

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

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

**1. COMPLAINT NO. CC12400064**

AFZAL ALARAKHA MANSURI

...COMPLAINANTS

A/W

**2. COMPLAINT NO. CC12400065**

ASHWIN JAIN

...COMPLAINANT

BHAVANA JAIN

A/W

**3. COMPLAINT NO. CC12400066**

ARVIND CHANDERDEV SINGH

...COMPLAINANT

A/W

**4. COMPLAINT NO. CC12400067**

DEEPAK PRABHAKAR THAKOOR

...COMPLAINANTS

A/W

**5. COMPLAINT NO. CC12500032**

ASHOK VISHWAKARMA

...COMPLAINANTS

VS

1. G A BUILDERS PVT LTD.

2. CHEMBUR SHIV SMRUTI COOPERATIVE  
HOUSING SOCIETY LTD.

....RESPONDENTS

A/W

**6. COMPLAINT NO. CC12500581**

ASSOCIATION OF ALLOTTEES OF SUBHASH NAGAR ...COMPLAINANTS  
BUILDING NO. 22

VS

1. G A BUILDERS PVT LTD.

2. CHEMBUR SHIV SMRUTI COOPERATIVE  
HOUSING SOCIETY LTD.

3. M/S ADITYARAJ HOUSING CORPORATION

4. LIST OF 25 MEMBERS OF THE BUILDING NO.21 ....RESPONDENTS

**MAHARERA PROJECT REGISTRATION NO. P51800004855**

**Order**

**July 31<sup>st</sup>, 2025**

(Last date of hearing – 15.05.2025 & 04.06.2025 - the matters were reserved for order)

**Coram: Manoj Saunik, Chairperson, MahaRERA**

Sr. No.	Appearance for Complainant(s)	Appearance for Respondents
1	Advocate Jayashree Gilra	Advocate Harsh Moorjani present for respondent no. 1; Advocate Priyank Kapadia present for respondent no. 2
2	Advocate Ketan Pandharpurkar	
3	Advocate Jayashree Gilra	
4		
5		
6	Advocate Cherag Balsara	Advocate Shadab Jan for respondent no.1; Advocate Priyank Kapadia for respondent no.2; Advocate Mohanish Chaudhari for respondent no.3

1. The complainants are home buyers / allottees within the meaning of Section 2(d) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the “**said Act**”) of Real Estate Regulatory Authority (hereinafter referred to as the “**RERA**”) and the Respondent No. 1 is the Promoter/Developer, the Respondent No. 2 is the Landowner of the project. The Respondent No. 1 is registered as the Promoter of the Project namely “**Subhash Nagar Building No 22**” under section 5 of the said Act bearing **MAHARERA Project Registration No. P51800004855** (hereinafter referred to as the “**said Project**”). The Respondent No. 3 in complaint at Sr. No. 6 is the newly appointed developer of the said project.
2. On the MahaRERA project registration webpage the proposed completion date is mentioned as 30.04.2022 & the revised proposed date of completion is mentioned as 30.04.2023.
3. The complainants are seeking the following reliefs:

SR. NO.	COMPLAINT NO. & DATE OF FILING	RELIEFS SOUGHT
1.	CC12400064 09.09.2024	“5.1 The Authority may ask the Respondent No 1 and 2 to give possession of the flat ASAP along with OC.
2.	CC12400065 09.09.2024	5.2 The Authority may kindly direct the Respondents to keep the Right Title and interest of the Complainants as per AFS.

