

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

Complaint No. CC004000000030233

Anandam Tower ' A' and 'B' Co-Operative Housing Society Ltd

Through its President / Secretary

...Complainant

Versus

Goldbricks Infrastructure Pvt Ltd &

Godrej Properties Limited

... Respondents

MahaRERA Project Registration No. P50500004568

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

Ld. Adv. A.J. Pathak appeared for the complainant.

Ld. Adv. Mohd. Taha appeared for the respondents.

ORDER

(Thursday, 25th July 2024)

(Through Video Conferencing)

1. The complainant above named has filed this online complaint before the MahaRERA on 12-01-2021 mainly seeking directions from MahaRERA to the respondent - promoter to i) furnish the accounts of amount received / realized from the respective allottees; ii) furnish the details of account in respect of amount received towards club house charges, water connection charges etc . (various charges have been mentioned); iii) to get insurance of the towers of the societies or to provide the documents pertaining to the insurance; iv) execute deed of conveyance; v) make appropriate water arrangements and fire compliance; vi) make arrangement of extra three water line from Nagpur Municipal Corporation; vii) to correct all structural defects, seepages, damages; viii) to restore water bodies as shown in the brochure; ix) to install new advanced lifts in Tower A and B ; x) To comply with the provision of Water and Air Pollution Act as well as Hazardous and other waste management; xi)

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to open and construct proper ingress – outgress of the right of way for vehicles; xii) to make arrangement of separate line of extra water; xiii) to make the arrangement of separate trench for the purpose of laying electric lines , water lines etc. xiii) compensation ; xiv) to provide proper equipped office; xv) to install newly equipped solar panels; xvi) to provide separate designated area; xvii) restrain the respondents not to grant any club house membership or to recover club house charges to any third person as prescribed under the provisions of section 4(1) (d), 16, 17 and 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of their respective flats / units in the respondent's registered project known as **"ANANDAM WORLD CITY PART OF TOWER A B AND D"** bearing MahaRERA registration No. **P50500004568** located at Nagpur (M Corp.), Taluka. Nagpur (Urban), Dist. Nagpur.

2. This complaint was heard by the MahaRERA on several occasions and finally on 13-02-2024 as per the Standard Operating Procedure dated 12-06-2020 issued by the MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing. On the said dates of hearings, the parties have appeared as per their appearances recorded in the Roznamas and made their respective submissions. The MahaRERA heard the submissions of the parties as per their appearances and perused the available record.
3. After hearing the arguments of the complainant, the following Roznama was recorded in this complaint: -

On 13-02-2024: "Both the parties are present. The respondent has filed its reply to the complaint and the complainant has filed a rejoinder to the said reply. The complainant has filed this complaint for various issues in the project mainly the amenities promised as per the brochure. The project consists of 6

towers and Societies formed in Tower A and B have filed this complaint. The respondent has raised the preliminary issue of maintainability of this complaint contending that only few flats from Tower A and B are part of the project registration since the project was ongoing at the time of commencement of the RERA in May 2017 and only few flats from Tower A and B were remaining to be sold. The respondent has also contended that since it is a large project and envisages stage wise development, the date of completion is August 2024. Therefore, this complaint is premature. Moreover, the allottees in both the towers have been residing for the last 9 years. Therefore, on all the above grounds this complaint is not maintainable. The respondent has pointed out that the residents of Co-operative Housing Society in Tower C and F have filed consumer complaints as well. The complainant has refuted these contentions of the respondent and mainly pointed to the seepage in the basement as well as provisions of adequate drinking water, provisions of lifts with adequate capacity and speed as promised in the brochure. The complainant- society contended that despite follow ups with the respondent these defects have not been rectified so far. Therefore, the complainant-society has filed this complaint. The respondent may file its written arguments within a period of 2 weeks i.e. by 27-02-2024. The complainant may file its written arguments within a further period of 2 weeks i.e. by 12-03-2024. Accordingly, this matter is reserved for orders suitably after 12-03-2024 based on the arguments of both the sides as well as reply, rejoinder and written arguments filed in the complaint."

4. Pursuant to the aforesaid directions given by the MahaRERA, the respondent has uploaded its written notes on the record of MahaRERA on 27-02-2024. The complainant has uploaded the additional written arguments on the record of MahaRERA on 10-03-2024. The same has been taken on record. The MahaRERA has perused the available record.

