

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

COMPLAINT NO. CC006000000089949

Ankush Chhabria  
Asha Chhabria  
Heer Chhabria

... Complainants

Versus

Atmosphere Realty Pvt Ltd  
MahaRERA Regn. No. P51800001243

... Respondent

**Corum:** Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant was represented by Mr. Ashwin Shah, Authorised representative.  
Respondent was represented by Mr. Viral Vora, Adv., Mr. Sanjay Gavkar, Adv., and Ms. Anulata Saundankar, Adv.

**Order**

October 17, 2019

1. The Complainants have booked an apartment bearing no. 3705 in the Respondent's project 'Atmosphere Phase 1' situated at Kurla, Mumbai via letter of allotment dated July 13, 2016. The Complainants have stated that they have entered into a tripartite agreement with the Respondent and a financial institution for a subvention scheme. The Complainants have stated that they eventually have identified irregularities in the said agreement and have accordingly stopped making payments. Further, they have stated that the said allotment letter does not contain any date of handing over possession. Therefore, the Complainant prayed that the Respondent be directed to refund the amounts paid by them along with interest and compensation and that the matter be assigned to an adjudication officer for deciding the compensation payable by the Respondent.
2. The learned Counsel for the Respondent submitted that the Respondent has called upon the Complainant to execute and register the agreement for sale till July 2018 but the Complainant has failed to do so and therefore the said booking was terminated since the Complainants have neither been paying the balance amounts nor have come forward to execute and register the agreement



for sale. He also submitted that the Respondent has also informed the Complainant in February, 2019, that the occupancy certificate for the project has been received and that the apartment is ready for possession. Further, he submitted that the Respondent is still willing to execute and register the agreement for sale.

3. Section 18 (1) of the Real Estate (Regulation and Development) Act 2016 reads as:

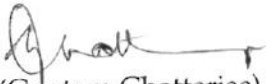
*“ if the promoter fails to complete or is unable to give possession of an apartment, plot or building, – (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;*

*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. “*

Accordingly, since no agreement for sale has been executed and registered between the parties, provisions of section 18 of the said Act does not apply to the present case. Hence, the question of adjudging compensation does not arise.

4. In view of the above facts, if the Complainants intend to continue in the said project they are advised to execute and register the agreement for sale, as per the provisions of section 13 of the Real Estate (Regulation and Development) Act 2016 and the rules and regulations made thereunder within 30 days from the date of this Order. However, if they intend to withdraw from the said project, then such withdrawal shall be guided by the terms and conditions of the booking letter.

5. Consequently, the matter is hereby disposed of.

  
(Gautam Chatterjee)  
Chairperson, MahaRERA