. The amount paid by the complainant towards the flat and the payment receipts provided by him does not match.
 - e. The respondent has applied for OC on 05.11.2020 however the project has not received OC till date.
10. After meticulously examining the AFS pertaining to the complaints at **Sr. Nos. 1 and 3** the Authority has observed that a date of possession is mentioned in their AFS and the same shall be considered for the purpose of calculation of interest on account of delay caused, which is tabulated as under:

SR. NO.	COMPLAINT NO. / DATE OF FILING	DATE OF AFS	DATE OF POSSESSION	AMOUNT PAID	INTEREST TO BE PAID FROM	INTEREST TO BE PAID TILL
1	CC006000000193927 09.09.2020	20.10.2014	31.12.2015	24,19,780	01.01.2016	The amounts are refunded
3	CC006000000209422 31.12.2021	29.07.2013	30.06.2015	10,08,052	01.07.2015	

11. Further, it is pertinent to note here that in **Sr. No. 1 and 3** the agreement executed between the parties are pre - RERA agreement. The amount paid by the complainants as mentioned in the facts does not match with the payment receipts provided by him. Thus, the amounts mentioned in the payment receipts attached by the complainants are taken into consideration as the amount paid towards the flats. The respondent is directed to refund the amount paid by complainants along with interest at **Sr. No. 1 and 3**. **The complaints at Sr. No. 1 and 3 are allowed.**
12. The parties in **Sr. No. 2** have executed consent terms in accordance with which the possession of the flat is handed over to the complainant. However, the complainant has not received the amenities with respect to the flat. The respondents have violated the terms and conditions of the consent terms and the agreement for sale. As a result of which the respondent is directed to handover the amenities as promised to the complainants. The complaint at Sr. No. 2 is allowed.
13. Further with regard claiming compensation for the mental harassment, mental torture and agony is concerned the complainant is at liberty to approach the Adjudicating Officer in order to seek compensation.

FINAL ORDER

- A. The complainants at **Sr. No. 1 and 3** are entitled to seek refund of the amount paid to the respondents as per the terms and conditions of the agreement for sale.

- A. The complainants at **Sr. Nos. 1 and 3** are entitled to claim interest on the total amount paid to the respondents as mentioned in **para no. 10** at the rate as prescribed under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules 2017.
- B. The respondent is duty bound to handover the agreed upon amenities as per the agreement to the complainant at **Sr. No. 2**.
- C. No order as to cost.

(Manoj Saunik)
Chairperson, MahaRERA