

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

Complaint No. CC006000000195986

Amjad Musa Shaikh &

Naziya Amjad Shaikh

.... Complainants

Versus

Karrm Infrastructure Pvt Ltd

.....Respondent

MahaRERA Project Registration No. P51700008284

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

The complainants appeared in person.

None appeared for the respondent.

ORDER

(Monday, 14th August, 2023)

(Through Video Conferencing)

1. The complainants above named have filed this online complaint before the MahaRERA on 17-02-2021, mainly seeking directions from MahaRERA to the respondent to refund the entire amount along with interest (as per the amended prayers) 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 the flat bearing no 105 on the 1st floor, Building no. 2, D- Wing in the respondent's registered project known as "KARRM GARDENS - 1," bearing MahaRERA registration No. **P51700008284** located at Ambarnath(M Cl), Thane (hereinafter referred to as the "said flat").

2. This complaint was heard on several occasions and the same was heard finally on 25-04-2023 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 they were also informed to file their written submissions if any. Accordingly, the complainants appeared for the hearing and made their submissions. However, despite the notice of hearing, none appeared for the respondent.

3. After hearing the arguments of the complainants, the following Roznama was recorded -

"The complainant is present. The respondent is absent. The association of allottees in the project has signed consent terms with the respondent/promoter on 3rd October 2022 which has been taken on record of MahaRERA and the complaint filed by association was disposed of accordingly. The said complaint vide no C006000000196256 was disposed of 29-11-2022 in terms of the amicable settlement. Copy of the said settlement has not been uploaded by the respondent despite directions in the previous hearings. However, the registry is directed to send the said order as well as the terms of settlement to the complainant immediately. Accordingly, the complainants may file their say on the said terms of settlement and the order of the MahaRERA within a period of 7 days i.e. by 02-05-2023 along with its written arguments. The main issue for MahaRERA is to decide whether the said terms of settlement would be applicable to this complaint and allottees as well. Therefore, it is expected that the complainants would include the same in their written arguments. The respondent is also granted one week's time i.e. till 09-05-2023 to file

reply as well as its written arguments in the complaint. This matter is reserved for orders suitably after 09-05-2023 based on the arguments of the complainants as well as the reply and written arguments of both sides.

4. Pursuant to the aforesaid direction, the complainants have uploaded their written arguments on the record of MahaRERA on 02-05-2023. The same is taken on record. However, despite the specific direction being given to the respondent, it has failed to upload any /reply documents on the record of MahaRERA. Hence, the MahaRERA has perused the available record.
5. It is the case of the complainants that they booked the said flat in the respondent's registered project for total consideration of Rs 23,61,450/- out of which they paid an amount of Rs. 18,19,879/- along with Rs. 1,80,000/- for the stamp duty and registration. The registered agreement for sale was executed between both the parties on 27-03-2017. Further as per RERA, the period allotted for the completion of the project was from 10-08-2017 to 31-05-2019. The said period expired and till date the respondent has not given possession to them. On several occasions, they visited the said project, but came to know that the project is incomplete, and the respondent needs some permission to complete further work. Further, they from time to time took the follow up for the same but on one pretext or another, the respondent just delayed to handover the possession. Hence, the complainant prayed to MahaRERA to allow this complaint and grant reliefs as sought for, in this complaint.
6. The complainants have also uploaded written arguments on the record of

MahaRERA wherein most of the submissions are mere repetition of the main complaint. They have stated that as far as the terms and condition settled between the respondent and the association of the allottees of this project in complaint no. CC006000000196256 is concerned, they do not agree with the terms and conditions of the settlement between them as there is already lot of delay from respondent's side for giving possession and now, they don't have faith on the association. As per clause 14 of the terms and conditions of respondent and association, it is clearly mentioned that associations are not responsible for any case filed by the allottee as clearly stated that: *"The Association of allottee shall not be responsible for any case filed in past and in future by any individual allottee before the Hon'ble MahaRERA or before any other forum for claiming any individual reliefs. "*

7. In the present case, the MahaRERA has observed that the complainants have filed this online complaint before MahaRERA on 17-02-2021. However, till date the respondent has not bothered to upload its reply to this complaint despite specific directions being given to it. Furthermore, , though the notices for virtual hearings on 02-08-2021, 17-01-2023 and 25-04-2023 have been duly served upon the respondent, it has failed to appear for the said hearings held before the MahaRERA. However, it appeared before the MahaRERA Conciliation Forum on 9-02-2022, 10-08-2022 and 4-10-2022. However, it seems that the respondent is not willing to further contest this complaint. Hence, the MahaRERA has no other alternative but to proceed with the matter ex-parte against the respondent on merits.

8. The MahaRERA has examined the submissions made by both the parties

and also perused the available record. The complainants in the present case being the allottees of this project have approached the MahaRERA mainly seeking relief under section 18 of the RERA towards the refund of entire amount of Rs. 18,19,879/- paid by them along with interest for the delayed possession. The complainants have also sought refund of stamp duty and registration charges of Rs. 1,80,000/-. The complainants have sought such relief mainly alleging the delay in handing over possession of the said flat to them by virtue of the registered agreement for sale dated 27-03-2017.

