

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

1. Complaint No. CC001000000020240

Dr Sarita & Dr Yashwant Patil

... Complainants

Versus

Mr. Naredra Ziprulal Kabra (Vasukamal Infrabuilders) ... Respondent

2. Complaint No. CC001000000020264

Sita Damu Chitte

... Complainant

Versus

Narendra Ziprulal Kabra

... Respondent

3. Complaint No. CC001000000030274

Monali Rambhau Soor

... Complainant

Versus

Narendra Ziprulal Kabra

... Respondent

4. Complaint No. CC001000000050289

Samadhan Madhukar Patil

... Complainant

Versus

Narendra Ziprulal Kabra

... Respondent

MahaRERA Project Registration No. P49900018352

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

CA Nachiket Jakhetiya appeared for the complainants.

CMA Ashok Nawal a/w. Ld. Adv. Nidhi Nawal appeared for the respondent.

ORDER

(Friday, 17th November 2023)

(Through Video Conferencing)

1. The complainants above named have filed these 4 separate online complaints before the MahaRERA on 02-03-2022, 03-06-2022, 20-07-2022 and 06-11-2022 respectively mainly seeking compensation for incomplete amenities particularly the Community Hall and Gym as prescribed under provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of their respective flats in the respondent's registered project known as "Vasuakamal Vihar" bearing MahaRERA registration no. **P49900018352** located at Nashik, Taluka- Jalgaon, Dist. Jalgaon.
2. These complaints were clubbed together and heard by the MahaRERA on several occasions and same were heard finally on 26-07-2023 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 were also informed to file their written arguments, reply and rejoinder, if any. Accordingly, both parties appeared and made their respective submissions. The MahaRERA heard the arguments of both parties and also pursued the available records.
3. After hearing the arguments of both the parties the following Roznama was recorded in these complaints -

"The complainants are present (except the complainants at Sr. No. 1 - CC001000000020203, 3 - CC001000000020228 and 4 - CC001000000020230). The respondent JSN Properties LLP is present. The present complaints have been filed for compensation for incomplete amenities particularly community hall and gym. Admittedly, the project is complete as the occupancy certificate and Form 4 have been uploaded on the MahaRERA website and the conveyance is also done in November 2020 and the deed of declaration under the Maharashtra Apartment Ownership Act is

registered in November 2018. However, the complainants after obtaining the possession have raised the issue of incomplete amenities to which the MahaRERA has pointed out that ideally such group issues are to be raised by the association of the allottees/society formed in the project. Moreover, admittedly, the said amenities are not mentioned in the agreement for sale. The respondent has pointed out the difficulties in completing the amenities. The respondent has contended that they were able and willing to provide the said amenities, however, there was no consensus amongst the allottees whether the amenities should be on the terrace or on the ground floor of the said building and the provisions for the said amenities on the terrace was finally removed. However, no new construction for the same has been done. The respondents are directed to file a reply to these complaints along with their written arguments within a period of one week i.e. by 02-08-2023. The complainants may file their rejoinder along with their written arguments within a further period of one week ie. by 09-08-2023. Accordingly, these matters are reserved for orders suitably after 09-08-2023 based on the arguments of both the sides as well as reply, rejoinder and written arguments filed in these complaints. “

4. However, despite the specific directions being issued in the hearing held on 26-07-2023, the complainants have not uploaded any document/s on record of MahaRERA. Hence, the MahaRERA has perused the available record.
5. The complainants by filing these 4 separate complaints are seeking compensation for incomplete amenities, particularly the Community Hall and Gym. The details of flat/s booked, agreement/s for sale, possession date, total consideration and consideration paid provided by them in their online complaints are as per the table given below.

Sr. No.	Flat	Date of	Conveyance	Total	Relief
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Complaint No. Name of the Complainants	No.	Agreement for sale	Deed	Consideratio n	
CC001000000020240 Dr Sarita & Dr Yashwant Patil	502, B wing	01-09-2020	19-10-2020	Rs.20,00,000/-	Compensati on for incomplete amenities particularly the community hall and gym
CC001000000020264 Sita Damu Chitte	107, B wing	23-12-2019	19-10-2020	Rs.30,00,000/-	
CC001000000030274 Monali Rambhau Soor	203, B wing	14-05-2019	27-11-2020	Rs.39,00,000/-	
CC001000000050289 Samadhan Madhukar Patil	408, A wing	19-10-2019	02-11-2020	Rs.24,75,000/-	

