

Complaint No. CC006000000429324
BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI

Complaint No. CC006000000429324

1. Purvi Parag Shah
2. Parag Chandrakant Shah ... Complainants

Versus

1. Arkade Associates
2. Raj Universal ... Respondents

MahaRERA Project Registration No. P51800021545

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

Ld. Adv. Godfrey Pimenta appeared for the complainants.

None appeared for the respondent.

FINAL ORDER

(Order Pronounced on Tuesday, 14th October 2025)

(Matter reserved for order on 03-07-2025)

(Through Video Conferencing)

1. The complainants above named has filed this online complaint before the MahaRERA on 19-02-2024 mainly seeking directions from the MahaRERA, to the respondents to handover possession of car parking ; pay compensation; grant NOC for transfer of electric meter; and for legal cost, as prescribed under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA'), in respect of their Flat No. 1202, B Wing, admeasuring 443 square feet carpet area as per RERA on the 12th floor in the respondent's registered project known as "**RUDRAKSHA BUILDING NO 11**" bearing MahaRERA registration No. **P51800021545** located at Plot/S.No.2776/B, 2776/D, Taluka Borivali, Dist. Mumbai Suburban (hereinafter referred to as the 'said project').
2. This complaint was heard by MahaRERA on several occasions and the same was heard finally on 03-07-2025 as per the Standard Operating Procedure dated 12-06-

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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. On the said dates of hearing, the complainant appeared as per their appearances recorded in the Roznamas and made their respective submissions. The MahaRERA heard the submissions of the complainant as per their appearances and also perused the available record.

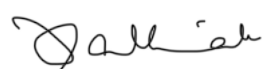
3. After hearing the arguments of the complainant, the following Roznamas were recorded in this complaint:-

i) On 12-02-2025 :

"The complainants are present. The respondent is absent. This complaint has been filed only for handover of the possession of the covered car parking and issue of the car parking letter by the respondent, possession letter for the flat as well as for grant of NOC for transfer of electric meter. The respondent has filed its reply to the complaint in May 2024 contending that the total cost of the flat is without parking as the parking details are blank. However, the complainants have refuted this contention of the respondent on the ground that the society has allotted a parking space to the complainants and is charging rent for the same. Hence, the prayer of the complainants is only for a proper possession letter for the car parking which has been assigned by the society and for NOC for transfer of the electric meter, as well as the possession for the flat. The complainants may file their rejoinder to the reply of the respondent along with written submissions within a period of 4 weeks i.e. by 12-03-2025. Further 4 weeks' time i.e. till 09-04-2025 is granted to the respondent to file its written submissions. Accordingly, the matter is adjourned to a suitable date after 09-04-2025 for final arguments by both sides. List the matter for next hearing on 30-04-2025."

ii) On 30-04-2025:

"Both the parties are absent. Although the respondents have filed a reply to the complaint, the complainants have not filed any rejoinder to the said reply. Therefore, the complainants may file a rejoinder to the said reply along with written submissions and the respondents may also file written submissions. The matter is adjourned to a suitable date for final arguments and as a last chance to



the complainants. List the matter for next hearing on 03-07-2025."

iii) On 03-07-2025:

"The complainant is present. The respondent is absent. Other than in the conciliation proceedings, the respondent has never appeared before the MahaRERA. However, the respondent has filed its reply to the complaint on 29-05-2024 and the complainant has filed a rejoinder to the said reply on 30-04-2025. The only issue in this complaint is with respect to the parking and electric meter. Therefore, both the parties may file their written submissions, if need be, within a period of one week i.e. by 10-07-2025. In case the respondent does not file any written submissions, the MahaRERA will be constrained to decide the matter on the basis of the reply of the respondent on 29-05-2024. Accordingly, the matter is reserved for order suitably after 10-07-2025 based on the arguments in the hearing as well as the reply, rejoinder and written submissions filed in the complaint."

