

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY, MUMBAI

Complaint No. CC006000000110661

1) Arunesh Bhagwan Prasad Chopra

2) Riddhima Chanda

... Complainant/s

Versus

Tata Housing Development Company Ltd

... Respondent/s

MahaRERA Project Registration No. P51700000308

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

Ld. Adv. Satish Dedhia appeared for the complainant/s.

Ld. Adv. Vikas Singh appeared for the respondent.

ORDER

(Friday, 06th September 2024)

(Through Video Conferencing)

1. The complainants above named have filed this online complaint before the MahaRERA on 30-08-2019 mainly seeking directions from MahaRERA to the respondent to refund the entire amount paid by them along with interest, compensation as prescribed under the provisions of section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of a flat bearing no. 173 on 17th floor in Tower - K along with one covered car parking in the respondents' registered project known as "**Amantra Phase 2**," bearing MahaRERA registration No. **P51700000308** located at Ranjnoli, Village Bhiwandi, on Mumbai Nashik Expressway, Dist- Thane (hereinafter referred to as the "said flat").

2. This complaint was heard by the Ld. Erstwhile Member-1/MahaRERA and after hearing the submissions made by both the parties, the present complaint was transferred to Ld. Adjudicating Officer/MahaRERA, Mumbai for taking appropriate decision in this complaint vide an interim order dated 7-02-2020, since the complainants are seeking refund along with interest and compensation under section 18 of the RERA.

3. Accordingly, the Ld. Adjudicating Officer/MahaRERA heard the submissions made by both the parties and passed an order on 23-01-2021. The said order reads as under:-

"1) Respondent to pay Rs.16,18,022/- to the complainants together with interest @10.40 p.a. from the date of payments till final realization as the loss suffered u/s 71(3) and 72(b) and (c) of RERA.

2) Respondent to pay one lakh to the complainant towards loss of income and mental harassment.

3) Respondent to pay Rs.20,000/- to the complainants as costs of this complaint.

4) Respondent to pay above amounts within 30 days from the date of this Order".

4. However, being aggrieved by the aforesaid order dated 23-1-2021 passed by the Ld. Adjudicating Officer/MahaRERA Mumbai, the respondent herein had preferred an Appeal No. AT006000000053028 before the Hon'ble Maharashtra Real Estate Appellate Tribunal on 15-03-2021. In the said Appeal, after hearing the submissions made by the both the parties, the Hon'ble Appellate Tribunal was pleased to pass an order on 03-03-2022, to set aside the aforesaid order dated 23-01-2021 passed by the Ld. Adjudicating Officer/MahaRERA on the issue of jurisdiction as decided by the Hon'ble Supreme Court of India in the matter of Newtech Promoters and Developers Pvt Ltd. And it remanded the matter to MahaRERA for hearing this complaint afresh.

5. Pursuant to the aforesaid order dated 3-03-2022 passed by the Hon'ble Appellate Tribunal, this complaint was again heard by the MahaRERA on 20/02/2024 and the same was heard finally on 21/05/2024 as per the Standard Operating Procedure dated 12/06/2020 issued by the MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing. On the said dates of hearings, the parties have appeared as per their appearances recorded in the Roznamas and made their respective submissions. The MahaRERA heard the submissions of the parties as per their appearances and also perused the available record.
6. After hearing the argument of both the parties, the following Roznamas were recorded in this complaint-

i) On 20/02/2024 :

"Both the parties are present. This matter has been remanded by the Hon'ble MahaRERA Appellate Tribunal on the issue of jurisdiction vide an order dated 03-03-2022 passed in Appeal No. AT006000000053028. The respondent has filed its reply to the complaint and the complainants have filed rejoinder cum written arguments. Therefore, the respondent is granted 4 weeks' time i.e. till 19-03-2024 to file its sur-rejoinder, if any and written arguments in the complaint. Further 2 weeks' time i.e. till 02-04-2024 is granted to the complainants to file any additional submissions, if need be. The complainants have filed this complaint for refund along with interest and compensation for delay. Although there is an allotment letter 20-11-2013 admittedly, there is no date of possession mentioned in the said allotment letter. However, the complainants mention that vide an email of October 2013 the respondent has promised possession by June 2017. Further, the complainants also mentioned that the said flat was booked under 20:80 scheme and admittedly this complaint is filed after the occupancy certificate for the project was received on 12-03-2018, ostensibly because the

complainants had some disputes with the respondent and the agreement for sale could not be signed. Accordingly, this matter is adjourned to a suitable date after 02-04-2024 for final arguments by both the sides. List the matter for next hearing on 21-05-2024."