3.	CC12400066 09.09.2024	<p>5.3 The Authority may kindly direct the Respondent No 2 to enroll him as a member of the Society.</p> <p>5.4 The Authority may kindly ask the Respondent No 1 to pay 2,00,000/- as compensation for Rental paid by the complainant.</p> <p>5.5 The Authority may ask the Respondent No 1 to pay Rs. 3, 00,000/- towards the amount of mental harassment and trauma caused to the Complainant.</p> <p>5.6 The Respondents may be asked to pay Rs. 2, 00,000/- towards the legal charges.</p> <p>5.7 The Respondent may be ask to pay Rs. 1, 00,000/- towards the cost to the said complaint.</p> <p>5.8 Any other reliefs this Hon'ble court may deem fit."</p>
4.	CC12400067 09.09.2024	<p>"5.1 The Authority may ask Respondent No. 1 and 2 to give possession of the flat as soon as possible along with the Occupancy Certificate (OC), and may direct Respondent No. 1 to pay delayed interest at the rate of SBI MLCR plus 2%.</p> <p>5.2 The Authority may kindly direct the Respondents to keep the Right Title and interest of the Complainants as per AFS.</p> <p>5.3 The Authority may kindly direct the Respondent No 2 to enroll him as a member of the Society.</p> <p>5.4 The Authority may kindly ask the Respondent No 1 to pay Rs. 7,50,000/- as compensation for Rental paid by the complainant.</p> <p>5.5 The Authority may ask the Respondent No 1 to pay Rs. 3, 00,000/- towards the amount of mental harassment and trauma caused to the Complainant.</p> <p>5.6 The Respondents may be asked to pay Rs. 2,00,000/- towards the legal charges.</p> <p>5.7 The Respondent may be ask to pay Rs. 1,00,000/- towards the cost to the said complaint.</p> <p>5.8 Any other reliefs this Hon'ble court may deem fit."</p>
5.	CC12500032 03.01.2025	<p>"The Authority be pleased to direct the Respondent No 1 and 2 to give possession of the said flat along with delay interest as soon as possible along with OC.</p> <p>The Authority may kindly direct the Respondents to keep the Right Title and interest of the Complainants as per AFS.</p> <p>The Authority may kindly direct the Respondent No 2 to enroll him as a member of the Society.</p> <p>The Authority may kindly ask the Respondent No 1 to pay 2,00,000/- as compensation for Rental paid by the complainant.</p> <p>The Authority may ask the Respondent No 1 to pay Rs. 3,00,000/- towards the amount of mental harassment and trauma caused to the Complainant.</p> <p>The Respondents may be asked to pay Rs. 2,00,000/- towards the legal charges. The Respondent may be ask to pay Rs. 1,00,000/- towards the cost to the said complaint. Any other reliefs this Hon'ble court may deem fit."</p>
6.	CC12500581 20.02.2025	<p>"1. The Hon'ble Authority be pleased to direct the Respondent No.2 Society to complete the formalities to be the promoter of the said project and file all necessary documents including but not limited to Affidavits in Form B.</p> <p>2. The Hon'ble Authority please to direct the Respondent No.2 Society to recognise the members of the Complainant Association as Allottee and enrol them as Society members.</p> <p>3. The Hon'ble Authority may please to direct the society to complete the project and hand over the respective flats to the members of the Complainant Association.</p>

		<p>4. Direct Respondents to enter into, execute and duly register Agreement for Sale with Members of the Association of Allottee"s as more particularly set out in Schedule I and II herein in terms with the respective Letters of Allotment/EOI issued by Respondent No. 1, and handover vacant and peaceful possession of apartments in terms with the respective Agreement for Sale;</p> <p>5. Direct Respondents to handover vacant and peaceful possession to allottees as more particularly set out in Schedule I and II in terms of the respective Agreements for Sale;</p> <p>6. Direct Respondents to provide information relating to sanctioned plans, layout along with specifications (as approved by the competent authority) and stage wise time schedule of project completion;</p> <p>7. Pending hearing and disposal of the present Complaint, pass an Order directing Respondents to disclose the particulars of sold/unsold units in the real estate project bearing RERA Reg. No. P51800004855;</p> <p>8. Any other relief this Hon "ble Authority may deem fit for the situation.</p>
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4. The captioned complaint at Sr. No. 6 was heard on 15.05.2025 and the remaining ones were heard on 04.06.2025, wherein the following roznama were recorded by this Authority:

SR. NOS.	COMPLAINT NO. & DATE OF FILING	ROZNAMA RECORDED
Hearing date : 04.06.2025		
1.	CC12400064 09.09.2024	"All the parties are directed to file their written submissions by 09.07.2025. The matters will be reserved for orders from 10.07.2025."
2.	CC12400065 09.09.2024	
3.	CC12400066 09.09.2024	
4.	CC12400067 09.09.2024	
5.	CC12500032 03.01.2025	
Hearing date : 15.05.2025		
6.	CC12500581 20.02.2025	"Heard both the parties at length. Parties are at liberty to file written submissions, if any, by 25.05.2025. Subsequent to which, matters will be reserved for orders."

5. The brief facts in the complaints are as follows:

SR. NO.	COMPLAINT NO. & DATE OF FILING	FLAT NO.	DATE OF AFS <sup>1</sup>	POSSESION AS PER AFS	TOTAL CONSIDERATION (INR)	TOTAL AMOUNT PAID (INR)	RELIEFS SOUGHT
1.	CC12400064 09.09.2024	Flat no 1002, B Wing, 10 <sup>th</sup> floor	26.04.2017	Not mentioned. (kept blank) (Clause 14)	Rs. 81,00,000/-	Rs. 46,00,000/-	Possession with interest & compensation for delay

<sup>1</sup> AFS-Agreement for Sale.

