

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

1. Complaint No. CC006000000292237

Mitali Enterprises

Through its Partner Mr Pankaj Kumar Jain.

... Complainant

Versus

Larsen & Toubro Ltd

L & T Parel Projects LLP (JV with ORDPL)

... Respondents

Along with

2. Complaint No. CC006000000292239

Himgiri Associates

Through its Partner Mr Pankaj Kumar Jain

... Complainant

Versus

Larsen & Toubro Ltd

L & T Parel Projects LLP (JV with ORDPL)

... Respondents

MahaRERA Project Registration No. P51900005188

Coram: Shri. Mahesh Pathak, Hon'ble Member - I/ MahaRERA

Ld. Adv. Godfrey Pimenta appeared for the complainants.

Ld. Adv. Anulata Saundankar appeared for the respondents.

ORDER

(Monday, 30th September 2024)

(Through Video Conferencing)

1. The complainants above named have filed these 2 online complaints before the MahaRERA on 05-08-2022 mainly seeking directions from MahaRERA to the respondents to refund the amounts paid for the allotment along with the interest for delay as well as refund of service taxes as prescribed under the provisions of the

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Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of their respective flats as mentioned in the table hereinbelow in the respondent-promoter's registered project known as "**Crescent Bay - T3**" bearing MahaRERA registration No. **P51900005188** located at Dadar-Naigaon Division, Parel, District-Mumbai City(hereinafter referred to as the said project).

2. These complaints were clubbed together and were heard by the MahaRERA on 21-03-2024 and finally on 25-06-2024 on merits as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions if any. Accordingly, the parties appeared for the hearing as per their appearances recorded in the Roznamas and made their respective submissions.
3. After hearing the arguments of both the parties, the following Roznamas were recorded in these complaints -

On 21-03-2024-" Both the parties are present. The complainants have filed these complainants for refund alongwith interest and compensation for delay as an amount of almost Rs. 60 lakhs has been paid as per the allotment letter of July, 2015. The complainants informed the respondent in May, 2019 that they wished to withdraw from the project. However, no sum admittedly has been refunded as there was dispute on the issue of deduction or forfeiture from the paid amount. According to the respondent, vide clause 6 of the allotment letter, an amount of 5% of the consideration was to be deducted in case of withdrawal by the complainants. The complainants have withdrawn from the project due to slow progress and contend that the amounts may be refunded along with interest and compensation although there is no date of possession in the allotment letter. Therefore, the respondent is directed to file replies to these complaints within a period of three weeks i.e. by 11-4-2024.

Further, three weeks' time i.e. till 2-5-2024 is granted to the complainants to file rejoinders to the said replies. These matters are adjourned to a suitable date after 2-5-2024 for final arguments by both sides. List these matters for next hearing on 13-06-2024."

On 25-06-2024- "Both the parties are present. The respondent has filed replies and the complainants have filed rejoinders to the said replies. The complainants are praying for refund of the amounts paid for the allotment along with the interest for delay as well as refund of the taxes (service taxes). The complainants booked the flat in July 2015 and the respondent contended that they terminated the allotments on the ground that the complainants did not come forward for execution of the agreement for sale despite efforts and agreed for refund vide an undated letter received by the respondent in December, 2021. In the said letter, the complainants have also agreed for refund of the entire amount except the taxes without any forfeiture. However, despite efforts by the respondent of issuing cheques to the complainants for the agreed amounts as per the said letter, twice the complainants did not collect the said cheques and on the other hand filed these complaints. However, the complainants refuted these contentions of the respondent on the ground that as there was slow progress in the project they wished to withdraw along with interest and compensation for delay although admittedly, there is no date of possession mentioned in the allotment letter. In view of the above, the respondent may file written submissions within a period of two weeks i.e. by 9-7-2024. Further two weeks i.e. till 23-7-2024 is granted to the complainants to file written submissions in the complaints. Accordingly, these complaints are reserved for orders suitable after 23-7-2024 based on the arguments of both sides as well as the replies, rejoinders and written submissions filed in the complaints."

