

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

Virtual Hearing held through video conference as per
MahaRERA Circular No.: 27/2020

Complaint No. CC006000000100363 (Sr. No. 10)

NILESH SADASHIV SONAWANE ...COMPLAINANT/S

ALONG-WITH

COMPLAINT NO. CC006000000100367 (Sr. No. 11)

VIPIN D RATNAPARKHI ...COMPLAINANT/S

ALONG-WITH

COMPLAINT NO. CC006000000100368 (Sr. No. 12)

SANJIV P. CHAUDHARY ...COMPLAINANT/S

ALONG-WITH

COMPLAINT NO. CC006000000100373 (Sr. No. 13)

DHIROJ K. BARAD ...COMPLAINANT/S

ALONG-WITH

COMPLAINT NO. CC006000000100377 (Sr. No. 14)

VAIBHAV NARKAR ...COMPLAINANT/S

ALONG-WITH

COMPLAINT NO. CC006000000192699 (Sr. No. 19)

ROHIL JULANIYA ...COMPLAINANT/S

VS

MACROTECH DEVELOPERS LTD. ...RESPONDENTS

MahaRERA Project Registration No. P51700001065

Order

February 08, 2022

(Date of hearing: 10.11.2021 – matter was reserved for order)

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Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Advocate Avinash Pawar for all Complainants
Advocate Prashant Gawali for the Respondent @Sr. Nos. 10 to 14
Advocate Anusha Jegadeesh for the Respondent @Sr. No. 19

1. The Complainants are home buyers and Allotees within the meaning of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016 ("said Act") of Real Estate Regulatory Authority ("RERA") and the Respondent is the Promoter/Developer within the meaning of Section 2 (zk) of the said Act. The Respondent has registered their project "LODHA AMARA - TOWER 1 - 5, 7 - 19" under section 5 of the said Act bearing MAHARERA Registration No. P51700001065 (hereinafter referred to as the "said Project"). The Proposed completion date of the said Project was 30.11.2019. The said Project has received Part Occupation Certificate (OC) dated 24.01.2018 bearing No. V.P. S05/0083/14/TMC/TDD/OCC/0453/18 for Wing Nos. 1 - 5 & 7 to 16.
2. The Complainants are seeking the following reliefs:

COMPLAINT NOS.	COMMON RELIEFS CLAIMED (in brief)
CC006000000100363	a. To direct Respondent to comply with the amenities which are in deficient and in contrast to the amenities mentioned in the agreement for sale of each apartment such as car parking spaces, two-wheeler parking allotments, maintenance charges refund, lifts issues, club house amenities and many facilities as mentioned in agreement for sale; b. To pay compensation of Rs. 2 lakhs for misrepresentation and false promises; c. Any other order.
CC006000000100367	
CC006000000100368	
CC006000000100373	
CC006000000100377	
CC006000000192699	

3. On 10.11.2021, the following roznama was passed by this Authority:

*"All Parties are represented through their respective lawyers mentioned above.
The Complainants submit that these complaint having been languishing for more than 1.5 years and that these complaints relate to around 15 buildings out of about 35 buildings in the total project.*

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The list of defects mentioned below is what the Complainants seeks reliefs before this Authority:

1. No parking provided for two wheelers as mandated in the Environment clearance and also no parking for visitors. Also that 3 parkings have been provided on 13th floor for which OC will never be received.
2. Toilets for domestic help to be provided on ground floor have not been provided and hence seeks interim relief in terms of restraining the Respondent from selling ground floor flats.
3. A separate stretcher lift which should be rectangular in shape has not been provided.
4. No proper water connection provided.
5. Common maintenance chargers i.e. FCAM were to be taken only for 18 months but have been taken for 5 years.
6. An exclusive club house was to be provided but they now understand that this club house could be used by the other new buildings coming up.
7. Leakages that reflects on poor quality of work provided.
8. One single parking building and parking has been provided on higher floors wherein OC has not been received.

Further, the Complainants confirm that at time of possession no written objection was taken but they had protested orally and followed up continuously vide emails.

The Respondent submits as follows:

1. The Society which is formed has also filed a complaint on which the erstwhile, Member 2, MahaRERA has passed an interim order which is now under challenge before the Hon'ble MahaRERA Appellate Tribunal. It is also brought to the notice of this Authority that the said complaint of the Society is coming up for hearing before this Authority on 14.12.2021.
2. The Respondent also clearly specifies that the allotment for parking is the prerogative of Developer and that the parking at lower level was provided only as and by way of a temporary arrangement which cannot be sought as matter of right today. Also that there is a different understanding on floor numbering and so it is the 12th floor and not 13th as stated by the Complainant.
3. With regard the issue of lift, they have provided reputed brands of lift and the stretcher lift is also provided for.
4. Further there is no deficiency of water which is available 24 hours and that the Complainant is asking for future plans which he has to get from Thane Municipal Corporation.
5. The FCAM charges have been collected as per the agreement for sale, however the apartments were handed over for fit outs at different point of time and so corpus was necessary for maintenance in the interim period.
6. Further, the agreement for sale clearly states that the amenities would be shared and that they shall provide for more as and when required during expansion.
7. The defects brought to their notice has been rectified and few of them are on account of normal wear and tear.