2.	CC12400065 09.09.2024	Flat no 601, B wing	06.03.2017 Sold by GA builders  21.09.2020 - Sale deed (wherein one of the 3 purchaser sold his share to the rest 2)	Not mentioned. (kept blank)  (Clause 14)	Rs. 73,00,000/-	Rs. 15,60,195/-	Possession with interest & compensatio n for delay
3.	CC12400066 09.09.2024	Flat no 701, B wing	18.04.2017 Sold by GA builders	Not mentioned. (kept blank)  (Clause 14)	Rs. 80,00,000/-	Rs. 73,95,285/- (as per clause 11 of AFS & receipts)	Possession with interest & compensatio n for delay
4.	CC12400067 09.09.2024	Flat no 701, A wing	12.01.2017 Sold by GA builders	Not mentioned. (kept blank)  (Clause 14)	Rs, 92,40,000/-	Rs. 71,87,000/- (receipt of page 31 of AFS + supporting documents)	Possession with interest & compensatio n for delay
5.	CC12500032 03.01.2025	Flat no 901, B wing	17.12.2018 Sold by GA builders	As displayed on RERA website + 2 years of grace period.  i.e. 30.04.2022 + 2 years i.e. 30.04.2024  (clause 12 of AFS)	Rs. 81,00,000/-	Rs. 8,92,858/- + Rs. 26,00,000/- (as per receipts) = 34,92,858/-	Possession with interest & compensatio n for delay
6.	CC12500581 20.02.2025	17 units allotted to different purchasers of sale component and 11 unsold units.					Direction to society to complete all formalities of be the promoter,  To direct the society to execute agreement for sale.

6. The brief submissions of the complainants are as follows:

Sr. No. herein	Submission of the complainants in brief
1.	1. That a flat was purchased by the complainant from M/s G A Builders Pvt Limited (Respondent No. 1) and the promoter society, Respondent No. 2, in the P51800004855 Subash Nagar project in Chembur, Mumbai.
2.	

3.	2. That the complainants have bought the subject flat and have already paid substantial amount towards consideration plus stamp duty and registration fees.
4.	
5.	<p>3. The project, originally a 1962 MHADA layout, was redeveloped under a 2007 agreement between the Respondents, who are both registered as promoters with MahaRERA.</p> <p>4. However, the project is now stalled, and both the possession and completion dates, as per RERA records, have passed.</p> <p>5. The complainants are facing significant financial hardship, paying both a home loan with interest and rent, despite the Supreme Court's "Fortune Infra Ruling" suggesting possession within three years without mitigating circumstances like COVID-19.</p> <p>6. That section 2(d) of the RERA Act, 2016, which defines a successive purchaser as an allottee, and Section 18(1), which grants allottees the right to interest for delayed possession or a refund with interest if they choose to withdraw, the Complainant seeks immediate possession of the flat along with interest and compensation.</p> <p>7. The complainants emphasize the "unqualified rights" of the allottees as per the Supreme Court's "Newtech" judgment and MahaRERA Circular 11 of 2017, asserting that both Respondent No. 1 and 2 are jointly and severally liable.</p>
6.	<p>1. That the complaint is filed on behalf of the Association of allottees in the captioned redevelopment project.</p> <p>2. That the respondent no 2 – the society is the owner of the project property.</p> <p>3. That the society and the respondent no 1 (previous developer) entered into development agreement dated 25.10.2007 whereby redevelopment of the captioned project was contemplated.</p> <p>4. In view of the termination of the development agreement dated 25.10.2007, the society along with its members entered into and executed the development agreement dated 03.11.2023 with respondent no 3.</p> <p>5. That due to the above events, respondent no 1 and respondent no 2 qualify as promoters under the Act.</p> <p>6. That among entire body of complainants represented herein, 8 allottees have entered into agreement for sale with previous developer and 9 allottees have been issued allotment letter.</p> <p>7. That the aforesaid Agreements/ EOI /Letters of Allotment were entered in the years 2016 -2017 for a cumulative consideration of Rs.14,29,40,000/-</p> <p>8. That out of the total consideration amount, the allottees have paid to respondent no. 1 a substantial consideration amounting Rs. 8,21,28,883/-, wherein notably 14 allottees have paid more than 10% of consideration.</p> <p>9. That the original building was a ground plus two additional storeys comprising of a total of 36 units.</p> <p>10. That by way of development agreement dated 25.10.2007, the society conferred development rights upon the previous developer in consideration for causing redevelopment of the subject property.</p>

