BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

1. Complaint No. CC006000000100341

Anant Ashok Pandirkar .... Complainant

Versus

1. Karrm Infrastructure Private Limited
2. Karrm Infrastructure Private Limited
3. ICICI Home Finance Limited ....

Respondents

Along with

2. Complaint No. CC006000000100504

Lalu Salunan Kochery .... Complainant

Versus

Karrm Infrastructure Private Limited .... Respondent

Along with

3. Complaint No. CC006000000140994

Pratiksha Prashant Kubal .... Complainant

Versus

1. Karrm Infrastructure Private Limited
2. Karrm Infrastructure Private Limited
3. LIC Housing Finanace Ltd. .... Respondent

Along with

4. Complaint No. CC006000000198867

Rozine Rauf Raje .... Complainant

Versus

M/s. Karrm Infrastructure Pvt. Ltd. .... Respondent

MahaRERA Project Registration No. P51700008284

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

Ld. Adv. Durgeshwari More I/b. Ld. Adv. Vikrant Nimbalkar appeared for the complainants at Sr. Nos. 1 and 3.

Ld. Adv. Vinay Taliwal appeared for the complainant at Sr. No. 2.

Ld. Adv. Nathu appeared for the complainant at Sr. No. 4.

Ld. Adv. Tejas Tipre appeared for the respondent/ promoter.

ORDER

(Monday, 14th March, 2022)

(Through Video Conferencing)

1. The complainants above named have filed these 4 separate complaints seeking directions from MahaRERA to the respondents to refund the entire amount paid by them 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 their respective flats in the respondent's registered project known as **"Karrm Gardens- 1"** bearing MahaRERA registration No. **P51700008284** located at Ambarnath, Dist. Thane.

2. The complaints at serial no. 1 to 3 above have sought reliefs under section 18 of the RERA for refund along with interest and compensation. These complaints were clubbed together and heard on 01-11-2019 and thereafter vide an interim order dated 22-11-2019 these complaints were transferred to Ld. Adjudicating Officer/

MahaRERA to take appropriate decisions. Accordingly, the parties appeared before the Ld. Adjudicating Officer/MahaRERA.

3. Thereafter on 14-04-2021, these complaints were again transferred to MahaRERA by the Ld. Adjudicating Officer/MahaRERA in view of judgment passed by the Hon'ble Maharashtra Real Estate Appellate Tribunal in case of Mr. Pankaj Agarwal.

4. In the meantime, the complainant at serial no. 4 filed the complaint before MahaRERA seeking similar reliefs under section 18 of the RERA. Hence, all these 4 complaints were clubbed together and same were heard finally on 19-01-2022 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 submit their written submissions, if any. Accordingly, both the parties appeared for the hearing and made their submissions.

5. During the course of hearing the respondent promoter sought time to settle the matters amicably with the complainants. Hence, on request of the respondent two weeks' time was granted to the respondent promoter to settle the matters amicably with the complainants and to file consent terms on record of MahaRERA, failing which the final order would be passed based on the submissions made by both the parties.

6. However, despite sufficient time granted to the respondent to settle the matter amicably with the complainants, the respondent has failed to settle the matter amicably with the complainants. Hence, the MahaRERA has no other alternative but to decide these complaints on merits. MahaRERA heard the arguments of the parties and perused the available record. However, it was not possible to decide the matters expeditiously since the office work was severely impacted by Covid 19 pandemic, heavy workload of the subordinates and shortage of staff.

7. It is the case of the complainants that they have booked their flats in the respondent's project in the year 2014 by executing the registered agreements for sale. The said flats were booked under the subvention scheme provided by the respondent promoter like 20:80 and 25:75 scheme. The respondent has agreed to pay the Pre -Emi's to the financial institution. However, the respondent promoter has failed to adhere to its promise and failed to pay the Pre-Emi's to the Bank. Even, the respondent promoter has failed to hand over the possession to the complainants in accordance with the agreements for sale.