ii) On 21/05/2024 :

"Both the parties are present. The details of the complaint have already been recorded in the previous roznama. However, the respondent has not filed any written submissions or sur-rejoinder in the complaint. Therefore, the respondent may do so within a period of three weeks i.e. by 11-6-2024. The matter is reserved for orders suitably after 11-6-2024 based on the arguments in the hearing as well as the reply, rejoinder, written arguments and surrejoinder filed in the complaint."

7. Pursuant to the aforesaid directions issued by the MahaRERA, the respondent on 11/06/2024 has uploaded its written submission on record of MahaRERA. However, despite specific directions being given by the MahaRERA, the complainants have failed to upload any further submission on record of MahaRERA. Hence, the MahaRERA has perused the available record.
8. It is the case of the complainants that they booked the said flat in the respondent's registered project for a total consideration amount of Rs. 76,17,330/- (as per allotment letter). Out of the said amount, they have paid a substantial amount of Rs. 16,18,022/-. The complainants have signed the booking application form on 05/11/2013 and they have been issued an allotment letter on 20/11/2013 by the respondent. Furthermore, till date they had paid more than 10% of the total consideration amounts, however, the respondent has failed to handover the said flat and also to execute the registered agreement for sale (AFS) with them. The complainants also contended that the said flat was booked under the 20:80 scheme. However, the

respondent has not only violated the provisions of the MOFA but also the RERA by delaying the execution of the AFS. Further, the respondent has unilaterally revised the completion date of the said project without consent and failed to disclose all the pending litigations in the said project on the MahaRERA website. Hence, being aggrieved by such an actions on the part of the respondent, they sought for refund of the entire money paid by them along with interest and compensation for delayed possession.

9. The respondent has uploaded its reply on record of MahaRERA (during the earlier proceeding conducted before the Ld. Adjudicating Officer/MahaRERA) on 08/10/2020 on record of MahaRERA. In the said reply, the respondent has stated that there is no AFS signed and executed between it and the complainants. Hence the present complaint is not maintainable under section 18 of RERA. Further, it has issued several letters to the complainants intimating them to pay the necessary stamp duty and registration charges and also to execute the registered agreement to sale. However, the complainants have failed to comply with the same. Additionally, it has stated that all the relevant information is uploaded on the MahaRERA website and the completion date as per MahaRERA registration is 31/03/2018. However, the occupancy certificate was obtained by it on 12/03/2018 and the possession was also offered to the complainants on 30/03/2018. The respondent also stated that despite timely completing of the said project the complainants have failed to adhere and comply to its letters of paying the stamp duty & registration charges and also to execute the registered agreement to sale. Also, clause 14 of the said booking application form dated 05/11/2013, explicitly provides for arbitration in case of any disputes which arise between the parties. The respondent stated that the complainants were provided with the cost sheet specifying the bifurcation of the charges along with the booking application form. Hence, the respondent

has demanded the balance outstanding amounts from the complainants at the time of possession. Moreover, the respondent has also contended that the complainants vide an email dated 27/04/2019 requested for refund. However, the respondent on 15/05/2019 requested the complainants to handover the copy of cancellation letter. The respondent further contended that as per clause 6(b) of the booking application form the respondent is entitled to forfeit and deduct entire earnest money in case of cancellation of the flat. The complainants have also failed to pay the outstanding maintenance and other charges. Hence, it has stated that the complaint of the complainants be dismissed.

10. The complainants on 12/10/2020 have uploaded the copies of commencement certificate(CC), occupancy certificate, IOD plan, MPCB consent, compliance report, and project registration form along with case laws on 14/10/2020.
11. The respondent on 12/10/2020 uploaded the draft copy of agreement for sale, brochure, and copy of emails sent to the complainants.
12. The complainants on 20/10/2020 and on 21/05/2024 have uploaded their written submission along with case laws and written arguments respectively on record of MahaRERA. In the said submissions, the complainants reiterated the facts of the complaint. Additionally, they stated that the respondent was liable to comply with the terms of the allotment letter as the said flat was under 20:80 scheme. Also, the approved CC was not provided to the allottees, and disclosure of encumbrances was not uploaded by the respondent. However, the complainants stated that the CC was not obtained by the respondent but the same was obtained by M/s. Eco Homes. The respondent changed the layout and plans of the said project without the consent of the allottees.