	<ol style="list-style-type: none"> <li>11. That the previous developer received commencement certificate upto 12<sup>th</sup> floor of A wing and 11<sup>th</sup> floor B wing and completed 90% of work from 2<sup>nd</sup> to 7<sup>th</sup> floor.</li> <li>12. That respondent no 2 society also executed a power of attorney dated 25.10.2007 in favour of respondent no 1 to allot / sell flats to third parties from the sale component of the developed building and on strength of it the respondent no 1 sold various units.</li> <li>13. That allottees of building no 21 were granted several units in the subject building from sale component and a total of 53 units (28 complainants and 25 respondents) have been allotted in the subject building by the respondent no 1.</li> <li>14. That the respondent no 1 has utilized the proceeds of sale under the respective agreements / allotment towards expenses incurred in project including purchase of additional FSI area, admeasuring 3000 sq. mts. and also payment of infrastructure changes to MCGM.</li> <li>15. That it is important to highlight, that at present Respondent No. 2 &amp; 3 are collectively utilizing the additional FSI purchased by Respondent No. 1 from the sale proceeds.</li> <li>16. That vide certificate of registration dated 09.09.2021, the Maharashtra RERA certified the project to be completed by 30.04.2023.</li> <li>17. That the provisions of RERA stood attracted to the Respondents. More particularly, considering the above, having issued EOI / letters of allotment/entered into Agreements for Sale in favour of the allottees herein, the Society and the New Developer were bound by the terms of such letters of allotment as well as the agreements for sale.</li> <li>18. That society terminated the development agreement entered with the previous developer vide 08.08.2019. In consequence thereof, Society appointed the new developer by entering into and executing the development agreement dated 03.11.2023.</li> <li>19. That the execution of the New Development Agreement and the Power of Attorney by the Society in favour of the New Developer constituted as a "transfer" within the meaning of Section 15 of RERA,2016.</li> <li>20. That neither the society nor the new developer have even communicated or informed the allottees herein in relation to termination of the old development agreement/execution of the new development agreement.</li> <li>21. That not only did the allottees have privity of contract with the society, but the society was obligated to ensure that the agreements for sale / allotment letter are upheld in letter and spirit.</li> <li>22. That the new extended timelines for completion of project in the new development agreement were never communicated to the allottees.</li> <li>23. That the complainants herein have been able to find that there are numerous litigations pending between the respondent No.1 and respondent No.2 relating to the captioned project.</li> <li>24. That, it was found that the Respondent No. 2 has terminated the Development Agreement and has also initiated proceedings before the Hon'ble Bombay High Court.</li> </ol>
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	<p>25. That some of the complainants had filed a consumer complaint before the Hon'ble National Consumer Dispute Redressal Commission (hereinafter referred to as "NCDRC") being C.C. No. 170 of 2023. The Hon'ble NCDRC, vide an order dated 13.12.2023, was pleased to direct the parties to maintain status quo.</p> <p>26. That upon an application filed by the Respondent No.2 Society, seeking to vacate the stay granted by the Hon'ble NCDRC in its order dated 13.12.2023, the Hon'ble NCDRC vide its order dated 13.05.2024 was pleased to vacate the stay granted by it in terms of the order dated 13.12.2023.</p> <p>27. That the order dated 13.05.2023 passed by the Hon'ble NCDRC was challenged through a civil appeal, being Civil Appeal No. 23166 of 2024, wherein the Hon'ble Supreme Court vide its order dated 14.06.2024, was pleased to restore the stay by directing the parties to maintain status quo with respect to the subject premises.</p> <p>28. The Hon'ble Supreme Court on 12.08.2024 disposed of the said civil appeal stating that the challenge here is to the interim order and proceedings are still pending before NCDRC therefore the Hon'ble Supreme Court declined to entertain the civil appeal.</p> <p>29. That the respondent no 2 society has been able to undertake the aforementioned illegal steps only because the respondent no 1 failed to make the Respondent No.2 as a co-promoter as respondent 1 &amp; 2 seem to be acting in collusion.</p> <p>30. That clause 16 of the IOA dated 14.12.2022 issued by MHADA clearly stipulates that respondent no 2 is vested with responsibility to settle the third-party claims "<i>before starting any work</i>".</p> <p>31. That the respondent No.2, along with the New Developer, has started demolishing the Subject Building(s) without allotting flats/units to the complainants.</p> <p>32. That the validity and sanctity of the alleged termination of the Development Agreement and POA is pending adjudication in an Arbitration proceeding, wherein, admittedly, the Complainants are not a party.</p> <p>33. That the rights of the complainant be protected either by respondent no 1 or respondent no 2.</p>
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7. The brief submissions of the respondent are as follows:

Sr. No. herein	Submission of the respondents in brief
1.	<b><u>Submission of respondent no 1 (Erstwhile developer)</u></b>
2.	1. That the respondent denies all the allegations of the complainant.
3.	2. That respondent no 1 is not liable for the reliefs sought as they are terminated on 08.08.2019 by the society and the challenge to said termination is pending before the arbitration proceedings.
4.	