4. Pursuant to the specific directions issued by the MahaRERA, the respondent no. 2

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has uploaded its written submissions on 10-07-2024 and the complainants have also uploaded their written submissions on 23-07-2024 on the record of the MahaRERA. The said submissions have been accepted and taken on record. The MahaRERA has also perused the available records.

5. The complainants by filing these online complaints before the MahaRERA have prayed for refund along with interest and compensation. The information provided by them in their online complaints regarding the details of the flat booked, date of agreement for sale, date of possession as per the agreement for sale, total consideration of the flat, total consideration paid by them and relief sought is as under -

Sr. No. Complaint No.	Flat Details	Date of Agreement for Sale Date of Possession	Total Consideration Consideration Paid
1 CC006000000292237	Flat no. 605, Tower T-3	Undated application dated 25-07-2015 Not mentioned	Rs.2,97,07,015/- Rs.58,81,395/- (inclusive of taxes)
2 CC006000000292239	Flat no. 606, Tower T-3	Undated application dated 25-07-2015 Not mentioned	Rs.2,97,07,015/- Rs. 2,85,89,976/- (revised) Rs.59,37,838/- (inclusive of taxes)

6. It is the case of the complainants that they purchased their respective flats in the respondent's said project vide application forms for which they had paid the amounts to the respondents as mentioned in the table at para-no. 5 hereinabove. The complainants have stated that after they got attracted by the promotions of the said project and the various amenities offered in the brochure, after making certain preliminary enquiries regarding the said real estate, intended to purchase the said flats from the respondents. It was agreed by the respondents that the possession of the said flats would be handed over in the year 2019 as stated in the email sent by

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the complainants to the respondents on 08-05-2018. Apart from this, the respondents had used several other methods to lure the public at large, indicating them to invest their hard-earned money in the said project and created the image of an exclusive real estate project for a select clientele. The respondents had propagated that they would be delivering the entire project in a timely manner and would be using excellent quality materials and high-end specifications in the entire project, however it has failed to comply with the same. The major criteria for the booking of the said flats was the reputation of the respondents and a trust that the project would be delivered in time. It was further stated that they had done the booking of the said flats for their own personal use and not as investors in the said project. As per the terms of the said application dated 25-07-2015, the possession of the said flats was to be delivered in the year 2019. Assuming but without admitting that there was no date of possession mentioned in the said application, then in that event the complainants booked the flats in the month of July 2015, and were expecting possession of the said flats within a reasonable period of three years from the date of booking of the said flats, which was June 2018. Section (4A)(a)(ii) of MOFA, specifically provides that it is the duty of the promoter to mention the date by which the possession of the flat is to be handed over to the purchaser, in the agreement and/or any contemporaneous document. It was the statutory duty of the respondents to mention the date of possession in the said application, which the respondents have not discharged. Furthermore, in absence of date of possession, the reasonable period of possession is 3 years is held by Hon'ble Supreme Court in case of Fortune Infrastructure v/s. Trevor D'Lima (2018)5 SCC 442. As such, the complainants are entitled to exercise the option of exiting from the said project by seeking cancellation of the booking of the said flat. As per the project registration done by the respondents on the MahaRERA website, the proposed date of the completion of the said project was 31-08-2021, which got revised to 30-03-2023. The respondents, as the promoters of the said project have failed to complete the construction for a considerable period of time now. As such, on account of the