9. The respondent although has appeared for the hearings held before the MahaRERA Conciliation Forum on three occasions, however, it has failed to upload any reply on record of MahaRERA to this complaint. Hence, the claim agitated by the complainants in this complaint remain unchallenged.
10. In the present case, it is pertinent to note that during the course of hearing the MahaRERA has noticed that in this project, an association of allottee has already been formed in the name of "Association of Allottees Karm Garden Phase I, Ambarnath". The said association had filed a Complaint No. CC006000000196256 before the MahaRERA for handing over of this project from the respondent under sections 7 and 8 of the RERA. In the said complaint, both the association of the allottees as well as the respondent herein have settled the matter amicably and signed the consent term and the same were uploaded on record of MahaRERA on 14-10-2022. Accordingly, by an order dated 29-11-2022, the MahaRERA has disposed of the said complaint being amicably settled. In view of the said settlement arrived at between the association of the allottees and the

respondent promoter, the MahaRERA has directed the respondent to upload the copy of the said consent terms on record of MahaRERA. Even the registry was also directed to share with the complainants, the copy of the said settlement terms filed on record of MahaRERA in the aforesaid complaint filed by the association of the allottees. As per the said directions, the copy of the said settlement agreement was shared with the complainants. Accordingly, the complainants have filed their written submission on record of MahaRERA and stated that they are not agreeable to the terms and conditions settled between the association of the allottees and the respondent as the said association is not ready to take over the liability in case of any further default on the part of the respondent in completion of this project. Hence, they prayed to allow this complaint. The respondent has not submitted any cogent documentary proof on record of MahaRERA to show that these complainants are already the members of the said association.

11. Even if it is considered that the complainants are the members of the said association, the MahaRERA is of the view that the formation of the association in the project cannot preclude the complainant allottees to agitate their claim conferred on them under the RERA. This issue has been clarified by the Hon'ble Appellate Tribunal in its order dated 5-04-2022 passed in Appeal No. AT006000000042069 filed in respect of another project. In the said order the Hon'ble Appellate Tribunal has held that even if an association is formed, the individual allottee can agitate his claim separately. Hence, the MahaRERA has no other alternative but to decide this complaint on merits.

12. Before dealing with the facts of the present complaint, 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."

13. 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

agreement for sale signed by both the parties on the dates specified in the agreement for sale. However, on bare perusal of this online complaint filed by the complainants, it appears that the complainants have uploaded only first page of the said agreement for sale dated 27-03-2017. However, the relevant clause which pertains to the possession to be handed over to these complainants have not been uploaded in this complaint. Furthermore, the complainants have also not specifically pleaded the agreed date of possession mentioned in the said agreement for sale. Hence, in absence of the complete copies of agreement for sale, it is difficult to ascertain the date of possession to decide the claim of the complainants for refund under section 18 of the RERA.

14. However, in the present case, it is pertinent to note that the respondent, while registering this project with the MahaRERA, has mentioned the proposed date of completion of this project as 31-12-2014 and revised completion date as 31-05-2019, which is further extended till 30-11-2020. However, even on the said extended date of completion i.e. 30-11-2020 the project was incomplete and the possession was not handed over to the complainants and even till date the project is incomplete. The respondent while implementing this project has represented that it will complete the said project by the said extended date of completion of this project mentioned on MahaRERA i.e. 30-11-2020. However, it has failed to adhere to its statement/commitment/representation given for completion of the project on MahaRERA website. It shows that the respondent has violated the provision of section 12 of the RERA. Hence, the complainants are entitled to seek refund along with interest as they are affected by such representation/ statement given by the respondent with regard to the date

of completion of the project on MahaRERA website while registering this project. However, since the complainants have failed to prove any violation of section 18 of the RERA by the respondent, they are entitled to seek interest on the refund amount from the date of default on the part of the respondent i.e. 30-11-2020.

15. In the present case, as stated hereinabove the validity of the project registration granted by the MahaRERA has lapsed on 30-11-2020. The respondent has neither uploaded form 4 (architect certificate) / occupancy certificate on record of MahaRERA. It shows that the project is still incomplete. Hence, the respondent has to seek extension from the MahaRERA by filing necessary application for revival of this project which has lapsed on 30-11-2020.
16. In view of the above, the following order is passed:
- The complainants are allowed to withdraw from the project.
 - The respondent promoter is 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 default on the part of the respondent i.e. 30-11-2020 till the actual realisation of the said amounts to the said complainants.
 - Needless to state here that the actual amount as provided under section 18 of the RERA means the amount paid by the complainants towards the consideration of the said flats only, excluding the stamp duty, registration charges and taxes etc. paid to the government.
 - 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 refund amount along with interest to the complainants shall be paid by the respondent promoter to these complainants within a period of 6 months in 6 equal instalments. Till then, the complainants will have charge on the said flats.

- e. On receipt of last instalment, the complainants shall execute the registered cancellation deed with the respondent.
 - f. 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.
 - g. Further, the respondent is also directed to take immediate steps for seeking extension of the said project within 30 days from the date of this order failing which the respondent shall be liable to pay penalty under section 63 of the RERA if such default is brought to the notice of the MahaRERA.
17. With these directions, the present complaint stands disposed of.


(Mahesh Pathak)

Member - 1/MahaRERA