5.	<p>3. That the society has obstructed respondent no 1 from developing the said property by demolishing the already constructed building without following the procedure established by law.</p> <p><b><u>Submission of respondent no 2 (Society)</u></b></p> <ol style="list-style-type: none"> <li>1. That the complaint is baseless and against well settled principle of law and thus is liable to be dismissed.</li> <li>2. That the complainant has already approached the Hon'ble Bombay High Court, vide Writ Petition (L) No. 1776 of 2023 in respect of the subject project and the same society in which it was held that the complainant has no locus to seek relief and dismissed the petition.</li> <li>3. That the complainant filed complaint bearing no 27 of 2024 before the Hon'ble National Consumer Dispute Redressal Commission which is still pending.</li> <li>4. That the society has not stepped in to the shoes of respondent no 1 and neither construction done by respondent 1 nor the monies paid by the complainant have been used for the benefit of respondent no 2.</li> <li>5. That the society has filed / defended atleast 10 litigations against respondent no 1 to avail back their own property.</li> </ol>
6.	<p><b><u>Submission of respondent no 1 (Erstwhile developer) :</u></b></p> <ol style="list-style-type: none"> <li>1. That the complaint is bad in law and is totally misconceived.</li> <li>2. That there are ongoing arbitration proceedings between the respondent no 2 (society) and respondent no 1 and also various proceedings in the Hon'ble High Court.</li> <li>3. That despite respondent no 1 performing its obligations, the respondent no 2 issued termination notice dated 19.09.2019 and unlawfully terminated the development agreement.</li> <li>4. That the reliefs claimed by the complainant can only be claimed by respondent no 2 &amp; 3 i.e. the society and the new developer.</li> <li>5. That the allotment done by respondent no 1 to the complainant were done on the basis of power for the same granted by the respondent no 2 society and thus the same is binding upon the society.</li> <li>6. That the society demolished the already constructed building by the respondent no 1 and illegally obtained the IOA, by cancelling the approval granted to the respondent no 1.</li> <li>7. That 36 members from building no 21 were allotted apartments in building no 22 and 17 purchasers were allotted units in the sale component for which substantial amounts have been paid by them.</li> <li>8. That the FSI of 3001 sq mtrs purchased by respondent no 1 on 12.12.2012 is being used by respondent no 3.</li> <li>9. That substantial part of construction was completed by respondent no 1.</li> <li>10. That the present proceedings be dismissed against respondent no 1 and be proceeded against respondent no 2 &amp; 3.</li> </ol> <p><b><u>Submission of respondent no 2 (Society) :</u></b></p>

	<ol style="list-style-type: none"> <li>1. That section 31 of the Act, mandates that any common complaint shall be maintainable only if it is filed either by registered association of allottees or voluntary association of consumers.</li> <li>2. That the members of the complainant had no privity of contract with the society, as held by the Hon'ble division bench of the Hon'ble high court vide order dated 12.10.2023.</li> <li>3. That the findings of the Hon'ble High Court are settled, final and binding on all including the Hon'ble Authority.</li> <li>4. That out of 28 member of the complainant, 17 units are bought by the alleged allottees. Out of these 14 alleged allottees, 9 have already filed consumer complaints which are pending as on today.</li> <li>5. That complainant members 18 to 28 is G A Builders Pvt Ltd, who is the same legal person i.e, the erstwhile developer and is also the respondent no 1 in this case.</li> <li>6. That respondent no 1 is the one who sold the subject premises to the alleged allottees and now has become both the complainant and the respondent trying to make mockery of the judicial process before the Authority.</li> <li>7. That the members of the complainant are either the respondent no 1 or people having close nexus with them being ex-employee or manager of the parent company of erstwhile developer, tiling contractor, security agency hired by them, etc. that the complainant association has been formed at the behest of the erstwhile developer to exert undue pressure on the society.</li> <li>8. That respondent no 4 to 28 are members of the adjoining property building no 21 and the erstwhile developer was developer of the same, however was terminated by them also.</li> <li>9. That respondent no 1 has played fraud on the members of the building no 21 and submitted their land as RG to MCGM without rehabilitating any of the members of the adjoining property.</li> <li>10. That an FIR has been filed against the respondent no 1 for the same.</li> <li>11. That the erstwhile developer is claiming 11 premises for its own ownership by contending to have allegedly acquired membership rights of adjoining property building no 21, without any locus.</li> <li>12. That the copy of the complaint has not been served on any of the respondent no 4 onwards.</li> <li>13. That the Hon'ble Bombay High Court has categorically dismissed the claim on multiple grounds including the members of the complainants herein not only on the basis of the IOD condition but also under RERA and has reaffirmed that they cannot seek specific performance as there is no privity with the society.</li> <li>14. That the present case is clearly covered by the order passed by the Hon'ble MahaREAT in Samudra Darshan Cooperative Housing Society Ltd. VS Peter Almeida Appeal no AT006000000053403 in complaint no CC006000000055575 wherein it has been categorically held that in absence of privity of contract, the new developer i.e. respondent no 3 and society cannot be held liable to allottees.</li> </ol>
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	<p>15. That the allottees can only seek refund by virtue of precedence of the aforesaid order of the Hon'ble MahaREAT.</p> <p>16. Further, the findings of the Hon'ble NCDRC in respect of the claims of the complainant are crucial which has refused to grant any reliefs to the complainant on merits.</p> <p>17. That the consumer complaint has been filed prior in time by the complainants and the members cannot approach the Hon'ble Tribunal and seek reliefs.</p> <p>18. That the complainant has failed to approach the Authority with clean hands as the second consumer complaint filed by their own members and the 5 RERA complaints filed before the Hon'ble Authority are conveniently not mentioned in the complaint.</p>
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8. From the facts and the submissions, the issues that need to be considered is : *whether at this juncture it would be appropriate to adjudicate the captioned matters on merits?*