Moreover, the application form, allotment letter has one-sided clauses and are not in accordance with the provisions of the MOFA as well as the RERA. The complainants further stated that the respondent has illegally levied / charged interest on the said flat, although the said flat was booked under 20:80 scheme. They further stated that they have handed-over advance cheque to the respondent with instructions to deposit only after execution of agreement for sale and after waiving the interest. However, the respondent delayed the execution of the AFS. Even before 17/04/2019, the complainants had informed their decision to withdraw, including by an email sent in October, 2018. But considering respondent's assurances the said option was not exercised. They also relied upon the case law decided by the Hon'ble Appellate Tribunal (in the case of Jyoti Narang Vs CCI Projects), wherein it was held that the document of transaction which is styled as "Allotment Letter" is an agreement for sale. . They further stated that imposing one side clauses is unfair as held by the Hon'ble Apex Court in the case of Ireo Grace Realtech Pvt. Ltd. vs Abhishek Khanna & others. Hence, due to the adamant response of the respondent and delay in the said project, they are seeking the reliefs as sought for in this complaint.

13. The respondent on 11/06/2024 has uploaded its written submissions on record of MahaRERA, wherein it has stated that the said flat was booked by the complainants prior to the enactment of RERA and hence the present complaint is not maintainable under RERA. The respondent has relied upon several letters sent to the complainants for execution of agreement for sale. However, the complainants failed to come forward and to make the necessary governments payments, due maintenance charges, society dues and other charges. The respondent contended that the said project is developed in a phase wise-manner and the occupancy certificate was received much prior to the proposed completion date of MahaRERA. Accordingly the demand was

made to the complainants and the possession was also offered to them. Although, there is an arbitration clause, the complainants are seeking reliefs before MahaRERA. Moreover, the respondent contended that the complainants have failed to add necessary party i.e. M/s. Eco homes Township LLP. Hence, the complainants are not entitled for refund. To support its claim, the respondent has relied upon several judgments passed by the Hon'ble Apex Court. Hence, it has prayed for dismissal of this complaint.

14. The MahaRERA has examined the rival submissions made by both the parties and also perused the available record. By filing this complaint, the complainants claiming to be the allottees of this captioned project, have approached the MahaRERA mainly seeking reliefs under section 18 of the RERA. The complainants have agitated their claim by virtue of allotment letter dated 20-11-2013 issued by the respondent promoter for the said booking.
15. The complainants have mainly contended that although they have booked the said flat under 20:80 scheme the respondent has asked for further payments from them. Also, though they have paid more than 10% of the total consideration amount (i.e. Rs. 16,78,022/- , out of the total consideration amount of Rs. 76,17,330/-), the respondent has failed to execute the registered agreement for sale with them as per the provisions of MOFA as well as RERA. Further, although no specific date of possession is mentioned in the said allotment letter, the respondent through an email sent to them in October, 2013 has agreed to handover possession of the said flat to them on or before June, 2017. However, it has failed to handover the possession of the said flat to them. The complainants also raised objections with regard to the various clauses mentioned in the booking application form dated 5-11-2013 as well as the allotment letter dated 20-11-2013 contending that the same are one sided. Hence, they had decided to withdraw from the project and to seek refund of

the entire money paid by them along with interest and compensation.

16. The respondent promoter on the other hand has assailed the aforesaid claim agitated by the complainants mainly raising an issue of maintainability of this complaint on two grounds viz i) the said booking application form/ allotment letter provides for arbitration in case of any dispute between the parties and without opting for the arbitration, the complainants have filed this complaint seeking reliefs under the provisions of the RERA, which is not maintainable and ii) the date of completion mentioned on the MahaRERA website is 31-03-2018 and it has completed this project before the said date and obtained OC for this project on 12-03-2018 and the possession of the said flat was also offered to the complainants on 30-03-2018. However, the complainants have neither paid the outstanding dues payable by them nor have obtained possession offered to them. Hence, the present complaint filed under section 18 of the RERA is not maintainable and the same is liable to be dismissed with costs.
17. In the present case, as far as the issue of maintainability of this complaint raised by the respondent, the MahaRERA is of the view that the same has no legal substance, since this complaint is remanded by the Hon'ble Appellate Tribunal. Hence, the MahaRERA needs to decide the same on its own merits.
18. As far as the substantive issue of refund along with interest and compensation sought by the complainants, the MahaRERA has noticed that admittedly, there is an allotment letter duly issued in favour of these complainant on 20-11-2013. Admittedly, no specific date of possession is mentioned in the said allotment letter. However, the complainants have alleged that as per the email sent by the respondent, it has agreed to handover possession of the said flat to them on or before June 2017.

