

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

**1. Complaint No. CC006000000194116**

OSM Capital Advisors Private Limited ...Complainant  
*Versus*

Macrotech Developers Limited ...Respondent

**2. Complaint No. CC006000000194117**

Pranay Kothari ...Complainant  
*Versus*

Macrotech Developers Limited ...Respondent

**MahaRERA Project Registration No. P51700014760**

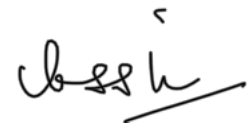
**Coram: Dr. Vijay Satbir Singh, Hon'ble Member – I/MahaRERA**

Ld. Adv. Avinash Pawar appeared for the complainants.

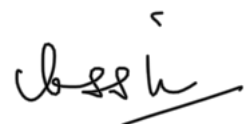
Ld. Adv. Prashant Gawali a/w Ld. Adv. Megha Gupta appeared for the respondent.

**ORDER**  
(Monday, 4<sup>th</sup> October, 2021)  
(Through Video Conferencing)

1. The complainants above named have filed these two separate complaints seeking directions from MahaRERA to the respondent to cancel the registered agreements for sale and refund the entire amount paid by the complainants to the respondent under the provisions Section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of a flat bearing no. 2705 and 2706 on 27<sup>th</sup> floor in the respondent's registered project known as "**Lodha Amara - Tower 6, 22**" bearing MahaRERA registration No. **P51700014760** located at Kolshet, Thane.

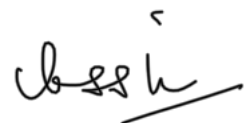


2. These complaints were transferred to this Bench from Hon'ble Chairperson on 14-07-2021. Accordingly, same were scheduled for hearing on 23-08-2021 and the same were heard finally on 15-09-2021 as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through 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. Accordingly, both the parties appeared for the hearing and made their submissions. The MahaRERA heard the arguments of the parties and also perused the available record.
3. It is the case of the complainants that they have purchased the said flats in the respondent's project bearing nos. 2706 and 2705 respectively on the 27<sup>th</sup> floor of the building known as "Lodha Amara" i.e. building W 6, through registered agreements for sale dated 4-09-2018 for consideration of Rs. 1,11,81,973/-. The said booking was done after commencement of RERA. Out of total consideration amount of the said flat, they have paid an amounts of Rs.56,10,570/- and Rs.67,27,691/- respectively to the respondent. However, they subsequently, came to know that the respondent on the date of execution of the agreements for sale did not have commencement certificate for 27<sup>th</sup> floor for the flats allotted to them. Despite that it has accepted 45% and 60% of sale consideration from them without having any permission to construct on the 26<sup>th</sup> and 27<sup>th</sup> floor on which the flat has been sold to the complainants. The respondent has not disclosed bank encumbrances on project amounting Rs 70 crores approximately. Thereby the respondent has violated the provisions of sections 3, 4, 12, 13, 7 of the RERA read along with Rule 10 of the MahaRERA Registration Rule, 2017. Even, the respondent has given false representation about the commencement certificate thereby violated the provisions of section 12 of the RERA. Hence they sought refund along with interest and compensation



under section 12 and 18(3) of the RERA. The complainants further sought revocation of registration under section 7 of the RERA and thereby penalty under sections 59 and 60 of the RERA.

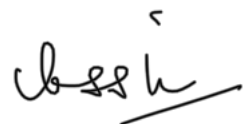
4. The respondent on the other hand has resisted the claims of the complainants by filing its affidavit on record on 15-9-2021 denying the contentions of the complaints and stating that the complainants have made various baseless allegations in these complaints which are erroneous including a) non receipt of commencement certificate by it; b) receiving 45% of the consideration value without having permission to construct the proposed building; and c) non disclosure of bank encumbrance on the project.
5. The respondent has mainly stated that the complainants are seeking cancellation of agreements, compensation, refund, interest and various other reliefs based on above erroneous notions, when a bare perusal of the registered agreements for sale dated 4-09-2018 will make it abundantly clear that the complainants are making frivolous allegations on the respondent. The respondent stated that the complainants had failed to make payments as per the agreed terms in the said agreements and hence trying to wriggle out of their own liabilities by making these frivolous complaints and wasting judicial time of the MahaRERA. Hence they are not entitled to seek any reliefs.
6. It has been further stated that the complainants alleged that the respondent didn't possess the commencement certificate at the time of execution of the said agreements and also till today the respondent has not received the



commencement certificate. However, it has stated that it received the commencement certificate upto 29<sup>th</sup> floor on 23-11-2020 and the same was intimated to the complainants and the complainants had signed the said agreement after understanding and agreeing to its terms and conditions which records very clearly at clause 13. 1 a declaration by the complainant confirming that the respondent had made full disclosure of title of larger property; that the complainants had satisfied themselves by taking inspection of relevant documents with respect to title, encumbrances, approvals, drawings, plans, specifications, and amenities in relation to the proposed building in which a Unit was offered and registered in their favour. It has further stated that it has obtained building approval plan (IOD) for ground plus 29<sup>th</sup> floor. It has further relied upon additional FAQ 2 provided on MahaRERA portal specifically records IOD/building plan as necessary for registration of the unit. The same is produced as below in verbatim;

***“Q. 1: (A) From a buyers perspective, what is an acceptable evidence of sanction under RERA? (a) IOD, or (b) Commencement certificate (CC) upto plinth or, (c) CC endorsed for the floor on which buyer wants to book the apartment ? 4 Ans: In any MahaRERA registered Real Estate Project, for registration of the apartment to be purchased, IOD/Building Plan Approval of the building where the apartment is located, is necessary. This is referred to as Annexure D in the Model Form of Agreement for Sale.*”**