6. It is the case of the complainants that they have purchased their respective flats in the respondent's registered project by executing registered agreements for sale as mentioned in para no. 5. At the time of booking, they were asked to pay the amount in the name of Mr. Lav Kabra as he was taking care of the whole matter on behalf of the respondent and landowners. Further, despite payment of more than 10% of the total consideration, the respondent did not issue any allotment letters to them. Despite that they have made timely payments as and when demanded by the respondent. After, booking their flats, the sanctioned plan was amended by the respondent without obtaining the consent of the allottees (including complainants). Further, the respondent has not audited nor it has uploaded Form 5 and Form 2A as prescribed by MahaRERA. As the respondent has constructed 30 covered parking in the said project, wherein 48 owners have obtained the parking, but according to the plan of Jalgaon Municipal Corporation dated 04-04-2019, there are 16 car parking, 21 scooters, and 27 cycle parking. Also there are various amenities such as a basketball court, jogging track, children's garden, community hall, gymnasium, designer

lobby, inventor back up in common areas, polished kota stone in the staircase, sitting area in the common area, common toilet, waiting room for visitors, security cabin of watchman, washing area for vehicles, separate toilet & changing room for helpers and drivers etc. are not provided by the respondent promoter, although the amenities such as Gymnasium and Community Hall are mentioned on the MahaRERA website. However, till date, the respondent has not completed the said amenities. Further, there was no project registration number mentioned in the allotment letter or vehicle allotment letter, not only that, but there are structural defects in their flats, there is issue with respect to the lift (as there is leakage in lift), structure of the building being not constructed as per sanctioned plan, even the carpet area provided in their flats are not given as per sale deed, no formation of association/ co-operative housing society. Also, the respondent has failed to pay the MSEB bills till date of possession due to which the complainants suffered from disconnection of power supply. The respondent did not provide any challans such as GST paid or MSEB demand notes, nor did it provide any municipal drawings, working drawings, plumbing, and electrical maps. Further, the agreement for sale and conveyance deed are not identical since, the respondent has mentioned certain conditions in the conveyance deed such as "allottees can't complain to any of the authorities against the promoter" etc. Further, instead of solving the issues raised by the complainants the respondents filed civil as well as criminal complaints against the allottees (including complainants). Further, the Jalgaon Municipal Corporation has sent a show cause notice to the respondent for inspection, but the respondent denied all the responsibility. Further, the respondent has taken disbursement without obtaining requisite consent from allottees (including complainants). The remaining tax shall be paid by the respondent because the conveyance deed was executed on 19-10-2020 and the corporation taxes are pending till 31-03-2020. Hence, being aggrieved by the

said action on the part of the respondent, they have filed this complaint for seeking compensation for incomplete amenities particularly the community hall and gym.

7. The respondent viz Mr. Narendra Kabra who is proprietor of Vasukamal Infra has registered this project with the MahaRERA. The respondent through his representative viz Mr. Ashok Kabra has filed his reply stating that the respondent viz Shri Narendra Ziprual Kabra, Proprietor of Vasukamal Infra Builders passed away on 12-03-2023.
8. The respondent has also uploaded his written submission cum reply dated 02-08-2023 on record of MahaRERA refuting the contentions of the complainants. He has stated that the succession certificate is applied before Hon'ble Civil Court Jalgaon which is pending. The occupation certificate in respect of said flats have been obtained on 26-08-2020 and accordingly the possession of the said flats are also handed over to these complainants by executing the Sale Deeds on various dates as mentioned in the aforesaid table at para-no.5. He has further stated that the complainants have executed the said sale deeds after due verification and inspection of their flats on 19-10-2020. Also, they have signed the feedback form and possession handover letter on 6-10-2020, 4-12-2020, 27-11-2020 and on 7-11- 2020 respectively.
9. He has further stated that by way of goodwill gesture, a conveyance deed was executed on various dates (as mentioned in the aforesaid table at para no. 5) on the request of the allottees whereby it applied for the commencement certificate for construction of Gymnasium and Community Hall on the Terrace Floor on 9-04-2021 which was sanctioned by the Jalgaon Municipal Corporation. The Apartment Condominium was formed before the request of Gymnasium and Community Hall which was accepted by the respondent. Thus, after handing