9. Before answering the issues framed in para 8 herein above the following observations are noteworthy.

Sr. No. herein	Observations
1.	The complainant claims to have paid Rs. 52,92,528/- + taxes towards the purchase of the subject flat, however has filed supporting document to the tune of Rs. 46,00,000/- exclusive of taxes. The same has been considered while recording the facts in table at para no 5 for Sr. No. 1.
2.	The complainant claims to have paid Rs. 73,00,000 plus taxes towards the purchase of the subject flat, however has filed supporting document to the tune of Rs. 15,60,195/-. The same has been considered while recording the facts in table at para no 5 for Sr. No. 2.
3.	The complainant claims to have paid Rs. 73,00,000 plus taxes towards the purchase of the subject flat, however has filed supporting documents pertaining to the same.
4.	<p>1. The complainant claims to have paid Rs. 72,70,700 plus taxes towards the purchase of the subject flat, however has filed supporting document to the tune of Rs. Rs. 71,87,000/-. The same has been considered while recording the facts in table at para no 5 for Sr. No. 4.</p> <p>2. An order dated 12.10.2023 was issued by the Hon'ble High Court of Bombay in a writ petition number (L) 1776 of 2023 filed by the complainant at Sr. No. 4.</p> <p>3. The petition was filed seeking to quash the Intimation of Approval dated 14.12.2022 issued by the Maharashtra Housing and Area Development Authority</p>

	<p>(MHADA) and secondly to restrain the respondent no 2 &amp; 3 herein from demolishing the construction.</p> <p>4. The petition was dismissed by the Hon'ble High Court wherein the judgement dated 14.10.2019 issued in the case of <i>Goregaon Pearl</i> was affirmed and it is held that the society (respondent no 2 herein) cannot be held liable in this case as the privity of contract is between the third-party purchaser of sale component (complainant at Sr. No. 4 herein) and the G A Builders (respondent no 1 herein). The High Court also held that clause 16 of the IOA and the undertaking given by the society are nothing more than an indemnity and do not create substantive rights.</p> <p>5. It is pertinent to note that the Hon'ble High court has not examined the question of validity of the termination of the development agreement by the society (respondent no. 2 herein) in the aforesaid petition. The validity of the termination and continuation of appointment of the new developer are kept open by the Hon'ble High Court to be decided in appropriate proceedings.</p> <p>6. Further, vide order dated 22.10.2024 the Hon'ble High Court of Bombay substituted arbitrator appointed vide order dated 21.12.2022. Further, the Hon'ble High Court also directed that the proceedings shall continue from the stage at which they were before the previous Arbitral Tribunal.</p>
5.	<p>The complainant claims to have paid Rs. 36,00,000 plus taxes towards the purchase of the subject flat, however has filed supporting document to the tune of Rs. 34,92,858/-. The same has been considered while recording the facts in table at para no 5 for Sr. No. 2.</p>
6.	<p>1. The respondent no 1 is the erstwhile promoter, respondent no 2 is the society and the landowner of the project property and respondent no 3 is the new developer appointed by the respondent no 2 after termination of development agreement with the erstwhile developer.</p> <p>2. The respondent no 1 applied for registration of the captioned project on 31.07.2017 as an ongoing real estate project.</p> <p>3. As per the records of the Authority, the respondent no 1 reflects as a promoter of the captioned project and the respondent no 2 - society is not registered as a co-promoter of the captioned project.</p> <p>4. The society granted development rights to respondent no 1 vide entering into development agreement dated 25.10.2007 however, terminated the same vide notice dated 08.08.2019 due to alleged non observance of the terms of the development agreement by respondent no. 1. The society avers that the termination notice has been sent to the respondent no 1 owing to failure of the latter to complete the agreed construction of the project within time agreed in the development agreement dated 25.10.2007.</p> <p>5. The sole arbitrator Shri Chandrakant Bhadang, (former judge Bombay High Court) issued an order dated 26.06.2023 which adjudicated only upon an interim issue of the arbitration petition and allowed a prayer to remove the GA Builders and their articles / machineries from the project property. The GA Builders challenged this order vide commercial arbitration petition (L) No. 20764 of 2023 before the Hon'ble High Court and consequently the Hon'ble Bombay High Court vide order dated 23.10.2023 dismissed the petition for due to lack of merit.</p>

