

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

Complaint No. **CC006000000195674**

Mrs. Richa Singh

... Complainant.

Versus

M/s. Kapstone Construction Pvt Limited

...Respondent.

MahaRERA Project Registration No. **P51700001516**

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

The complainant appeared in person.

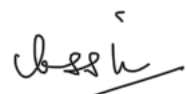
Ld. Adv. Abir Patel a/w Ld. Adv. Gayatri Tikale appeared for the respondent

ORDER

(24th June, 2021)

(Through Video Conferencing)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondents to allocate proper spacious parking in the upper basement 2 or in the alternative to be given compensation under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of her flat in respondent's registered project known as "**Rustomjee Aurelia 1**" bearing MahaRERA registration no. **P51700001516** situated at Thane.
2. This complaint is scheduled for hearing today 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 made their submissions. The MahaRERA heard the arguments of both the parties and also perused the available record.

3. It is the case of the complainant that her only consideration to buy the said flat in this project was proper spacious parking which was committed verbally by the sales team of the respondent at the time of booking of the said flat on 5-11-2018. Further, the building was under construction and it was difficult to understand the parking arrangement and she relied only on sales team promises. Further, she highlighted the same in one of the emails dated 26-09-2020 to which she received a reply by email dated 26-10-2020 with reference to provisional parking allocation stating that it is a shared parking (mechanical) i.e., technically it belongs to 2 owners and because of mechanical polls width and gets reduced by approx. 12% which its unsafe while opening the car door. The complainant further stated that there are unsold flats in the building and the builder is arbitrarily keeping them as a value proposition for the future customers. The complainant further stated that the respondent without following any procedure, a few days before the formation of society has illegally allotted the said car parking spaces to the allottees. The complainant therefore has filed this complaint seeking directions to the respondent to allocate proper spacious parking in the upper basement and if it is not possible, then, remove mechanical arrangement in said parking and make it an independent one for her exclusively. Further, if this is not possible, then, pay her compensation towards mental agony, depreciated value of the

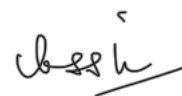
property since she has paid the highest amount of money for said flat.

4. The respondent has refuted the claim of the complainant and has filed its affidavit in reply on record on 23-06-2021 stating that there is no provision of the RERA under which the relief sought by the complainant can be granted. It is further stated that the occupancy certificate for this project was obtained on 29-08-2019 and on 6-10-2019 the complainant has made full payment and taken unconditional possession of the subject flat. It is further stated that in the possession letter, the complainant has clearly confirmed that she has inspected the flat, common areas and amenities (parking being a common area) and that since she is satisfied with the same, she will make no claims of any nature whatsoever in that regard. Moreover, during the pendency of this complaint, the society of flat purchasers of this project has already been formed and in its first general body meeting of all members was held on 23-05-2021 it was decided to handover the present project to the society of flat purchasers, including the common areas such as allotted parking spaces and thus the common areas and allotted parking spaces are now all under the control of the above society and hence, the respondent no longer has any control over the handed over car parking area of the project and in any event all car parking's have been assigned to the respective flats.

5. In addition to this, the respondent further stated that from clause 3.4 of the agreement for sale dated 17-12-2018, it is clear that the complainant can be allotted any of a puzzle/ mechanical/

independent/stack car parking which is free of cost. Clause 3.4 of the said agreement reads thus. ***"The Promoter has made adequate provision for car parking for the Real Estate Project in accordance with the Development Control Regulations for Thane, 1994 ("DCR") and/ or the applicable building bye laws etc. As per the norms, car parking spaces in the form of independent/ stack/ mechanical/ puzzle and/ or otherwise is required to be provided in respect of the Premises, and the Promoter confirms having made provision for the same (hereinafter referred to as "the said Parking Space"). Accordingly and as incidental to the purchase and ownership of the Premises, the Allottee shall be entitled to the use of the said Parking Space, subject to the rules and regulations of the Society (as defined below). The Promoter has not charged/ levied any consideration for the said Parking Space. The Allottee shall use the said Parking Space for the purpose of parking his vehicle only."***

6. It is further stated that there is not a single document produced or existing between the parties that shows that the complainant was promised a car parking of a particular category. Moreover, there are no other car parking spaces currently available in the said project apart from mechanical parking places which are meant for allotment to the allottees of the unsold flats in the said project. Further, the complainant has made major defaults in payment, as a result whereof they had even accrued interest of Rs. 19,943/- and hence she has violated section 19(6) of the RERA which has been admitted by the complainant. It is stated that the car parking space allotted to the complainant is spacious and there is, therefore, no



basis for the complainant to dispute the allotment of a mechanical car parking. Hence, it is prayed that the complainant is not entitled to any reliefs and in fact, the reliefs sought by the complainants cannot even be entertained under the RERA, as no provision of the RERA has been violated in their case.

7. The MahaRERA has examined the rival submissions made by both the parties and also perused the available record. In the present case, the complainant has brought a dispute before MahaRERA by filing this complaint with respect to the allotment of car parking. Admittedly, the project is complete and the occupancy certificate has already been obtained for the project in the year 2019. It is not a disputed fact that the complainant has taken possession of her flat by signing the possession letter. After the occupancy certificate is being obtained for the project and also after taking possession of her flat, the complainant has approached MahaRERA in the year 2021 seeking reliefs towards an alternate car parking.

8. The respondent while resisting the claim of the complainant has mainly stated that the car parking has been allotted to the complainant as per clause no. 3.4 of the agreement for sale dated 18-12-2018. Therefore the complainant cannot agitate such claim before MahaRERA after signing the agreement for sale.

9. After considering these submissions, the MahaRERA is of the view that the complainant in this complaint and even at the time of hearing has not explained under which provision of the RERA, she is

claiming such reliefs / compensation etc. The provisions of section 18(3) of the RERA specify that if the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottee. However, in the present case, admittedly the car parking space has been handed over to the complainant. Moreover, the complainant has failed to point out to any clause in the agreement for sale, whereby the respondent has ever agreed to allot any specific car parking space to her or the respondent ever agreed to allot the said car parking spaces by following any specific procedure. Hence, in absence of such specific clause in the agreement for sale, the complainant cannot seek any compensation under section 18(3) of the RERA. Hence, the claim of the complainant towards compensation stands rejected.

10. Further, the MahaRERA is also of the view that the car parking space has been allotted to the complainant free of cost and as per the approved plan of the competent authority. Hence, there is no provision which mandates that the said sanctioned plans should be modified at this stage when the project is already completed in the year 2019 itself.
11. In addition to this, the MahaRERA is also of the view that the open car parking spaces covers the common area, which is to be handed over to the society. In the present case, the respondent has already formed a society of the allottees and the society has already taken over charge of the project including the common

area. Hence, if the complainant has any grievances about the car parking space, she has to approach the society for the same. The respondent cannot be held liable now for change in car parking space.

12. In view of these facts, the MahaRERA does not find any merits in this complaint. Consequently, the complaint stands dismissed.
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.



A handwritten signature in black ink, appearing to read 'V. Singh', is placed to the right of the MahaRERA logo.

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