

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

1. Complaint No. **CC004000000020136**

Mrs Shital Atul Shrungarpawar ..Complainant

2. Complaint No. **CC004000000030135**

Prashant Keshao Khadatkhar ..Complainant

3. Complaint No. **CC004000000030137**

Rajesh Ramniwas Kaushik ..Complainant

4. Complaint No. **CC004000000030138**

Pravin Kewalprasad Shrivastava ..Complainant

5. Complaint No. **CC004000000030139**

Tukaram Gopalrao Dhakate ..Complainant

6. Complaint No. **CC004000000030140**

Sanjay Tukaram Khobragade ..Complainant

7. Complaint No. **CC004000000030141**

Sanjay Rambharosh Rathod ..Complainant

8. Complaint No. **CC004000000030142**

Mrs Monika Deepak Babhulgaonkar ..Complainant

9. Complaint No. **CC004000000030143**

Mrs Saroj Dharmopal Khandekar ..Complainant

10. Complaint No. **CC004000000030144**

Vishal Bandopant Gharote ..Complainant

11. Complaint No. **CC004000000030145**

Siddharth Sukhdeo Meshram ..Complainant

12. Complaint No. **CC004000000030146**

Tapas Banerjee ..Complainant

13. Complaint No. **CC004000000030147**

Sudhakar Arjunrao Gonnade ..Complainant

14. Complaint No. **CC004000000030148**

Praful Ghanshyam Sonkusare ..Complainant

15. Complaint No. **CC004000000030149**

Mayankkumar M Jain ..Complainant

16. Complaint No. **CC004000000030150**

Anurag Jageshwar Pardhi ..Complainant

17. Complaint No. **CC004000000030151**

Atul Laxmanrao Kadam ..Complainant

18. Complaint No. **CC004000000030152**

Shriram Pandurang Kadoo ..Complainant

19. Complaint No. **CC004000000030153**

Ravindra Deoraoji Thune ..Complainant

20. Complaint No. **CC004000000030154**

Mrs Dipika Bikash Chowdhury ..Complainant

21. Complaint No. **CC004000000030160**

Mrs Krishna Pradeep Meshram ..Complainant

22. Complaint No. **CC004000000030161**

Shashank Sudhir Dixit ..Complainant

Versus

Mr. Kishor Govindrao Kanhere ..Respondent

MahaRERA Project Registration No. P50500003259

Coram: Dr. Vijay Satbir Singh, Hon'ble Member – I/MahaRERA

Ld. Adv. Nikhil Lad appeared for all 22 complainants.

Ld. Adv. Sanjay Chaturvedi appeared for the respondent.

ORDER

(25th May, 2021)

(Through Video Conferencing)

1. The complainants abovenamed have filed these 22 separate complaints seeking direction from MahaRERA to the respondent to complete the balance pending work in this project and handover all agreed amenities, interest for the delayed possession under the provisions of section 18 (3) 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 **"K-Square Apartments"** bearing MahaRERA registration No. **P50500003259** at Nagpur.
2. These complaints were transferred to this bench on 30/04/2021 by the Hon'ble Member-2, MahaRERA. Accordingly, the same were scheduled for hearing today as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions, if any. Accordingly, both the parties appeared for the hearing and made their submissions. MahaRERA heard the arguments of the respondent also perused the available record.
3. It is the case of the complainants that they have purchased their respective flats in the respondent's project by executing the

registered agreements for sale. The said bookings were done on the basis of brochure published by the respondent showing certain amenities such as covered car parking, garden, children play area etc. Accordingly, they have made payments to the respondent by executing the registered agreements for sale. The respondent has taken more money from what is agreed upon in the agreements for sale for such agreed amenities. However, he has failed to provide the same along with their flats though the possession of their flats have been handed over to them in the year 2018 itself by obtaining the occupancy certificate on 18-06-2018. The complainants mainly stated that the respondent has not handed over the open space admeasuring 6000 sq.ft for the common areas though it is mentioned in the sanctioned plan. They have uploaded the same on record of MahaRERA in support of their claim. The complainants further raised the issue of corpus fund and stated that the respondent has accepted one time maintenance towards the corpus fund, however he has not provided the corpus fund along with audited statement. Further the respondent has provided limited parking space to them, though he has agreed to provide covered car parking /stilt car parking spaces to them in the agreements for sale. Hence they prayed to allow these complaints.