Observations pertaining to the project.	<ol style="list-style-type: none"> <li>1. The complainants at Sr. No. 1 to 5 are also the members of the association of allottees who is the complainant at Sr. No. 6 herein.</li> <li>2. The arbitration proceedings initiated by the society i.e. the respondent no 2 herein has not concluded till date and the issue as to the validity of the termination of respondent no 1 (G A Builders) and continuation of the appointment of the new developer i.e. the respondent no 3 is still sub judice before the Arbitration Tribunal constituted by the order of the Hon'ble High court of Bombay.</li> <li>3. The society has not caused to change the promoter on the record of the Authority despite the termination notice sent by them and intimation of approval obtained.</li> <li>4. The outcome of the arbitration proceedings will have a crucial impact which shall further crystalize the rights and obligations of each of the parties herein the captioned matters.</li> <li>5. Upon perusal of the orders issued by the Hon'ble High Court, it is clear that the High Court has ruled that the society cannot be held liable for the acts of the respondent no 1 (GA Builders) as the rights of the complainants are based upon transaction with the respondent no 1 (GA Builders).</li> <li>6. Therefore, although the society has taken approvals from the competent authority i.e. the MHADA, the rights and obligations of the parties are not yet crystalized owing to pendency of the arbitration proceedings, and it is imperative for the Authority to ensure that the rights, if any, of the allottees are not trampled upon prior to the outcome of the Arbitration proceedings.</li> </ol>
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10. For the Authority to adjudicate the complaints on merits, one issue that needs to be answered at the first instance is who is the promoter of the project under the provisions of the Act. As recorded in the observations in para 9 hereinabove the issue pertaining to the validity of termination of the development agreement is already sub judice before the Arbitral Tribunal constituted by the Hon'ble High Court of Bombay. It is noteworthy that G A Builders Pvt Ltd. (respondent no 1) is the promoter on record of the Authority. The society is not declared as the co-promoter of the project at the time of obtaining registration of the project.

11. Further, upon termination of development agreement and subsequent to relevant proceedings before the Hon'ble High Court of Bombay, the society for the purpose of carrying out self-redevelopment obtained IOA dated 14.12.2022 issued by MHADA. The conduct of the society indicates that the society has now assumed the role of a promoter for the captioned project. It also submitted that the society has appointed a new developer i.e. respondent no 3 vide a new development agreement dated 03.11.2023. The IOA dated 14.12.2022 records that

the same is issued as per NOC dated 08.08.2013 issued by MHADA granting additional built-up area of 3001.02 square meters to be utilised for the captioned project. It is pertinent to note that the NOC for grant of additional area was obtained before the termination by the G A Builders for the captioned project and the latest IOA obtained by the society after the termination is obtained on the basis of plan approved as per the same NOC which granted the additional built up area permission before the termination. However, neither the respondent no 1 nor the society has taken any steps to declare all these crucial developments on record of the Authority before the captioned matters were filed by the complainants.

12. In the eyes of the Authority, at this juncture the newly appointed developer i.e. respondent no. 3 is not the promoter of the project however construction is being undertaken by them and the society, by virtue of the development agreement executed between them. The non-disclosure of crucial facts pertaining to the project is a serious concern for the Authority since the aforesaid events carry possibility of creation of new third-party rights by the new developer and / or the society which may directly hamper, encumber or impede the rights and interests of the existing allottees of the captioned project.
13. The complainants purchased / booked respective apartments vide registered agreements/ payment receipts / allotment letter / EOIs as the case may be, which establishes that apartments have been allotted to respective purchasers by the respondent no 1, after accepting substantial amount of consideration. Thus, the same are allottees within the meaning of section 2(d) of the Act and hold all the rights of allottees provided under the provisions of the Act.
14. The Authority is constituted vide a special legislation and one of the main objects of the statute is to protect the interest of the home buyers, as more particularly described in the object of the Act. Thus, it is the duty of the Authority in the instant case to ensure that till the aforementioned proceedings pertaining to the

issue of validity of termination of the respondent no 1 (G A Builders) and continuation of the newly appointed developer i.e. the respondent no. 3 is concluded, the rights and interests of the home buyers are protected and should be kept unhampered.