The Complainants in rejoinder submit that while the parking allotment is the prerogative of Developer but the same should be exercised in just and fair manner and not arbitrarily. The Complainants also submit that the main submission is that there is

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no permanent water connection to meet the future water needs. The Complainants also point out that there is no mention of fit out possession. The Complainants state that Respondent's submissions deal with the brand of lifts but not the purpose (stretcher) for which they had to be provided.

Heard the Parties. The Parties are at liberty to file written submissions, if any on or before 23.11.2021 subsequent to which the matters shall be reserved for order."

4. The following facts and submissions of the Complainants are noteworthy:

COMPLAINT NOS.	DATE OF FILING THE COMPLAINT	FLAT NO./ FLOOR	WING	DATE OF COMPLETION	STATUS
CC006000000100363	01.08.2019	101/1	5	30.11.2019	OC received on 24.01.2018
CC006000000100367	01.08.2019	1804/18	5		
CC006000000100368	01.08.2019	601/6	3		
CC006000000.0100373	02.08.2019	2005/20	12		
CC006000000100377	02.08.2019	2103/21	13		
CC006000000192699	21.02.2020	603/6	1		

5. Before going into the merits of the complaints, it is important to examine the maintainability of the complaints on account of the above facts put before this Authority. The following observations in this regard are noteworthy:

- a. All the Complainants in their respective complaints have clearly mentioned that the OC of their respective wings have been received on 24.01.2018 and that they have taken possession of their respective flats (apartments) pursuant to the same i.e. in the year 2018 itself. The Complainants have all filed their complaints much later to the date of the receipt of OC i.e. on or after August 2019 (ref: table @para No. 4 hereinabove).
- b. Further, it is not the case of any of the Complainants that the possession of their respective apartments was delayed and that they are claiming any interest regarding the same. In this regard it is pertinent to note that the OC of the wings in which the Complainants are presently residing was received way back on 24.01.2018 and that a Society namely **Casa Fresco Housing Society Ltd.** has already been formed by the residents of the said Project.

By M. S. S.

- c. The present complaints have been filed by the Complainants with regard the issues pertaining to the common amenities mentioned in the agreement for sale of each of the Complainant such as car parking spaces, two-wheeler parking allotments, maintenance charges refund, lifts issues, club house amenities and many facilities as mentioned in agreement for sale. In this regard, it is important to examine that the rights of an Allottee (Complainants herein) under MahaRERA is qua his / her apartment and the common amenities rights are with the Society and /or Association of Allottees. In this regard section 11 (4) read with section 19 (3) of the said Act are noteworthy:

" 11 (4) The promoter shall –

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed."

" 19 (3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (1) of sub-section (2) of section 4."

- d. From the above it is clear that the grievances pertaining to common areas and common amenities shall be raised by the Society for the said Project and it's not open for individuals to raise individual grievances as this may cause multiplicity of proceedings and the Promoter (Respondent herein) shall never be free from the litigation of the Projects which shall hamper the handover activities constraining the interest of the larger majority. Hence individuals in these complaints have no locus standii to raise disputes in this regard as it squarely falls within the purview of the Society.
- e. Also, it is pertinent to note that the Society namely Casa Fresco Housing Society Ltd. has already filed two complaints bearing Nos.


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CC006000000171517 and CC006000000195952 of which the complaint No. CC006000000195952 has been dismissed for lack of prosecution and the complaint No CC006000000171517 was reserved for order on 18.01.2022 by this Authority.

- f. In addition to the above, one must not forget, that as the scheme of the said Act is to safeguard the interest of an Allottee (Complainant/s herein) against the Promoter (Respondent herein) at the same time this Authority is also vested with the responsibility of safeguarding the Promoter (Respondent herein) against unreasonable demands and to create an ecosystem that ensures completion of the project in a time bound manner.
- g. Needless to say, that the responsibility of the Promoter (Respondent herein), with respect to the structural defect or any other defect [section 14(3)] shall continue even after the conveyance deed are executed starting from the date of handing over possession up to 5 years thereafter.

FINAL ORDER

Thus, from the above observations, all the captioned complaints are dismissed as not maintainable. No order as to cost.


(Ajoy Mehta)
Chairperson, MahaRERA

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MahaRERA Project Registration No. P51700001065

Rectification Order (Suo-Motu)

February 09, 2022


A. J. M. K.

1. There is an inadvertent error in the observation para No. 5 (e) @page No.5/6 of the Order dated 08.02.2022 passed by this Authority in all the captioned complaints wherein the words '*has been dismissed for lack of prosecution*' is been wrongly stated. The correct fact to be stated is 'has been adjourned to 04.10.2022'.

Thus, the correct para No. 5 (e) shall now read as under:

"Also, it is pertinent to note that the Society namely Casa Fresco Housing Society Ltd. has already filed two complaints bearing Nos. CC006000000171517 and CC006000000195952 of which the complaint No. CC006000000195952 has been adjourned to 04.10.2022 and the complaint No CC006000000171517 was reserved for order on 18.01.2022 by this Authority."

2. Further, the remaining part of the Order dated 08.02.2022 shall remain the same and this rectification order (*suo-motu*) to be read along with the Order dated 08.02.2022.


(Ajay) Mehta
Chairperson, MahaRERA