

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

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

COMPLAINT NO. CC00600000396770

ASSOCIATION OF FLAT UNITS PURCHASER

...COMPLAINANT

VS

M/S COMMERCIAL DEVELOPERS -

A Partnership firm through its partners:

1. TAHER KAMRUDDIN KANORWALA.
2. AAMIR KAMRUDDIN KANORWALA.
3. MOHAMMED KAMRUDDIN KANORWALA.
4. MOHAMMED KAMRUDDIN KANOREWALA.

...RESPONDENT/S

MAHARERA PROJECT REGISTRATION NO. P51900011926

Order

July 2, 2024

(Date of hearing -28.03.2024 matter was reserved for order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA

Advocate Nikita Jacob for the Complainant

Advocate Avinash Pawar present for the Respondent

1. The Complainants are flat purchasers and an 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**") The Respondent is the Promoter within the meaning of Section 2 (zk) who has registered the Project namely "**CHANDRA DARSHAN HEIGHTS**" under section 5 of the said Act bearing **MAHARERA Project Registration No. P51900011926** (hereinafter referred to as the "**said Project**").
2. On the MahaRERA Project registration webpage the proposed date of completion is mentioned as 31.12.2019 and the revised date of completion is

mentioned as 30.12.2023. The Project has received a Part Occupation Certificate (“OC”) dated 30.07.2020 issued by Slum Rehabilitation Authority bearing number SRA/ENG/2860/E/PL/AP.

3. The Complainants are seeking the following reliefs:

*(a) that this Hon’ble Authority be please to pass the necessary order/ directions and **restrain the Respondent**, or his agent, partners, officers, relatives, employees, or any person /s claiming through or under them, **from carrying out any further construction on Wing ‘C’ and revoke / cancel the amended plan dated 2020**, amended by the Respondent without consent and direct the Respondent to forthwith stay further construction of Wing ‘C’ on the said property.*

*(b) that this Hon’ble Authority be please to pass the necessary order/ directions and direct the Respondent, or his agent, partners, officers, relatives, employees, or any person /s claiming through or under them, **to not to create further third party rights/ interest** of any nature whatsoever in respect of any Unit / flat in the Wing C to be constructed on said property and disclose the details and particulars of any allotment if any made by the Respondent for the same as on date.*

*(c) that this Hon’ble Authority be please to pass the necessary order/ directions and direct the Respondent, or his agent, partners, officers, relatives, employees, or any person /s claiming through or under them, **to forthwith form and register a Society of allottees** of said project including the Complainant herein as per Rule 9(1)(i) of said Act.*

*(d) that this Hon’ble Authority be please to pass the necessary order/ directions and direct the Respondent, or his agent, partners, officers, relatives, employees, or any person /s claiming through or under them, **to forthwith execute the Deed of Conveyance** in respect of the said property on which the said project is constructed in favor of Society / association of allottee to be formed, including the Complainant herein.”*

4. The complaint was heard on 28.03.2024 wherein the following roznama was recorded by this Authority:

“1. The Respondent avers that in 2020, the OC was received for the building which is now the issue at hand. They got CC in 2020 itself for the new building that is being opposed by the Complainant. The Complaint was filed in July 2023, when 70 % of the work of the ‘C’ wing was almost complete. The Complainant avers that Agreements were signed in 2013/2014 wherein under various clauses the Complainants have given consents for change in plans and amendments of the proposed plans. In 2020, when the possession was been given even at that point of time the Complainant consented to any changes that may take place. The Respondent further avers that they handed over all the forms to the Residents for the formation of the co-operative society, however the Residents are yet to fill up the form and make the necessary compliances to enable him to form the co-operative society. As far as the conveyance is concerned the Respondent avers that since this is an SRA project this would be done once all the three buildings come up.

2. The Complainant avers that general consent given by the Allotees cannot be construed as taking away the remedies available under the law. The law clearly under Section 14

provides that any amendments or changes in plan would have to be done with the consent of the Allottees. In this case the Respondent has violated the same and gone ahead with the construction which should be now stopped.

3. The Complainant further avers that in view of the orders of the Hon'ble Supreme court because of the covid conditions the limitation would not apply in this case.

4. Further the Complainant avers that there are two RERA certificates on the same project. The SRA/ LOI Clearly mentions the stage at which the conveyance should be done. That stage has been achieved once the two building has been constructed and accordingly the conveyance is now required to be done. Further we also find the RG area has been reduced and so also the parking area are lesser than what was approved. The Complainant seeks that the construction of the 'C 'wing be stopped forthwith for with in view of the consents not having been taken. Complainant avers that the forms for formation of society was given only 10 days prior to this hearing.

5. The Respondent avers that residents are already parking on the area provided for the same and the handing over of that can be done only once a society is formed. The Residents by not complying with the requirements have delayed the formation of a society. The Respondent mentions the new building has 18 PAP units and a number of sale units out of which in 5 to 6 third party rights have already been created.

6. Parties are at liberty to file written submissions if any on or before the 15.04.2024, subsequent to which the matter will be reserved for order."