5. It is the case of the complainant that the complainant is a registered housing society. The respondent no. 1 had floated the said project in the year 2010-12 comprising of the 5 wings i.e. A to E and later including the dwelling units of F Tower, the total dwelling units being around 475. The complainant has further stated the list of amenities which would be provided to the flat owners as per brochure and other lucrative advertisement was published by it. Further it had after developing and promoting the township executed and registered the agreement to sell with the members of the complainant societies. However, though it is incumbent upon the respondents to execute the conveyance deed by forming the co-operative society / association, no conveyance deed was executed though the co-operative society has been formed that too after the lapse of the period specified in the MOFA. The respondents have manipulated the FSI and TDR rights and also changed the structure of the building. As per the clauses of the said agreement, it had collected the amount for the club house and other charges. The amount differs according to the area of the flats. But till date even after more than 4 years of handing over the possession of the flats, the club house was not built. However, after two of the associations (C & F) moved the National Consumer Dispute Redressal Commission, it had collected the amount of around Rs. 15 Cr. Approx. The respondents have also violated the provisions of the RERA by not depositing the amounts in a separate account. Further the separate co-operative societies are formed specifying the separate tower namely Tower A, Tower B, Tower C etc. up to Tower F. The respondent has collected amount towards the electricity and water connection while executing the agreement for sale and it has again demanded doubly for the same. The complainant further stated that, due to poor quality of the construction carried out by the respondents it had resulted in the seepage problem in dwelling flats of the members of the society, podium, villas etc. Despite repeated requests, no repairs have been carried out till today. The parking area and basement area

was filled with the water during the rainy season and with seepage from the bathrooms of upper floor to lower floor. It has provided poor quality of Lift resulting in the frequent failure and recurring maintenance. Further, the roof top solar panels affixed are of substandard quality and these are still not functioning properly since their installation and no structural audit is ever conducted for the complainant's towers. There was no adherence to the sanctioned plans, and approvals. It has further failed to execute deed of conveyance in favour of the complainant society along with undivided proportionate title in common areas of the project. Further, there is no proper way of ingress - egress for the vehicles. Therefore, being aggrieved by the conduct of the respondents, the complainant has filed the present complaint and sought reliefs as prayed above.

6. The respondent no. 1 on the other hand, refuted the contentions of the complainant and uploaded its reply on 20-11-2023 stating that the complainant has approached this Authority belatedly and are raising grievances which are time barred and therefore, the said complaint cannot be entertained in view of the limitation period prescribed. The said project is in the process of development and considering the fact that the entire amenities and facilities would be given as and when the project is completed and thus the said complaint is premature. The agreement clearly provides for that the Owner/ Developer will execute Deed of Transfer but specifically the transfer would only be done after completion of the project and as the project is being developed and construction activities are being carried out in a phase-wise manner, therefore, it is not possible for the respondent no. 1 herein to get the Deed of Conveyance executed at this stage. It is further denied that there is any violation of the FSI and TDR rights as also that the structure of the existing building is being changed. It is therefore submitted that the present complaint is premature. Moreover, the allegation that the Club House is not constructed

is absolutely incorrect as a make shift Club House has been prepared for the purchasers to enjoy the facilities and the same has been done since way back in the year 2014 which is at the time of possession. The said Club House also includes Gym, Jacuzzi etc. Though the Club House sanction is received on 23-08-2019 and the delay was only due to permission not being granted from the Town Planning Department. It has stated that the permanent Club house is on the verge of completion. The said matter being sub judice before the National Consumer Commission there is no question of interpreting anything unless it attains finality. It has been time and again requesting the residents to adhere to the proper construction while demolishing and building new toilets as it would be a wet area and therefore the construction needs to be in a proper manner else it would lead to leakages and seepages which would be beyond the control of the respondent no. 1 herein. However, it's been approximately nine years since the residents are residing in the Society and all this while there is hardly any grievance with regard to the facilities provided. The respondent no. 1 has a very limited role and it is the duty of the respective Societies to maintain the Society and ensure that there are no issues as are being alleged. Further the lifts provided in the said buildings is that of 'Thyssenkrupp' which is one of the leading lift companies in the World and is known for its quality standards and its quality cannot be questioned. Further so far as the structural audit is concerned the same was already done and there is no doubt regarding the quality of construction as well as the defects in the construction, the same are to the satisfaction and requirement as is contemplated. The maintenance charges have been already remitted to the complainant in respect of the unsold flats as per the terms agreed upon. As per Memorandum of Understanding dated 02-09-2017 executed between the complainant and the respondent no. 1 it clearly shows that the amount was transferred to the Society (to the tune of Rs.2,20,98,907/-.) As also the similar MOU is entered with B society.