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substantial delay in construction of the said project and handover the possession of the said flats they made an application for cancellation of the said flat booked by them to the respondent vide their letter dated 08-05-2018. The respondents through their CRM Team vide an email dated 17-05-2019 informed them that the cancellation of the said flats was in process and the cheque will be ready in 60 to 90 days and as such they should bear with them. There were numerous exchanges of emails between the complainants and the representatives of the respondents during the period May 2018 to June 2021. Further, the complainants vide their email dated 24-06-2021, addressed to the respondents stated that their suggestion towards service tax and MVAT was not acceptable to them. Further, the delay in refunding the amount, on account of cancellation of the booking of the said flats which was entirely due to the delay attributable to the respondents, the complainants sought the details of the working of interest for the refund amount. The respondents vide their letter dated 22-12-2021, acceding to the request made by the complainants for withdrawal of the booking of the said flats, agreed to refund an amount of Rs. 56,35,867/- (for both the flats) as full and final settlement and issued a cheque for the said amount. In the said letter, the respondents further stated that an amount of Rs.2,53,994/- towards service tax and Rs.56,443/- towards MVAT aggregating to Rs.3,10,437/- has been deposited with government authorities. Since there was considerable delay on the part of the respondents to refund the entire amount along with the interest, they through their advocate issued a letter dated 09-03-2022, which was received by the respondents on 10-03-2022, narrated the entire facts including the date of possession of the said flats which got delayed due to some issues relating to various approvals/permissions etc. They further stated that the delay in handing over the possession of the said flats, has caused a lot of mental stress and agony to the complainants. They, relying upon the submissions, reproduced the observations made by the Hon'ble Supreme Court in para 25 in the case of M/s Newtech Promoter and Developers Pvt. Ltd V/s. State of Uttar Pradesh that due to delay in handover of the possession of the said flat which was solely

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attributable to the respondents and that the complainant was not the cause for the said delay in any manner whatsoever. In terms of section 18(1) of RERA, the complainants wish to withdraw from the said project and therefore the respondents are liable to refund the entire amounts along with the interest on the said amount from the date of receipt till the payment. The complainant at sr. no. 2 additionally submitted that the respondent vide its letter dated 02-02-2018 addressed to the complainant, gave fraudulent reference to the purported application dated 28-01-2016 (even though the same was signed and submitted by the complainant on 25-07-2015 with a number of blanks to be filled therein including the date of application) and pursuant to which the said complainant has made various payments to the respondent as stated hereinabove. The said complainant further submitted that the respondents vide their letter dated 02-02-2018 intimated the complainant that the agreement value of the said flat no. 606 stood revised to Rs. 2,85,89,976/- and called upon the complainant to complete the process of the execution and registration of the agreement for sale in respect of the said flat. Therefore, being aggrieved by the actions of the respondents, the complainants have filed these complaints before the MahaRERA seeking refund of the entire amount along with the interest on the said amounts from the date of receipt till the payment thereof by the respondents to the complainants, at such rate of interest as the MahaRERA may decide the compensation.

7. The respondent no. 2 is a Limited Liability Partnership Firm (LLP) of the promoter which has registered this project and the respondent no. 1 is the other entity of the respondent no. 2 promoter, (who has not been shown as a promoter of the said project. Hence, for the sake of brevity both the respondents are hereinafter referred to as the respondent.
8. The respondent on 11-04-2024 has uploaded its reply on the record of the MahaRERA, wherein it has denied every contention of the complainants. It stated

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that as per the terms and conditions mentioned in the booking form application, the demands were raised for the payments as well as respondent, requested the complainants to contact for completing formalities for execution and registration of the agreement for sale as per the MOFA Act 1963. Further, it stated that instead of execution and registration of the agreement for sale, the complainants have requested for the cancellation of the said flats and claimed refund along with interest. Hence by accepting the demand of the complainants, the respondent cancelled the booking of the said flats as well as kept the refund cheque ready. However, the complainants failed to collect the said cheques. In lieu of that, the complainants filed the present complaints. However, these complaints are not maintainable for the following reasons such as that, the complaints are bad for misjoinder of the party as the respondent no. 1 is not a necessary party and the complainants have wrongly made the parent company i.e. Larsen and Toubro Limited a party to the complaints solely to badger respondent. Further, there was no delay in completing the said Tower-3 in which these flats booked by the complainants are situated, as the occupation certificate for tower 3 was obtained as per the stipulated timelines as of 31-01-2022, which is much prior to the revised timeline as mentioned on the MahaRERA website. Furthermore, it was clarified to the complainants that the terms of cancellation would be as per the booking forms. However, respondent waived the cancellation charges (up to 5%) and informed the complainants that the refund shall be after the deductions of the taxes and statutory payments which are deposited with the government. However, the same was not agreed to by the complainants. Thereafter, the complainants agreed and accepted the refund with the deduction of the taxes and the same is clear from the correspondence between the parties. The complainants reneged from the agreed terms and filed these complaints seeking refund and interest. In view of the acceptance of the terms of the settlement which included reduction of taxes, the captioned complaints are against the principle of settlement law. Further, it alleged that the complainants are the defaulters as per clause 3(e) of the booking form and

