

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

1. Complaint No. CC006000000195665

M/s. Conoor builders Private Limited ..Complainant

Versus

1. Sangita Bharat Gharat
2. Bharat Gharat ..Respondents

Along with

2. Complaint No. CC006000000195666

M/s. Conoor Builders Private Limited ..Complainant

Versus

1. Cyril Horold Moraes
2. Regina Lucy Moraes ..Respondents

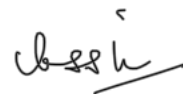
MahaRERA Project Registration No. **P51800002922**

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

Ld. Adv. Bishwajit Mukharjee a/w Ld. Adv. Anil D'Souza appeared for the complainant.

Ld. Adv. Sandeep Manobarwala appeared for respondents.

ORDER

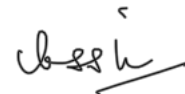


(11th May, 2021)
(Through Video Conferencing)

1. The complainant promoter has filed two separate review applications in the form of fresh complaints seeking review of the orders passed by the MahaRERA on 3-11-2020, whereby the complainant promoter was directed to pay interest to the respondents allottees for the delayed possession under section 18 of the Real Estate (Regulation & Development) Act, 2016 from 1st July, 2017 till the date of occupancy certificate at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2% as prescribed under the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016 and the Rules made there under on the complaints in the complainant's registered project "**The Gateway**" bearing MahaRERA Project Registration No. **P51800002922** at **Andheri, Mumbai**.
2. These review applications were heard on 1-04-2021 as per the Standard Operating Procedure dated 12th June 2020 issued by MahaRERA for hearing of complaints through video conferencing. Both the parties were issued prior notice and were also informed to file their respective submissions before MahaRERA. Accordingly, both the parties appeared through their respective advocates / representative.
3. During the course of said hearing the Ld. advocate for the complainant sought further time for hearing. However the respondents have objected to the said adjournment on the ground that these complaints cum review applications filed by the

complainant promoter are not maintainable under the provisions of Rule 36 of the Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017 as same are filed beyond 45 days from the date of orders passed by the MahaRERA dated 3-11-2020 in the complaints filed by the respondents allottees. They have further stated that the complainant is seeking review of the said orders only on the ground that as per Punjab and Haryana High Court, the single Bench of MahaRERA had no jurisdiction to decide the complaints filed by the respondents allottees. The respondents have stated that the Punjab and Haryana order was prevalent when the complaints filed by them were heard and decided by the MahaRERA. However, at that time the complainant had not taken up the said issue. Hence, the only remedy the complainant now has, is to approach the Hon'ble Maharashtra Real Estate Appellate Tribunal by filing appeals against the said orders passed by the MahaRERA.

4. Considering the aforesaid submissions made by the respondents and in compliance of principles of natural justice, the complainant was granted one week time to file its written submissions on record of MahaRERA and these complaints cum review applications were again placed for hearing on request of the complainant on 27-04-2021, when both the parties appeared through their respective advocates/representatives and made their submissions. The MahaRERA heard the arguments advanced by both the parties and also perused the available record.

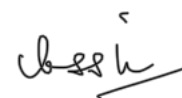


5. The MahaRERA has examined the complaints cum review applications filed by the complainant promoter (hereinafter referred to as **promoter**) and also the submissions made by the respondents (hereinafter referred to as **allottees**). On an analytic examination prima facie, it appears that the promoter is seeking review of the orders passed by MahaRERA on 3-11-2020 in aforesaid two separate complaints filed by the allottees bearing complaint Nos. CC0060000000171459 and CC0060000000171612. The said complaints were filed seeking reliefs under section 18 of the RERA.
6. The aforesaid two complaints were heard in presence of both the parties and the MahaRERA has passed two separate reasoned orders dated 3-11-2020 considering the submissions made by both the parties on merits. Now by filing these review applications, the promoter is seeking review of the said orders though on the ground that the said orders were passed by the MahaRERA without any jurisdiction in view of the order passed by the Hon'ble Punjab Haryana High Court. However, the promoter has not pressed the said ground during the course of hearing held on 27-04-2021. However, the promoter has mainly stated that the allottees have been allotted extra car parking slot in the project by the promoter in lieu of the alleged delay and they have been sufficiently compensated. These material facts, though have been within the knowledge of the allottees, they have failed to put the same before the MahaRERA in their complaints. Hence after accepting the additional car parking, the allottees should not have made any grievances about the

delay as stipulated under section 18 of the RERA. Mainly on this ground the promoter has sought review of the orders dated 3-11-2020 passed by MahaRERA in the complaints filed by the allottees.

7. The allottees on the other hand have also refuted the said claim of the promoter stating that these grounds of review are not pleaded in these complaints cum review applications filed by the promoter. Moreover, the promoter itself has admitted in the complaints that the car parking has been allotted to the allottees as per the agreements for sale. Further, the allottee in complaint at sr.no.2 stated that the additional car parking no. 50 has been purchased by them by paying cash amount. Hence the allottees denied the claim of the promoter. Hence they prayed for dismissal of these complaints cum review applications.

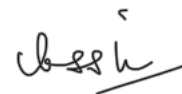
8. MahaRERA has heard the rival submissions made by both the parties and also perused the record. By filing these complaints cum review applications, the promoter is seeking review of the order dated 3-11-2020 passed by the MahaRERA in complaints filed by the allottees. In this regard, the MahaRERA has perused the provisions of Regulation 36 of the Maharashtra Real Estate Regulatory Authority (General) Regulations 2017, whereby an order of the Authority can be reviewed. The said regulations reads as under:



"36(a) Any person aggrieved by a direction, decision or order of the Authority, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Authority.

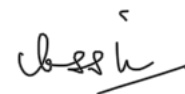
(b)(e) When -----, the review of which is applied for."

9. In view of the aforesaid explicit provision prescribed under Regulation 36 (a), it is clear that an order passed by MahaRERA can be reviewed if there are new facts discovered or any important matter or evidence which was not within the knowledge of the parties or could not be produced by them at the time when the order was passed or if there are other sufficient reasons. The aforesaid provisions further provide that the review application has to be filed within a period of 45 days from the date of order.



10. However, in the present case, prima facie it appears that the MahaRERA has passed the impugned orders on 3-11-2020 and the promoter has filed these review applications on record of MahaRERA on 02-02-2021. It shows that the same are filed beyond the stipulated time period of 45 days provided under the aforesaid Regulation. Hence the MahaRERA prima facie is of the view that these complaints cum review applications are not maintainable under Regulation 36 of the Maharashtra Real Estate Regulatory Authority (General) Regulations 2017.

11. In addition to this, the MahaRERA further noticed that the promoter during the course of hearing has made only grievances about the allotment of additional car parking to the allottees in lieu of the alleged delay caused in handing over possession of the flats to the allottees. However, on bare perusal of the pleadings of these complaints cum review applications, no such facts or ground of review has been made by the promoter. Even these facts were within the knowledge of the promoter when it pleaded its case before MahaRERA at the time of final hearings held in the complaints filed by the allottees and therefore it should have brought these facts on record of MahaRERA at the time of the said hearing and while passing orders dated 3/11/2020 by MahaRERA. The MahaRERA therefore cannot treat these facts as new since these facts were already within the knowledge of the promoter. Thus the MahaRERA is of the view that even on these grounds also these complaints cum review applications cannot be considered on merits by the MahaRERA.



12. Consequently, both these complaints cum review applications stand dismissed for want of merits.
13. 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.

Vijay Satbir Singh

(Dr. Vijay Satbir Singh)
Member – 1/MahaRERA