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7. The complainant on 10-02-2024 uploaded its written submission which is reiteration of the submissions made in its complaint.
8. The respondent no.1 on 27-02-2024 also uploaded its written notes of arguments raising a preliminary objection towards the present complaint that the purchasers were granted possession of their flats as early as 2014. This annexure encompasses an Agreement to Sale concerning a flat sale, where the terms, conditions, liabilities, and limitations are consistently applied across the board to all relevant flat purchasers within the complainant's society. The Clause 23 of the Sale agreement at Annexure C unambiguously stipulates that any grievances regarding structural defects, including water leakage issues, and other grievances with regard to the deficiency on the part of the promoter respondent no. 1 must be communicated to the promoter, within a one-year timeframe. Further, if any structural defect was observed at the time of handover of operations to the society, the society would have never taken handover. The respondent, since the underlying agreement for sale was executed in 2013, and in light of section 14 (3) of the RERA, any complaints regarding structural defects are required to be notified to the promoter within five years from the date of possession. Further, the act of filing the complaint in 2021, two years beyond the prescribed period, directly contravenes the legislative framework established under RERA. To support its contention with respect to the present complaint being barred by the law of Limitation as envisaged under Section 14(3) of the RERA Act, 2016, the respondent relies upon the case of the Hon'ble Supreme Court in Oahiben vs Aruindbhai Kalyanji Bhanusali. The respondent further submitted that the complainant society, representing A and B Society, has only a limited number of flats (10 and 14 respectively) registered on the RERA portal. This fact raises questions about the society's standing to represent owners of unregistered flats in a legal action concerning defects or other grievances related to the real estate

development. The said registered 24 flats (out of more than 200 flats) of the said owners were sold after the grant of OC and for that reason too RERA was not applicable. The complainant societies failed to disclose crucial information about the flats not registered on the RERA portal. This omission was an intentional suppression of material facts, which is a serious concern in legal proceedings. The respondent submitted that the aforesaid complaint has been filed by the Society consisting of Tower A and Tower B of Anandam World City. The complainant represented before the MahaRERA that it was representing the entire housing society, being a society. It was not permissible for the complainant to approach the MahaRERA without an authorisation or resolution passed in the meeting which took place granting permission to the President/Secretary to represent the society before the MahaRERA, neither there were any details regarding the authorizations/resolutions and also the complaint does not disclose any document to that effect. Such a resolution is mandatory for ensuring that legal actions taken by a society are backed by the collective decision of its members. This oversight casts doubt on the legitimacy of the complaint and the authority of the individual(s) who filed it on behalf of the society. The respondent further relies upon the Judgement passed by the Hon'ble Supreme Court in the matter of P. Nazeer etc. vs. Salafi Trust & Anr. Further, the Deed of Conveyance is a critical document in transferring the title of property from the developer to the society or allottees. The objection notes that the conveyance deed's issuance is contingent upon the project's completion and the formation of an Apex Body representing societies A to F; conditions that have yet to be fulfilled.

9. The complainant on 10-03-2024 uploaded its additional written notes of arguments on the record of the MahaRERA stating that the respondent in its entire submissions only adopted denial mode and prematurity of the complaint, however failed to establish the fact, what steps were taken in order

to rectify the defects which were apparent from the face of record. The respondent was silent on certain aspects which were, amount received towards club house charges from more than 450 flat occupants, no account or explanation given which was more than 15.00 crores along with interest. Further, respondent no. 1 was silent on illegal ground water excavation without obtaining permission from CWG department and the document already brought to the notice of the MahaRERA. However, the respondent was involved in illegal excavation of residential apartment. The said information was sought by one of the residents on 12-01-2023 under RTI from the office of the Central Ground Water Board. Therefore, the stand taken for environmental clearance was based on falsehood and the construction activity of the respondent was in full swing. It was further submitted that the respondent on false pretext has shown water body in the brochure, which was in totally bad condition, however no explanation was given by the respondent. The respondent shoulders entire responsibility of the water supply but satisfied it on the local body (Nagpur Municipal Corporation), however being a developer, the respondent suppressed the fact and failed to provide the supply which resulted in inconvenience to the members of the complainant societies. As a result of which the water was required to be purchased from outside sources. The NMC sanctioned water line from newly constructed water tank, was primary duty of the respondent. Therefore, the shelter of, absence of cause of action due to delay in filing of the present complaint, does not arise at all. The club house plan already was sanctioned on 23-08-2019 but only after issuance of notice by NCRDC and the MahaRERA the club housework was started. However, there was no explanation in relation to accounts of money taken towards club house charges. Hence the complainant prayed to allow this complaint as per the prayer clause.