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have failed to execute the agreements for sale although they have agreed for the same as per the said booking application form. The respondent further denied every contention of the complainants in a para wise manner. The respondent further stated that in the project, the revised date of completion was 31-03-2022 and therefore, the question of committing the date of possession as 2019 does not arise. However, the complainants falsely mentioned the date of handover of the possession as 2019. Further, the booking application forms dated 25-07-2015 does not contemplate any possession date. Moreover, on a bare perusal of the booking application forms, it becomes abundantly evident that the said booking application does not canvas a date of possession. As alleged by the complainants they were expecting the handover of possession of the said flat within 3 years. Further, it alleged that the averments made by the complainants are highly paradoxical. Further, it relied on the case of "Fortune Infrastructure V/S. Trevor D'lima 2018 SCC 442. Further, it has stated that the proposed date of completion uploaded on the RERA website is 31-08-2021 which was revised to 30-03-2023. Further, it stated that the complainants were apprised about the phase-wise development of the said project, and as far as the revised proposed date of completion is concerned, it refers to the entire project including but not limited to the amenities and not just an isolated tower. The said tower was developed within the timelines stipulated on the MahaRERA website as well as the declaration given by the respondent. Moreover, the complainants claim that the respondent is liable to refund the full amount with interest till the date of receipt of the payment. However, it is pertinent to note that the MahaRERA has recently issued an order no. 35/2022 dated 12-08-2022 which permits the respondent to forfeit 2% of the amount in case of any cancellation done by the allottee. Further, the respondent prayed for dismissal of these complaints.

9. The complainants on 24-05-2024 uploaded their rejoinders on the records of the MahaRERA, wherein they have denied the contentions of the respondents in para-wise manner. Additionally, it was submitted that, it was not the complainants who

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suppressed the material facts, but the respondent no. 2 with regard to delay in execution of the said project. Since the date of booking there was no progress on the construction front despite the complainants chasing the respondents regularly for the update of the said project. As no satisfactory reply came from the respondents, the complainants had no option but to seek for refund. Furthermore, the complainants submitted that they were genuine allottees of the said project and had booked flats for the personal use of the partner. The respondent no. 2 having agreed to refund the amount to the complainants, way back in March 2019 due to its own default in timely completion of the said project, was seeking to blame to the complainants for no fault. Moreover, the complainants denied all the allegations and submissions made out by the respondents in toto.

10. The respondent also uploaded its written submissions in these complaints on 10-07-2024 which is mere repetition of what has been stated in their replies.
11. The complainants further uploaded their written submissions on 23-07-2024 on the record of the MahaRERA which was mere repetition of what has been stated hereinabove. Furthermore, the said refund amount was not acceptable to the complainants for several reasons viz. the said refund amount was in violation of the Item No.6 of the General Terms and Conditions of the Booking Form issued by the respondent, which stipulates that *"in the event of applicant fails to pay the amounts as per the Payment Schedule or commits any breach of the terms and conditions hereof or any other terms and conditions agreed by the applicant, then respondent retains the right to reject the application at any time respondent shall refund the balance amount if any (without interest) to the applicant within 12 months from the date of such rejection of the application"*. The fact that the respondent did not cancel the application itself proves that the respondent itself was in breach and not the complainants and as such the Item No.6 of the General Terms and Conditions of the Booking Form and therefore, the complainants are entitled to refund along with applicable interest.