8. The complainant at serial no. 1 has stated that the respondent promoter has paid the pre-EMI's to the respondent no. 2 Bank from 2-01-2014 till 10-05-2018 and thereafter it has failed to pay the pre-EMI's to the respondent No. 2. Hence, they have approached MahaRERA seeking refund along with interest/ compensation for the delayed possession under section 18 of the RERA. The complainants

have submitted following details in their complaints in support of their claims:

Sr. No.	Name of the Complainants	Flat No./Wing Total Consideration Consideration	Date of Agreement Date of Possession	Reliefs Sought
1	Anant Ashok Pandirkar	404 Rs. 29,66,694/- Rs. 19,28,350/-	23-10-2013 31-12-2014	Refund, Interest and compensation
2	Lalu Salunan Kochery	106 Rs. 34,25,400/- Rs. 23,75,000/-	29-06-2013 31-12-2014	Refund, Interest and compensation
3	Pratiksha Prashant Kubal	502 Rs.23,85,276/- Rs.19,16,930/-	22-11-2013 31-12-2014	Refund, Interest and compensation
4	Rozine Rauf Raje	201 Rs.32,93,050/- Entire consideration	28-03-2014 Not mentioned	Refund, Interest and compensation

9. The complainants further submitted that, due to the delay in handing over the possession of the said flats by respondent, it has caused lot of mental stress and agony to the complainants. The complainants further stated that though several reminders have been sent by many of the allottees in the project, no response have been received from the respondent's and the respondent has not committed to a completion date for the full project. The complainants further stated

that they have booked the said flats under the subvention scheme, wherein the respondent had agreed to pay the pre-EMI's to the bank till the date of possession by issuing various letters. However, it has failed to make the payments. Thereafter by issuing letters, the respondent has informed them to pay the pre-EMI's to the banks, which it would reimburse and same would be adjusted against the outstanding dues at the time of the possession. Accordingly, they have paid the EMI's to the bank. The complainants have stated that though they have paid substantial amounts to the respondent, till date they have not been handed over possession of their flats. Further, due to the said delay, they were constrained to stay on rental premises for which they incurred huge amounts, which the respondent is liable to compensate. Further they have issued legal notices to the respondent through their advocate and called upon it to refund the entire amounts paid by them along with interest as well as the rent. However, the respondent has not responded to the same. Even, the revised completion date mentioned on MahaRERA website by the respondent i.e., 31-05-2019 is lapsed, still the project is incomplete.

10. Further the complainant at Sr. no. 4 has mainly contended that though the respondent has executed the registered agreement for sale with him on 28-03-2014, it has not mentioned any date of possession in the said agreement for sale. Further the project is idle and no possession has been handed over to him till date. Even the completion date is uncertain and he is paying monthly EMI's to the bank, which is huge burden on him.

11. Hence, they have filed these complaints seeking refund along interest and payment of rent under section 18 of the RERA. The complainants therefore prayed to allow their complaints.

12. In the present case, the MahaRERA has observed that the said complainants have filed these online complaints before MahaRERA on 27-08-2019, 4-09-2019, 22-09-2019 and 29-10-2021 respectively. However, till date the respondent promoter has not bothered to file its reply to these complaints, though the complaints are visible to the respondent in its project. Even after issuance of the SOP dated 12-06-2020, the respondent was liable to upload its reply in digital form in these complaints. However, till date the respondent has not complied with the said direction. Furthermore, though the specific direction was given to it to settle the matter amicably and to file consent terms on record of MahaRERA, it has not filed the same. It shows that the respondent is not willing to contest these complaints. Hence, the MahaRERA has no other alternative but to proceed with the matters ex-parte against the respondent on merits.

13. The MahaRERA has examined the arguments advanced by the complainants. The complainants being allottees of this project have filed these complaints seeking refund of the entire amounts paid by them along with interest, due to the delayed possession of their flats, under section 18 of the RERA. There are registered agreements for sale entered into between the complainants and the respondent on the dates mentioned in the table the aforesaid para-No.8. The copies

of the same have also been uploaded on record of MahaRERA by the complainants. According to clause No. 7 of the said agreements for sale, the respondent has agreed to handover possession of the said flats to the complainants as specified therein.