4. Despite directions in the aforesaid hearing, the respondents have not filed any written submissions. However, the complainants have already filed written submissions on 02-05-2025. Hence, the MahaRERA has perused the available record.
5. It is the case of the complainants that, vide registered agreement for sale dated 31st December 2020 executed between Arkade Associates, as the developer of the one part (respondent no.1), Raj Universal, as the confirming party of the second part (respondent no.2), and Mrs. Purvi Parag Shah and Mr. Parag Chandrakant Shah, as the purchasers of the third part, the respondents sold and transferred to the complainants Flat No.1202, B Wing, admeasuring 443 sq. ft. carpet area as per RERA, situated on the 12th floor of the building known as "Rudraksha - Building No.11" in the respondents' project, for a total consideration of Rs.66,13,000/-. However, while registering the said agreement for sale, the respondents failed to mention the car parking space number allotted to the complainants despite having received consideration for the same. The enclosed car parking space admeasuring 13.94 sq. mtrs. is, however, duly reflected in the valuation sheet annexed to the said agreement for sale. The complainants state that they took fit-out possession of the said flat on 06-09-2022 and occupied it after receipt of the occupation certificate in June 2023. Thereafter, they continuously followed up with the respondents for allotment of a dedicated car parking space. The respondents, however, allegedly demanded a sum of Rs.5,00,000/- in cash for the said parking space, which the complainants refused

to pay. The complainants further contend that, despite their letter dated 29-11-2022 requesting an NOC for transfer of the electric meter, the respondents have failed to issue the same. The respondents are also allegedly insisting that the complainants execute a deed of rectification on the ground that the parking space was wrongly reflected in the said agreement for sale, which the complainants deny as false. The complainants, through their advocate's letter dated 02-10-2023, placed these facts on record. They rely upon MahaRERA Circular No.36/2021 dated 30th July 2021, which mandates that when a garage or covered parking space is sold or allotted for monetary consideration, its details including type, size, number, and location must be incorporated in the agreement for sale. As per the information available on the MahaRERA website, the project comprises 176 apartments with 125 covered parking spaces. The complainants further invoke Section 18(3) of the Act, contending that the respondents are liable to compensate them for the delay in handing over the designated car parking space. Accordingly, the complainants seek directions to the respondents to (i) hand over the said covered car parking space with a designated number, (ii) pay compensation of Rs.10,00,000/- for deprivation of the same, (iii) issue NOC for transfer of the electric meter, and (iv) pay costs.

6. The respondents nos.1 and 2, in their reply dated 29-05-2025, contend that the complainants have no direct privity of contract with respondent no.2, who is merely a confirming party to the agreement for sale dated 31-12-2020, registered on 22-01-2021. They submit that all transactions were carried out between the complainants and respondent no.1 alone. The respondents further state that the allotment form dated 30-12-2020, duly signed by both parties, clearly mentions "Flat No.1202 (without car parking)" and specifies the total cost as "flat value without car parking." Hence, the parking details were intentionally left blank in the registered agreement for sale since no parking space was purchased by the complainants. It is further submitted that the complainants are attempting to take undue advantage of a general clause (para 6.8) in the agreement. The respondents argue that, as per settled principles of conveyancing, the preliminary recitals of a document prevail over its subsequent clauses. Therefore, para 6.8 cannot be relied upon by the complainants to claim rights to a parking space. The respondents also submit that the complainants have produced no evidence or proof of payment towards any car parking space.

Hence, the reliefs sought are misconceived and liable to be dismissed with costs.

7. The complainants have filed their written submissions on 02-05-2025, reiterating the contents and arguments raised in their complaint.
8. The MahaRERA has examined the submissions made by the complainants and also perused the available record. The complainants are the allottees of the said project registered by respondent no. 2, wherein respondent no. 1 has also been shown as a promoter having an area share in the said project by virtue of a Development Agreement dated 14-05-2019 executed between them. Hence, both respondents, being promoters of the said project as defined under Section 2(zk) of the RERA, are hereinafter collectively referred to as "the respondent".
9. The complainants have contended that although the respondent handed over possession of the said flat to them on 06-09-2022, the Occupancy Certificate (OC) for the said project was obtained subsequently, on 28-06-2023. It is further alleged that no car parking space has been handed over to them till date. Accordingly, they have filed this complaint seeking reliefs under Section 18(3) of the RERA.
10. The respondent, by filing its reply on record before MahaRERA, has denied the complainants' allegations, primarily on the ground that the complainants have not purchased any car parking space along with the said flat. Hence, it has prayed for dismissal of the present complaint.
11. Be that as it may, upon perusal of the pleadings, submissions of both parties, and the documents placed on record, the following observations are noteworthy:
 - a) Admittedly, the complainants purchased the said flat vide a registered agreement for sale dated 31-12-2020. The possession of the flat was handed over to them on 06-09-2022 for fit-out purposes, while the Occupancy Certificate was obtained later, on 28-06-2023, from the competent authority, i.e., MCGM. Nearly two years after taking possession, the complainants have filed the present complaint seeking two substantive reliefs, viz., (i) possession of one covered car parking space, and (ii) issuance of a No Objection Certificate (NOC) for transfer of the electricity meter.
 - b) The complainants have further alleged that the respondent demanded an amount