over the Gymnasium and Community Hall on terrace, it amended the deed of Apartment Condominium to the extent of adding Gymnasium and Community Hall on terrace on 7-05-2021 which was not mentioned in the agreement for sale nor in Sale Deed. The respondent agreed to construct the same at his own cost in the common interest of all the allottees through Apartment Condominium. Thereafter, the complainants approached the respondent to demolish the same and re-construct it on the ground floor in exchange of the two flats on the ground floor to the terrace. Thus, the respondent again applied for the requisite permissions from the competent authority for which MOU has been sent on 10-08- 2021 and the same have been demolished. The respondent further contended that the complainants have taken illegal possession of 2 flats owned by him during the process of demolition , due to which he has filed a civil suit and criminal complaint before the Jalgaon Court. In support of his case, he has relied on the judgements namely Rahul Kshisagar & others Vs. Akruti Jay Developers, Amita Soni Versus Ekta Parksville Homes Pvt Ltd, Anita Castellino Versus Godrej Landmark Redevelopers Pvt. Ltd, Babita Jain & Dinesh Jain Vs. Universal Builders & Developers & Others, Achal Tiwari Versus Bellissimo Hi Rise Builders Pvt Ltd (Lodha Developers Pvt Ltd, Vipul N. Sanghvi Versus Aaditya Realtors. Therefore, the respondent has prayed to dismiss these complainants and also to direct the complainants to vacate the illegal possession of his flats on the ground floor.

10. The MahaRERA has examined the rival submissions made by both the parties and also perused the available record. In the present case, the complainants who are the allottees have approached the MahaRERA mainly seeking compensation from the respondent for incomplete amenities.
11. However, before going into the merits of this complaints, on bare perusal of the webpage information uploaded by the respondent on MahaRERA website, it

appears that the respondent has obtained the OC for this project on 31-12-2019, 26-08-2020 and 19-04-2021 and the Form -4 Architect Certificate has also been uploaded on the MahaRERA website on 2-10-2020. Also, the Deed of Declaration dated 6-11-2018 read with rectification deeds dated 16-04-2019 and 7-05-2021 have also been executed under the provisions of Maharashtra Apartment Ownership Act, 1970.

12. However, the complainants after obtaining the possession of their respective flats have approached the MahaRERA mainly seeking agreed amenities such as Community Hall and Gym. Admittedly, the said amenities fall within the definition of the "Common Areas" as defined under section 2(n) of the RERA.
13. In this regard it is necessary to peruse relevant provisions of section 11(4)(a) of the RERA , which reads as under:

"11(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".

Further the provisions of section 19(3) of the RERA provides as under:

"19(3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (I) of sub-section (2) of section 4."

14. The aforesaid explicit provisions of the RERA clearly provide that the allottees are entitled to seek amenities as agreed in the agreements for sale and the

association /society of the allottees is entitled to seek common areas as defined hereinabove.

15. However, in the present case, the complainant-allottees by filing these complaints, have raised issues common issues in the complaints filed in their individual . Also they seeking reliefs towards the common area (Community Hall and Gym), which they are not entitled to seek in their individual capacity. However, the society/condominium of the allottees would be entitled to claim such amenities.
16. Moreso, admittedly, the said common amenities sought by the complainants viz Community Hall and Gym are nowhere mentioned in their respective agreements for sale signed by them with the respondent. Hence, even on these grounds, the complainants cannot seek anything over and above what is stipulated in their agreements for sale.
17. However, as transpired during the hearing that the respondent has committed to provide such amenities on the terrace floor (5th floor) of the said building to which the allottees have opposed as they wanted it on the ground floor. From the submissions made by the respondent, it appears that he is ready and willing to construct the said amenities on the ground floor, however, he has stated that the allottees are not allowing him to do the same. Be that as it may, admittedly as these amenities are not part of the agreements for sale, the MahaRERA is not inclined to entertain any grievances of these complainants in this regards. It is for the both the allottees and the respondent promoter to resolve the said issue with an amicable solution.
18. In the present case, during the course of hearing the complainants have also contended that the respondent has not carried out the construction as per the

sanctioned plan by the competent authority due to which the concerned competent authority vi Jalgaon Municipal Corporation has taken suo moto action against the respondent herein. In this regard, the MahaRERA is of the view that the said issue does not fall within the purview of the MahaRERA, however it is for the concerned competent authority to look into the same under the relevant provisions of M.R. & T.P Act, 1966. Hence, the MahaRERA does not find any substance in such issue raised by the complainants.

19. As far as the other issues raised by the complainants about structural defects in their flats, the MahaRERA has noticed that although the said issue was pleaded in their complaints, during the course of hearing, the complainants have not pressed for the same. Hence, no directions is required to be issued by the MahaRERA in this regard. Needless to state here that the respondent being promoter of this project is anyhow liable to maintain the project and is liable to rectify such structural defects in the project for the period of 5 years from the date of OC as provided under section 14(3) of the RERA.
20. In view of these facts, the MahaRERA does not find any merits in these complaints. Consequently, all 4 complaints stand dismissed for want of merits.


(Mahesh Pathak)

Member - 1/MahaRERA