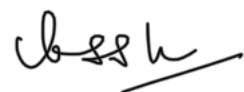
Therefore, it has submitted that these complainants are falsely and mischievously alleging laches on its part. The complainant has based his claims on gross misconstruction and convenient misinterpretation of essential clauses of the agreement and as such they are not entitled to any reliefs as claimed for or otherwise. It has also stated that it had received 45% of the sale consideration without having any permission to construct 27 floors



on which the flat have been sold to the complainants and the money was demanded as per the payment schedule mentioned in the agreements for sale. It has also denied that it did not disclose bank encumbrances on the project and that it had not made disclosures and submitted that the said agreements record very clearly at clause 13. 1 a declaration by the complainants confirming that it had made full disclosure of title of larger property and even the complainant had satisfied themselves by taking inspection of relevant documents with respect to title, encumbrances, approvals, drawings, plans, specifications, and amenities in relation to the proposed building in which the said flats were offered and registered in their favour.

7. Hence, now therefore after signing and agreeing to the terms of the said agreements the complainants cannot falsely allege grievances about non-disclosure. Further, it had issued defaulter letter dated 9-10-2020 calling upon them to make payment of the outstanding amount. However, they failed to make the payments and by suppressing such material facts they have made this false claim against it. Hence, it has prayed for dismissal of these complaints.

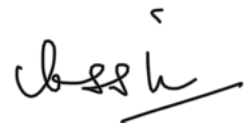
8. The MahaRERA has examined the rival submissions of both the parties and also perused the available record. In these complaints the complainants have approached MahaRERA mainly seeking relief of refund along with interest and compensation mainly alleging the violation of section 12 of the RERA. The complainants have stated that the respondent has executed the registered agreement for sale dated 4-09-2018 without any valid mandatory permissions such as commencement certificate for the said flat and thereby



it has given misleading information to them. Mainly due to the said reason, they are seeking refund along with interest and compensation. However, the said contention of the complainants has been denied by the respondent promoter by relying upon the FAQ issued by the MahaRERA whereby it was clarified by the MahaRERA that in any MahaRERA registered project, for registration of the apartment to be purchased, Building Plan Approval (IOD) of the building where the apartment is located, is necessary.

9. As far as the main reliance placed by the complainants with respect to violation of provision of section 12 of the RERA is concerned, it is necessary to deal with the said provisions of RERA before going into the merits of this case. The relevant provisions of section 12 reads as under:

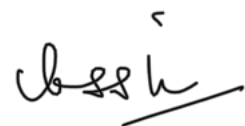
***“12. Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act: Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.”***





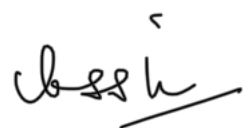
10. The aforesaid explicit provisions under RERA make it clear that the allottee is entitled to seek refund of the amount along with interest if he makes any booking on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein. However, in the present case, admittedly, it is not the case of the complainants that the respondent has provided them any false advertisement, notice or prospectus and induced them to book the said flat. Further the provision of section 12 of the RERA does not talk about the execution of agreement for sale. Hence the MahaRERA prima facie feels that there is no substance in the claim agitated by the complainants for violation of section 12 of the RERA.

11. The MahaRERA has noticed that admittedly, the said agreements for sale are executed and registered between the complainants and the respondent after commencement of RERA in the year 2018 in the MahaRERA registered project. Being promoter of the project it was mandatory on the part of the respondent promoter to disclose all relevant information pertaining to this project on the MahaRERA webpage as per the provisions of section 4 of the RERA. Further as per provision of section 4(2) (C ) of the RERA, it was mandatory for the respondent promoter to upload / submit an authenticated copies of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the said project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases. Section 4 of the RERA mainly talks about the information to be submitted for registration of project with MahaRERA; however it does not talk



about registration of agreement for sale between the allottee and the promoter.

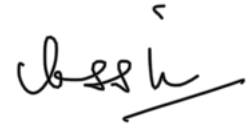
12. In addition to this, the MahaRERA has further noticed that the RERA legislation is enacted to regulate and promote the real estate sector in the whole country. Further, the MahaRERA is constituted to strive to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector while protecting the interest of allottees, promoters and real estate agents. After commencement of RERA in the year 2017, no sale is permitted by the promoter without registering the project with MahaRERA under the provisions of section 3 of the RERA. Accordingly, this project was registered with MahaRERA whereby the respondent has disclosed all relevant information pertaining to this project was uploaded on MahaRERA website. The complainants being prudent allottees should have verified all the relevant information pertaining to the said project including the relevant permissions uploaded on the MahaRERA website such as IOD commencement certificate etc. If no commencement certificate for their units was not uploaded on MahaRERA webpage, in that event, the complainants should have raised the query/ objection at the relevant time of signing and executing the said agreements. After signing the said agreements, now the complainants cannot raise such issue of commencement certificate, which has subsequently been obtained by the respondent promoter including the complainants units in the year 2020. Hence the said claim of the complainants seems to be an afterthought and hence cannot be entertained at this stage as it has been raised after two years from the date of execution of the said agreements for sale. Therefore, the MahaRERA does not find any merits in the claim agitated by the complainants. Hence, the subsequent reliefs sought by them need not be entertained.





13. In view of the aforesaid facts, the complaints are devoid of merit. Hence, both the complaints stand dismissed.
14. 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.





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