15. It is also submitted by the parties that construction is being carried out by the respondent no 3 on the basis of the IOA dated 14.12.2022 obtained by the society which can hamper with the rights of the existing allottees with regard to the apartment booked by them in the project. As the matter pertaining to the validity of continuation of the newly appointed developer is sub judice, it is imperative for the Authority to ensure that no acts of the newly appointed developer or the society be allowed at this juncture which may be seriously detrimental to the already existing rights of the complainants / allottees. The society undoubtedly enjoys the right to construct the dwellings they wish to reside in, however they do not have the power to supersede and impede the rights of the existing allottees. Therefore, in view of the above, the Authority directs all the parties to maintain status quo, till the legal proceedings on the issue of validity of termination and continuation of newly appointed developer is concluded and the rights and obligations of all the parties are determined. **In light of the above observations, the issue framed at para no 8 hereinabove is answered in the negative.**
16. As it is an admitted fact that the complainants are home buyers and have valid supporting documents such as agreement / allotment letters, etc executed with the respondent no 1, it is significant to see that their rights emanating from respective documents remain unaffected till connected litigations are finally determined through appropriate, valid and lawful proceedings.
17. The captioned project has lapsed from the year 2023 and the promoter / society / newly appointed developer have not taken any steps to revive the same.

18. The Authority finds it vital that the project webpage has every information timely updated by the promoter, in accordance with provisions of the act, for the intending allottees to make an informed decision whether to invest their hard-earned money in any registered project. The very object of the Act casts upon the Authority, a duty to set such a framework that every promoter maintains utmost transparency on the registered webpage of the project and the public in general has complete access to the same. In the present case the society has a very cavalier approach towards the duty cast upon by the Act. On one hand the society avers that a new promoter has been appointed but on the RERA portal respondent number 1 continues to be the sole promoter with no mention of the other two parties.
19. In the instant case, due to the foregoing litigation, in the present scenario it is impossible for public in general to become aware of the ongoing litigation and the actual status of the project on the registered webpage due to incomplete information. Resultantly, the decision of any intending allottee upon the same, if any, will be based upon incomplete information which may be detrimental to their interests. As on today, the record of the Authority reflects respondent no 1 as the promoter, however the same is in dispute owing to the termination notice sent by the society and the matter is sub judice. Thus, it can be said the vital information pertaining to the captioned project is not up to date and it is brought to the notice of the Authority that the project is being constructed by the newly appointed developer on the basis of the IOA dated 14.12.2022 granted by MHADA. This fact is nowhere visible on the MahaRERA webpage due to non-disclosure by all the respondents and thus there is inadequacy of information which the general public is not aware of.
20. The Authority takes into consideration the complexity and serious implications of the captioned matters and thinks it fit to put the project in abeyance, till the final outcome of the arbitral proceedings and all other proceedings before the



Hon'ble High Court, the Consumer Dispute Redressal Forum and any other court of law.

### **FINAL ORDER**

21. Therefore, after considering the aforementioned observations and provisions of the act, the materials placed on record, the facts of the case, the Authority passes the following order:
- A. All the captioned matters are disposed without going into the merits of the case for the reasons more specifically mentioned hereinabove.
  - B. All the parties herein are at liberty to approach the Authority to revive the complaints at appropriate stage upon the conclusion of other legal proceedings pending before the Arbitral Tribunal constituted by the Hon'ble High Court of Bombay.
  - C. The Authority directs that the captioned project registration number be put in abeyance till the proceedings before the Arbitral Tribunal constituted by the Hon'ble High Court of Bombay, and all other courts of law reach determination. The promoter presently on record and any of the respondents hereinabove shall not be entitled to advertise, market, book, sell or offer for sale, or invite person/s to purchase in any manner any apartment in the said Project till further orders. The notice of this prohibition be displayed prominently at the RERA site and the project QR code.
  - D. The Secretary, MahaRERA is directed to put the said project registration number in abeyance with immediate effect. The Secretary, MahaRERA is further directed to take a stock of and review all returns filed till date and ensure that the same are in safe custody. All complaints in the said project pending adjudication before the Authority be tagged together and fixed for hearing. Further, on said Project registration webpage on the website pertaining to the this order should be displayed.

- E. All the parties herein, are hereby directed to maintain status quo with respect to all the activities pertaining to the captioned project until further orders.
- F. No order as to costs.

**Manoj Saunik**  
**Chairperson, MahaRERA**