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Furthermore, the respondent having utilised the monies in the construction of said project, since the date of booking onwards and further having sold the flat in question cannot eat the cake and have it too, thereby meaning that it utilises the monies belonging the complainants and sells the flats belonging to the complainants but does not agree to pay the interest on the refund amount particularly when the respondent itself was in default of its obligations. It was further agreed by the respondent during the conciliation meeting to refund the amount to the complainants at @ 6% p.a which was not acceptable to the complainants, since they were demanding the refund along with interest thereon at MCLR + 2% as per RERA rules and regulations. The respondents have sold the said flats to third party at higher rate than the rate sold to the complainants, however at the same time it does not want to refund the amount to the complainants with applicable interest thereon, which was nothing but unfair practice and unjust enrichment. The complainants denied that they had agreed to the deductions and authorised Mr. Pankaj Jain to accept the refund amount with deductions. No such authority was given to allow deductions, and the statement made by the respondent was mischievous in nature. The complainants further submitted that the letter relied upon by the respondent was neither having any date nor had any signatures of Mr. Pankaj Jain. The decisions cited by the respondent in its written submissions were inapplicable to the facts of these complaints in as much as the delay in construction was on the part of the respondents in constructing the said project and the reasons for the delay cannot be ascribed to the complainants. The respondents cannot take advantage of their own wrongs and deny refund of amount with applicable interest thereon to the complainants. The submissions made therein are irrelevant in as much as the respondent having accepted its liability to refund the amount and the subsequent delay after having agreed to pay the refund are not relevant for the purpose of these complaints. Further, the respondent having admitted its liability to refund the amount, the only question left for determination was whether the said amount was to be refunded with interest

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applicable thereon as prescribed under RERA or not. The complainants further reproduced section 2(za) of the RERA. Therefore, the complainants relying upon the aforesaid submissions prayed for the reliefs as mentioned hereinabove.

12. The MahaRERA has examined the rival submission made by all the parties concerned and also perused the available record. In the present case, the complainants herein by filing these complainants under section 31 of the RERA have approached the MahaRERA mainly seeking refund of the entire money paid by them (details as mentioned in the aforesaid para-no. 5) to the respondent along with interest and compensation under the provisions of the RERA.
13. The complainants have claimed such reliefs mainly contending the delay on the part of the respondent in completion of the said project and handing over of the same within a reasonable time period of 3 years. They have also contended that at the time of said booking in the year 2015, the respondent has agreed to handover possession of the said flats to them on or before 2019. However, the respondent with malafide intention, did not mention any specific date of possession, thereby, it has violated the prevailing provisions of section 4 of the RERA. The complainants further contended that the respondent has also accepted their request for refund in the year 2021, still it has failed to refund the said amount to them. Hence, they have filed these complaints seeking refund of the entire money paid by them along with interest and compensation under section 18 of the RERA.
14. The respondent promoter, on the other hand has refuted the aforesaid claims of the complainants mainly raising the issue of maintainability of these complaints on the ground of misjoinder of respondent no. 1 as a party to these complaints. It has also contended that the complainants are the defaulters and have failed to execute the registered agreements for sale as per the terms stipulated in the said booking application forms. As far as the delay, the respondent has contended that there is

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no specific date of possession mentioned in the said booking application forms. However, the project got completed before the revised completion date of the said project i.e. 30-03-2023 as it has obtained the OC for the said flats booked by the complainants on 31-01-2022. Hence, it has prayed for dismissal of these complaints.

15. From the aforesaid submissions made by both the parties it is amply clear that there is neither any agreement for sale duly signed by the parties herein showing any agreed dates of possession nor there is allotment letter issued in favour of the complainants showing any agreed date of possession which has lapsed. Admittedly, there are booking application forms dated 25-07-2015 duly signed by these complainants. By virtue of the said booking, the said complainants have paid an amount of Rs.58,81,395/- and Rs.59,37,838/- (respectively) out of the total consideration amount of Rs. 2,97,07,015/- and 2,85,89,976/- respectively, which amounts to nearly 20% of the total consideration value of the said flats. Admittedly, no specific date of possession is mentioned in the said booking application forms signed by both the parties, which has ever lapsed.
16. Furthermore, the complainants have filed these complaints seeking reliefs under section 18 of the RERA alleging the delay on the part of the respondent in completion of the said flats on or before 31-12-2019. However, the complainants have failed to submit any cogent documentary proof on record of MahaRERA to show that the respondent has ever agreed to handover possession of the said flats to them on the said date of possession i.e. 31-12-2019. Hence, in absence of any written contract between the parties, showing any agreed date of possession, which has lapsed, the MahaRERA is not inclined to accept the contentions of the complainants that the date of possession in this case committed by the respondent for handing over possession of the said flats was 31-12-2019.
17. In this case, the complainants have also contended that in absence of agreed date of

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possession mentioned in the said booking application forms, the reasonable period for handing over possession of the said flats should be considered as 3 years (from the said booking i.e 25-07-2015) as held by the Hon'ble Apex Court. In this regard, it is pertinent to note that considering the said 3 years period from the date of the said booking, the date of possession comes to July 2018. However, the complainants have filed these complaints before the MahaRERA only on 5-08-2022 which is after lapse of more than 4 years. The said delay has not been plausibly explained by these complainants.