4. The respondent on the other hand has refuted the claim of the complainants by filing written reply on record of MahaRERA along with supportive documents such as copies of agreements for sale etc. He has mainly stated that the provision of section 14 of the RERA provides for amenities. In these complaints the complainants are mainly seeking two amenities such as covered

car parking and 6000 sq.ft open space. With regard to the issue of car parking he has stated that only 3 allottees have been provided covered car parking spaces as per the agreements for sale and open car parking areas being common area has to be provided to the society being common areas. As far as the issue of open space of 6000 sq.ft, the respondent has stated that nowhere in the agreements for sale executed with these complainants, he is liable to provide any open space of 6000 sq.ft. Further as per clause no. 17 of the agreements for sale, all earlier brochures / promises stand superseded. Further the agreements for sale do not mention about any amenities as sought by the complainants and hence he is not liable to provide the same to the complainants.



5. In addition to this, the respondent further stated that the common areas belong to the society and not to these individual allottees. He further stated that if the society is formed he is ready and willing to handover the common areas to the society. He further stated that he has obtained the registration certificate on 15-03-2020 and a copy thereof has also been uploaded on record. He further stated that though he has completed the registration formalities, the allottees have failed to provide 12 names for completion of process of society formation, despite the repeated requests and reminders sent by him. The respondent further stated that out of total 22 complaints, only 3 to 4 complainants are seeking interest for the delayed possession under section 18 of the RERA and their claims are not maintainable since he has completed the project and obtained occupancy certificate on 18-06-2018. Hence he prayed for dismissal of these complaints.

6. The MahaRERA has examined the rival submissions made by both the parties and also perused the available record. By filing these 22 separate complaints, the complainants are seeking amenities towards the common area such as car parking space/ open space admeasuring 6000sq.fts. They further claim corpus fund along with audited statement. The respondent promoter has disputed the said claim of the complainants stating that no such amenities have been mentioned in the agreements for sale signed by the complainants.
7. In this case, the MahaRERA has noticed that the present project is completed and the occupancy certificate has also been obtained on 18-06-2018. However, till date the society has not been formed. In this regard, the respondent has submitted a copy of letter dated 15-03-2020 issued by the Registrar of the Co-operative Societies. The said letter shows that the society name has been reserved. However the registration certificate is not issued finally due to some procedural compliances. In this regard, the respondent has contended that though he has asked for 12 names for completion of registration process, same have not been provided by the allottees and hence he could not complete the process of formation of society.
8. From the rival submissions made by both the parties, prima facie it appears that there is a dispute between the allottees and the respondent promoter, due to which the process of formation of society has not yet been completed. Hence, while hearing these complaints, the Hon'ble Member-2 /MahaRERA was pleased to

pass a common interim order in all these 22 complaints on 25-01-2021. By the said order, he has issued direction under section 19(9) of the RERA, that the respondent shall convene the meeting of all allottees for formation of society and for taking appropriate decision in the matter. He further directed allottees to participate in the process of formation of society registration process and further directed to complete the process of formation of society by end of March, 2021. However, it appears that due to the dispute between the allottees and the respondent, the said interim order of Hon'ble Member-2 /MahaRERA has not been fully complied with. Hence the society has not yet been formed. The MahaRERA therefore is of the view that the process of the formation of society is to be completed first, since the occupancy certificate has already been issued in the year 2018 itself and the respondent promoter has to take further necessary action under section 17 of the RERA, which is not possibly implemented for want of formation of society.