5. The brief facts & submissions of the Complainants are as follows:
 - A. The complaint was filed on 28.07.2023.
 - B. The Complainants (flat purchasers) vide an agreement for sale purchased flats in Wing A of the said Project.
 - C. That the Respondent has handed over the possession of the said flats as per the terms and conditions mentioned in the said agreement.
 - D. The Respondent has not executed the conveyance deed in favour of the society and amendment of plans is being carried out without the consent of the allottees thereby violating the provision of the said act.
 - E. That a legal notice dated 18.02.2023 was issued by the Complainants to the Respondent to in order to comply with the demands of the Complainant which he failed to do so.
 - F. The Respondent without the consent of the Complainants demolished a part of first floor of A Wing in order to gain access to the undergoing construction of Wing C.
 - G. That the Respondent has carried out various alteration in the sanction plans by reducing the parking space allotted, reduction in the recreation

area and shifting of the car machine room and the same is being carried about without the consent of the allottees thereby violating the provision of the said act.

- H. That despite of receiving part OC for the said flat the Respondent has failed to execute conveyance in favour of the Complainants and did not provide car parking.
 - I. That as per clause 24 of the Letter of Intent (LOI) the Respondent was to execute the conveyance before obtaining OC which he failed to do so.
 - J. That the Respondent has issued two RERA certificates dated 01.09.2017 and 09.09.2021 for the same Project. However, both the certificates have expired and at different points. The Respondent in a way is escaping from the mandatory rule of the 51% of the consent of allottees required under the said project.
 - K. The Complainants in the captioned complaint is seeking stay on the Construction of the Wing C and revocation of the amended plans execution and directives for executing conveyance deed and registration of cooperative society.
6. The submission of the Respondent are as follows:
- A. That building in dispute is different from the building newly constructed building named "CHANDRA DARSHAN HEIGHTS" which consist of units and are to be handed over to the government authority.
 - B. The new project has received OC and CC and OC is received for the building in dispute. The Complainants were previously informed about the changes in the sanctioned plan to which they gave their consents.
 - C. The conveyance deed will be executed after the construction of all the 3 buildings considering this is an SRA project.
 - D. The Complainants are not complying with the compliances laid down by the Respondent which led to delay in execution of the conveyance deed. That the Complainants are currently using the parking space and their contention of not providing parking space is false.

- E. The Respondent seeks the dismissal of the complaint.
7. From the facts and submissions of the Parties the issue that needs to be examined is *Whether the complaint is entitled to seek reliefs under the said Act?*
8. In order to determine the issue at para-No.7, following observations are noteworthy:
- A. That the Respondent has single project registration certificate with respect to the said Project.
- B. The said project has received Part OC and the Allottees in the Complainant Association have received possession of their respective flats.
9. In order to examine and adjudicate upon the reliefs being sought by the Complainant and the performance of the Promoter with respect to obligations cast upon him under the Act it would be imperative to refer to Section 11 of the said Act namely the functions and duties of the Promoter which is reproduced herein below for ease of reference:

“Section 11 - Functions and duties of Promoter: (1) *The promoter shall, upon receiving his Login Id and password under clause (a) of subsection (1) or under subsection (2) of section 5, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project as provided under sub section (2) of section 4, in all the fields as provided, for public viewing, including –*

- (a) details of the registration granted by the Authority;*
- (b) quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;*
- (c) quarterly up-to-date the list of number of garages booked;*
- (d) quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate;*
- (e) quarterly up-to-date status of the project; and*
- (f) such other information and documents as may be specified by the regulations made by the Authority*

(2) The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto.

(3) The promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely:– (a) sanctioned plans, layout plans, along with specifications, approved by the competent

authority, by display at the site or such other place as may be specified by the regulations made by the Authority; (b) the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.

(4) The promoter shall –

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;

(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;

(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable: Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project): Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or

person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;

(5) The promoter may cancel the allotment only in terms of the agreement for sale: Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.

(6) The promoter shall prepare and maintain all such other details as may be specified, from time to time, by regulations made by the Authority.

Section 17 - Transfer of title.

*(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto **within specified period as per sanctioned plans as provided under the local laws:***

*Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter **within three months from date of issue of occupancy certificate.***

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.

10. The Complainant has approached the Authority with the grievance for direction to Respondent to form cooperative society and execute conveyance deed with respect to the said project along with other reliefs seeking restraint, revocation and stay orders pertaining to C wing of the said Project, for which, the complainants have given their consent qua their individual agreements for sale and also have failed to state in their complaint and to satisfy this Authority as to which provisions of the said Act gives right to the Complainants to claim

such reliefs. Thus, after perusal of Section 11 and Section 17 of the said Act it is crystal clear that the Respondent is obligated to enable the formation of the cooperative society and to execute conveyance deed with the allottees with respect to the A – Wing of the said Project. **Thus, the issue framed at para No. 8 is answered in affirmative** with respect to the reliefs prayed for enabling formation of cooperative society and executing conveyance deed.

11. Lastly, all other reliefs claimed by all the Complainants save and except the reliefs sought under section 11 and 17 are rejected, as the Complainants have failed to state in their complaint and has also failed to satisfy this Authority as to which provisions of the said Act gives right to the Complainants to claim such reliefs.

FINAL ORDER

12. Therefore, after considering the aforementioned observations and provisions of the Act, the materials placed on record, the facts of the case and submissions made by the Parties, the Authority passes the following order:
 - A. The captioned complaint is **partly allowed**.
 - B. The Authority hereby directs the Respondent to enable formation of cooperative society within 3 months from the date of this order and subsequently execute a conveyance deed pertaining to the A – wing of the said project within 3 months from the date of registration of co-operative society.
 - C. Further, both the Parties shall co-operate with each other in formation and registration of co-operative society and transfer of title to the registered society vide a conveyance deed.

(Ajoy Mehta)
Chairperson, MahaRERA