10. The MahaRERA has examined the rival submissions made by both the parties

and also perused the available record. The complainant society which is formed by the allottees of this project registered by the respondent promoters by filing this complaint has approached the MahaRERA mainly seeking following reliefs (as per the reliefs mentioned in this online complaint in reliefs sought column) : -

“(a) execution of conveyance deed (b) providing the insurance cover (c) furnishing the accounts (d) installation of the advanced lifts (e) provision of the drinkable and the potable water (f) seepage control and removal of damages (g) compensation to the tune of 25 lacs installation of the solar panels etc.”

11. The respondent no. 1 which is a company of the promoter which has registered this project and the respondent no. 2 is also a co-promoter of this project having revenue share in this project. Further, the respondent no. 1 has contested this complaint by filing its reply on record of MahaRERA. Hence, for the sake of brevity both the respondents are hereinafter referred to as the ‘respondent promoter’.
12. The respondent promoter has assailed the aforesaid claim of the complainant by filing its reply on record of MahaRERA mainly raising a preliminary issue of maintainability of this complaint on the ground that this project is yet to be completed on site and hence, this complaint is premature at this stage.
13. Hence, before dealing with this complaint on merits, the MahaRERA has to decide the said issue of maintainability of this complaint being a preliminary issue.
14. The respondent promoter while raising the said issue of maintainability of this complaint mainly contended that only few flats from Tower A and B are part of the project registration. It is ostensibly because the project was ongoing at

the time of commencement of the RERA on 1-05-2017 and there were few flats in Tower A and B which remained to be sold. The respondent has also contended that since it is implementing this project on a larger layout and the same envisages stage wise development, while registering this project with the MahaRERA it has mentioned the revised completion date of this project as 29-08-2024. The said date is yet to come. Hence, it has contended that this complaint is premature to seek reliefs as sought for in this complaint. In addition to this, it has also contended that the allottees in both the towers have been residing for the last 9 years. In addition to this, the residents of Co-operative Housing Society in Tower C and F have also filed consumer complaints before the National Consumer Commission and the said complaint is still pending as on date. On these grounds the respondent has prayed for dismissal of this complaint being not maintainable.

15. The complainant has refuted these contentions of the respondent and mainly contended that the seepage in the basement as well as provision of adequate drinking water, provision of lifts with adequate capacity and speed were not made as promised in the brochure. The complainant-society also contended that despite follow up with the respondent, the said defects have not been rectified so far. Hence, the society has contended that this complaint is maintainable and the same needs to be allowed.
16. From the aforesaid submissions made by the complainant society it is amply clear that the society is mainly seeking completion of all the agreed amenities in the project allegedly agreed by the respondent promoter in the brochure of the said project. The complainant society is admittedly formed by the allottees of the buildings known as Tower A and B and it is seeking such common sort of reliefs which is ostensibly agitated by the complainant herein.

17. However, on bare perusal of the webpage information uploaded by the respondent promoter on the MahaRERA website, it appears that the respondent promoter has undertaken this project on the larger layout having a total number of 6 Towers viz Tower A,B,C D E and F (as per the respondent). However, while registering this project, the respondent promoter has registered 3 towers viz Tower A, B and D (partially). Further, from the Architect Certificate Form-4 dated 24-06-2020 uploaded by the respondent promoter on MahaRERA website, it appears that the respondent promoter has already obtained part occupancy certificate for few of the floors of the said Towers from Nagpur Municipal Corporation on 27-12-2019.
18. In addition to this, the record also shows that the respondent promoter while registering this project with MahaRERA under the provisions of RERA in the year 2017 has mentioned the proposed and revised date of completion of this project as 31-08-2023 and the said date is extended further till 29-08-2024. Admittedly, the said date of completion is yet to arrive. Meaning thereby, the respondent promoter still has time till 29-08-2024 to complete the project as per the sanctioned plans approved by the concerned competent authority. Hence, the main issue raised by the complainant society about the completion of the agreed amenities seems to be premature on the date of filing of this complaint before the MahaRERA on 12-01-2021 and also as on date. Hence, the MahaRERA prima facie finds substance in the maintainability issue raised by the respondent.
19. In view of these facts, the MahaRERA prima facie feels that the present complaint is premature to seek reliefs as stated hereinabove as on date.
20. Consequently, the present complaint stands dismissed being premature as on date. Hence, no further hearing is required to be given in this complaint.

However, the complainant society is always at liberty to approach the MahaRERA after completion of this project i.e. after 29-08-2024, agitating all these issues with respect to the common area if it so desires.

Mahesh Pathak
(Mahesh Pathak)

Member - 1/MahaRERA