of Rs. 5,00,000/- (in cash) for allotment of a covered car parking space; however, the respondent has categorically denied the said allegation.

- c) On a bare perusal of the record, particularly the registered agreement for sale, the MahaRERA, has prima facie noticed that there is no reference whatsoever to any covered car parking space in the recitals (Clause QQ), in the Index-II, or in the "Sixth Schedule of Property" annexed thereto. However, it is evident that the clause pertaining to parking space has been left blank in the said agreement. Therefore, in the absence of any agreed term or condition regarding a covered car parking space, the complainants' claim for the same under Section 18(3) of the RERA has no legal substance. Needless to state here that the said provision of RERA, mandates that an allottee is entitled only to the agreed amenities as per the registered agreement for sale. Hence, in this case, in absence of any specific covered car parking space in the said agreement for sale, the question of granting any compensation or relief to the complainants under Section 18(3) does not arise and the same is devoid of merit.
- d) Further, the complainants have failed to submit any cogent documentary evidence on record before MahaRERA to substantiate their claim that they have purchased a covered car parking space along with the said flat. Hence, MahaRERA is not inclined to accept the said claim or to direct the respondent to issue any car parking possession letter. Hence, in the event that a cooperative housing society which has been formed in the said project, is allotting car parking spaces to its members including the complainants, they are required to follow the rules and procedures adopted by the said society. However, the MahaRERA is not inclined to interfere in the internal affairs of the said society.
- e) As regards the second issue concerning issuance of an NOC for transfer of the electricity meter, the MahaRERA has noticed that the complainants had obtained possession of the said flat for fit-out purposes prior to the issuance of the OC dated 28-06-2023. Evidently, such possession cannot be termed as lawful or complete possession in the eyes of law. Hence, upon obtaining the OC, the respondent, being the promoter of the said project, is under a statutory obligation to complete all formalities related to lawful possession, including issuance of necessary NOCs in favour of the allottees. In this regard, it is pertinent to peruse the relevant provisions of Section 19(5) of the RERA, which explicitly provides

that *"The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over of the physical possession of the apartment or plot or building, as the case may be, by the promoter."* Therefore, the complainants, being allottees, are entitled to receive the possession of the said flat along with all requisite documents/NOCs, including the NOC for transfer of the electricity meter in respect of the said flat.

- f) Moreover, since the respondent has not specifically denied the allegation of non-issuance of the said NOC, MahaRERA finds it appropriate to direct the respondent to issue the said NOC to the complainants forthwith, notwithstanding the delay in approaching the MahaRERA.

12. In view of the above, the following order is passed:-

- a) The present complaint is partly allowed.
- b) The claim of the complainants for allotment of car parking spaces stands rejected in view of the aforesaid observations made in para-nos. 11(c) and (d), mentioned above.
- c) The respondent is directed to issue NOC for transfer of electricity meter possession to the complainants within a period of 15 days from the date of receipt of this order, (if not done so far).
- d) Failing to comply with the aforesaid directions at para-no.(c) above, appropriate penal action would be taken against the respondent, if such non-compliance is brought to the notice of MahaRERA by the complainants.

13. With these directions, the present complaint stands disposed of.

**MAHESH
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PATHAK**
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(Mahesh Pathak)

Member - 1/MahaRERA