19. In this regard, it is necessary to peruse the provision of section 18 of the RERA, which reads as under:

“18 (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, – (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”

20. Likewise, in the present case, alleging that the respondent has failed to handover possession of the flat to them on the agreed date of possession i.e. June, 2017, the complainants have filed this complaint seeking interest and compensation under section 18 of the RERA.

21. However, in the present case, presuming that the date of possession in this case is June, 2017 (as per the complainants), however, the respondent in this case has completed its statutory liability and has obtained OC for the said flat booked by the complainants on 12-03-2018 and it has also offered possession of the said flat to the complainants on 30-03-2018. However, the complainants, after the OC for this project was obtained and also after the

possession was offered to them on 30-03-2018, have filed this complaint seeking reliefs under section 18 of the RERA only on 30-08-2019.


22. It is seen that on the date of filing of this complaint on 30-08-2019, the complainants' flat was complete with occupancy certificate and the possession was also offered to the complainants. The complainants have filed this complaint seeking refund along with interest and compensation for the delayed possession of the said flat only on 30-08-2019, which is after the completion of the project and after the possession of the said flat was offered to them.
23. In this regard, the MahaRERA is of the view that to ascertain violation of section 18 of the RERA, there are mainly two criteria which are necessary to be examined viz. i) whether the promoter has failed to complete the said project or is unable to give possession of the flat in accordance with the terms and conditions of the agreement for sale and ii) by the date specified in the said agreement. Hence, the cause of action as enumerated under section 18 of the RERA was not surviving on the date of filing of this complaint. It shows that the complainants have failed to prove violation of section 18 of RERA by the respondent-promoter on the date of filing of this complaint and hence, the question of refund along with interest and compensation for the delayed possession does not arise and the same is an afterthought. Hence, the MahaRERA is not inclined to consider the claim of the complainants for refund along with interest and compensation on account of delay for violation of section 18 of the RERA.
24. However, in the present case on bare perusal of the allotment letter dated 20-11-2013, it appears that the said booking was done under the 20:80 scheme. Meaning thereby, 20% of the total consideration amount was payable by the

complainants within a period of 45 days from the said booking and the remaining 80% amount was payable one month before the possession of the said flat. Further, although there is booking application form signed by and between both the parties, however, the same got superseded by the allotment letter issued by the respondent on 20-11-2013. Meaning thereby that the said allotment letter dated 20-11-2013 supersedes the earlier booking application form signed by the complainants on 5-11-2013. Hence, the respondent cannot seek cancellation of the said booking by citing the clause of the said booking application form (clause 6 (b)). However, on bare perusal of the said allotment letter dated 20-11-2013, it appears that no cancellation policy is stipulated therein.

25. 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 is issued recently (in the year 2022), however, earlier there was no prescribed format of allotment letter issued by the MahaRERA (even in this case no specific cancellation policy is stipulated in the allotment letter).
26. 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. Further, the action on the part of the respondent of forfeiture of the entire earnest money paid by the complainants i.e. Rs. 16,18,022/- or forfeiture of 10.5 % of the total consideration amount of the said flat (whichever is higher) as per the booking application form dated 5-11-2013, is not in consonance with the said circular dated 12-08-2022 issued by MahaRERA. Further, as per the webpage information uploaded by the respondent on the MahaRERA website, the respondent has not uploaded any

deviation report to the said Order No. 35 dated 12-08-2022 issued by the MahaRERA.

27. 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.
28. In view of these facts, the following order is passed:
- a) The complaint is partly allowed.
 - b) The claim of interest sought by the complainant along with the entire refund amount stands rejected in view of the observations made in aforesaid para nos. 21,22 and 23.
 - c) The respondent is directed to refund the money paid by the complainants towards the consideration of the said flat 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.
29. With these directions, the present complaint stands disposed of.


(Mahesh Pathak)

Member - 1/MahaRERA