9. As far as the other amenities sought by the complainants, the MahaRERA has perused the provision of section 2(n) of the RERA which defines the "common area", which in reads as under:

"2(n)(i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase; (ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings; (iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces; (iv) the

premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel; (v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy; (vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use; (vii) all community and commercial facilities as provided in the real estate project; (viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use";

10. The complainants in these complaints are mainly seeking car parking space/ open space admeasuring 6000 sq.ft., Garden, Children Play area, Senior Citizen Park & Temple on open space area, CCTV Camera connection with Video Door Phone at the main door, Amphitheatre system etc. All such amenities are covered under the definition of common area.

11. Further the provision of section 11(4)(a) of the RERA provides as under:

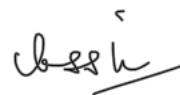
"11(4). The promoter shall -(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance 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.”

12. 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. By filing these complaints, the complainants being allottees are seeking reliefs towards the common area, which they are not entitled to seek in their individual capacity. However, the society of the allottees would be entitled to seek such amenities. As far as the covered car parking issues raised by the complainants, the MahaRERA is of the view that if it is mentioned in the registered agreement for sale, the allottees /complainants are entitled to seek the same from the respondent. Further the respondent promoter is liable to handover the common areas as per the plan sanctioned by the competent authority to the society of the allottees. This are clear provisions under the RERA.



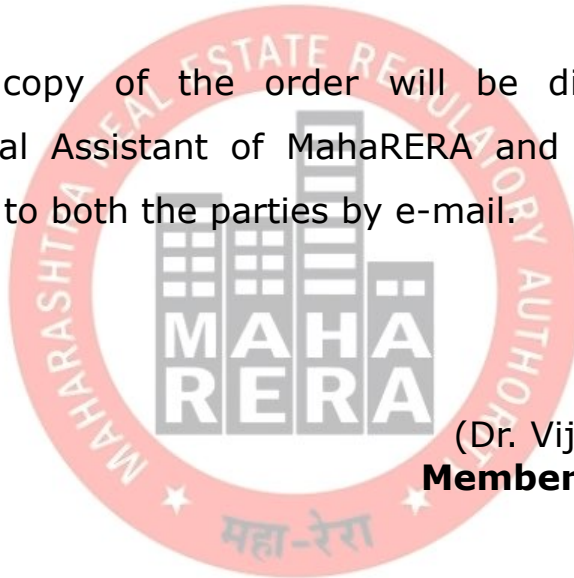
13. With regard to the other issue raised by the complainants for corpus fund to be handed over to them along with the adjudicated statement, the respondent during the course of hearing agreed to handover the same to the society, once it is formed.
14. Considering the aforesaid facts and circumstances of this case, the following order is passed.
 - a) The allottees are directed to provide names of 12 members to complete the process of society formation within a period of 15 days from the date of receipt of this order.
 - b) On receipt thereof, the respondent promoter is directed to complete the process of society formation within a period of 15 days from date of receipts of the details from the allottees.
 - c) On formation of society, the respondent is directed to handover the common area as per the sanctioned plans by the competent authority to the society, within a period of next 15 days.
 - d) The respondent is further directed to handover the corpus fund along with audited statement to the society within a period of 15 days from the date of formation of society.
 - e) The respondent is also directed to take necessary steps in compliance of provisions of section 17 of the RERA.
 - f) The respondent is also directed to adhere to the terms and condition of the agreements of sale executed with the

complainants and provide the covered car parking space if it is mentioned therein.

g) As far relief sought by few of the complainants towards interest for the delayed possession under section 18 of RERA cannot be considered by MahaRERA at this belated stage, since they have already taken possession of their flats in the year 2018 with occupancy certificate.

15. With these directions all 22 complaints stand disposed of.

16. The certified copy of the order will be digitally signed by concerned Legal Assistant of MahaRERA and it is permitted to send the same to both the parties by e-mail.



(Dr. Vijay Satbir Singh)
Member – 1/MahaRERA