18. Moreso, in the present case, the MahaRERA has also noticed that the Part OC for the said project was obtained on 31-01-2022. However, it seems that the complainants have filed these complaints after the completion of their flats and after the OC for the said project was obtained. Hence, on the date of filing of these complaints, the cause of action as enumerated under section 18 of the RERA was not surviving for these complainants to seek reliefs under section 18 of the RERA. Hence, in this case, the MahaRERA prima facie feels that there is no violation of section 18 of the RERA by the respondent due to which the prayer of the complainants for refund along with interest and compensation could be considered favourably by the MahaRERA under section 18 of the RERA.
19. Furthermore, the complainants have not cited any facts for violation of section 12 of the RERA by the respondent, whereby the respondent has given any false notice or advertisement based on which they have booked the said flats and suffered from any loss. Hence, the claim of refund along with interest is devoid of merits under section 12 of the RERA.
20. In the present case, the MahaRERA has noticed that both the parties have tried to settle the matter amicably and accordingly, the request of the complainants for refund was accepted by the respondent and accordingly, the cheques of Rs.

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56,35,867/- for both the complainants were kept ready by the respondent. However, the complainants have not accepted the same and have filed these complaints. Hence, since the said settlement is not part of these proceedings, the MahaRERA cannot take the same into consideration. Since these complaints are filed under section 31 of the RERA and the MahaRERA needs to decide the same on their own merits as per the provisions of the RERA.

21. In the present case, in absence of any agreement for sale/allotment letter , the parties herein are governed under the said booking application forms dated 25-07-2015. However, it seems that the relevant clause for cancellation mentioned in the said booking applications forms provides for forfeiture of 5 % of the total consideration of the said flats.
22. In this regard, it is pertinent to note that the MahaRERA has recently issued an Order No. 35 /2022 dated 12-08-2022 with respect to the prescribed format of allotment letter, which permits the promoter to forfeit 2% amount in case of any cancellation done by the allottee. Although the aforesaid MahaRERA order was issued recently, earlier there was no prescribed format of allotment letter issued by the MahaRERA. Now, the settled principle for cancellation of the booking (before the execution of agreement for sale is executed) has been prescribed by the MahaRERA by way of such order. The 5% forfeiture of the amount by the respondent (of the total consideration amount) is not in consonance with the said circular dated 12-08-2022 issued by MahaRERA but since this project is registered with MahaRERA, the said MahaRERA Order can be made applicable while deciding such cases on merits. Hence, in case of cancellation by the complainants allottees, the refund shall be processed by the respondent as per the said MahaRERA order no. 35 of 2022 dated 12-08-2022.
23. Further, as per the webpage information uploaded by the respondent on the

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MahaRERA website, the respondent has not uploaded any deviation report to the said Order No. 35 dated 12-08-2022 issued by the MahaRERA.

24. In view of the above, since this project is registered with the MahaRERA, the said MahaRERA Order can be made applicable while deciding such cases on merits.
25. In view of these facts, the following order is passed:
- a) These complaints are partly allowed.
 - b) The claim of interest sought by the complainants along with the entire refund amount stands rejected in view of the observations made in aforesaid para nos. 15,16,17, 18 and 19.
 - c) The respondent is directed to refund the money paid by the complainants towards the consideration of the said flats without any interest, after deducting 2% of the total consideration (value) of the said flat (excluding the statutory dues paid to the government/brokerage if any) within a period of 45 days from the date of this order.
26. With these directions, the present complaints stand disposed of.


(Mahesh Pathak)

Member - 1/MahaRERA