14. Before dealing with the facts in these complaints, it is pertinent to examine "possession" as contemplated under 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 allottees, 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."

15. From the plain reading of section 18, it is very clear that if the promoter fails to handover possession as per the terms of the agreement for sale or as the case may be, by the specified date therein, the allottee has a choice either to withdraw from the said project or to stay with the project. Further, in case the allottee chooses to be in the project and take possession, he is entitled to claim interest for the delayed period of possession on the actual amount paid by him for every month of delay. It is important to note here that the examination of the term 'possession' is in context to the agreements for sale signed by both the parties on the dates specified in para 3 mentioned hereinabove. According to clause No. 7 of the said agreements for sale, the respondent has agreed to handover possession of the said flats to the complainants at sr nos. 1 to 3 on the dates specified in para-No. 8 mentioned hereinabove. Admittedly, the possession of the said flats has not been handed over to the complainants at sr nos. 1 to 3 on the said dates of possession. Hence, the MahaRERA is of the view that the claim of the complainants towards refund along with interest has substance in law and hence the complainants are entitled to seek relief under section 18 of the RERA.

16. As far as the claim of the complainant at sr no. 4 is concerned, no date of possession is mentioned in the agreement for sale dated 28-03-2014. However, while registering this project with MahaRERA, the respondent promoter has mentioned the proposed date of completion of this project as 31-12-2014 and revised date as 31-05-2019. Hence, in absence of any agreed date of possession, the MahaRERA has to consider the proposed date of completion as date of possession in this case, which was extended till 31-05-2019. Even on that date the project was incomplete and the respondent promoter has failed to handover possession of the said flat to the said complainant on 31-05-2019. Hence, the MahaRERA prima facie is of the view that the complainant is entitled to seek reliefs of refund under section 18 of the RERA.

17. However, in this case the MahaRERA has noticed that according to the information available on MahaRERA website, the validity period of the said project has already lapsed on 30-11-2020. Further, the respondent has not uploaded the Form-4 and occupancy certificate on MahaRERA website. Therefore, prima facie, it shows that the project is still incomplete.

18. In this regard, the MahaRERA is of the view that the promoter of such project should apply to MahaRERA for extension of the project. It should also enable the formation of the association of allottees under section -11(4)(e) of the RERA by sharing the project related information with all the allottees.

19. In view of the aforesaid facts, the following order is passed:

a) The respondent promoter is directed to approach MahaRERA for extension of the project period or take any other action to revive the project giving a definite time-line for its completion within a period of one month from the date of this order. The respondent is further directed to share the information of allottees with the complainants. The association of the allottees can contemplate action under section 7 & 8 of the RERA if it so desires.

b) The respondent is also directed to refund the entire amount paid by the complainants towards the consideration of the said flat along with interest at the rate of SBI's Highest Marginal Cost Lending Rate (MCLR) plus 2% as prescribed under the provisions of section-18 of the RERA and the Rules made there under from the date of payment till the actual realisation of the said amount to the complainants.

c) However, in view of the mitigating circumstances beyond the control of the respondent promoter and also to ensure that the said project is not jeopardised due to the outflow of finances and is completed keeping in mind the interest of the other buyers of the said project at large, it is directed that the amounts of refund along with interest shall be paid to the complainants by the respondent promoter within a period of 6 months from the date of this order.

d) With regard to the payment of interest to the complainants, the MahaRERA further directs that the respondent promoter is entitled to

claim the benefit of “moratorium period” as mentioned in the Notifications /Orders nos. 13 and 14 dated 2nd April, 2020 and 18th May, 2020 issued by the MahaRERA and the Notification/Order which may be issued in this regard from time to time.

20. With the above directions, all 4 complaints stand disposed of.

21. 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