

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

**Complaint No. CC006000000195810**

Om Shanti Ambika Welfare Association .... Complainant

**Versus**

Rajguru Developers Private Limited .... Respondent

**MahaRERA Project Registration No. P51800007125**

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

Ld. Adv. Tanuj Lodha appeared for the complainant.

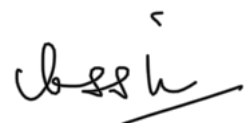
Ld. Adv. Shilang Shah appeared for the respondent.

**ORDER**

(Wednesday, 23<sup>rd</sup> March 2022)

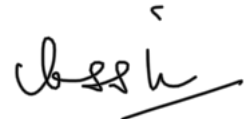
(Through Video Conferencing)

1. The complainant-association has filed this complaint seeking direction from MahaRERA to the respondent to handover the said project to it under the provisions of section 7 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the respondent's registered project known as "**Raj Altezza**" bearing MahaRERA registration No. **P51800007125** located at Mulund west, Mumbai.
2. This complaint was heard on 16-12-2021 as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for



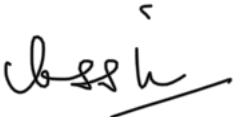
hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their respective written submissions if any. Accordingly, both the parties appeared for the hearing and made the submissions. Further, during the course of the hearing, on request of the respondent two weeks' time is granted to the respondent to file its reply, on the record of MahaRERA. With this direction, the matter was reserved for the order. The MahaRERA heard the submissions made by the parties and also perused the available record.

3. Pursuant to the said directions, the respondent filed its reply on record of MahaRERA on 10-02-2022 and the complainant has filed its rejoinder on 14-02-2022. The said submissions were taken on record. The MahaRERA heard the submissions of both the parties and also perused the available records, however, it was not possible to decide the matter expeditiously since the office was severely impacted by Covid-19 pandemic heavy work and shortage of staff
4. It is the case of the complainant that it is a registered association of flat purchasers who have purchased the flat in the said project consisting of flat owners who have bought 42 flats either singly or jointly while the respondent is the promoter of the project. Further, the members of Association have purchased the flats via registered agreements for sale during the period 2013 to 2018 and have till date paid Rs.32.6 Crore i.e., 58% of the consideration (exclusive of taxes) towards purchase of the residential flats in the project building to the respondent but the respondent has failed to provide the possession



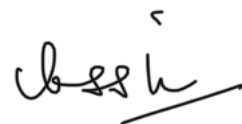
of the flats, to its members, as per the date specified in their respective agreement for sale and has also failed to pay interest and compensation for the delay in handing over the possession. Moreover, consent of flat buyer is not obtained by the respondent for the construction of one additional floor in the project building. Further, the respondent has also defaulted to pay the pre-EMI of the members who have availed loan under subvention scheme and despite selling more than 51 % of the flats in the project, Respondent has failed to form society. The complainant further stated that the respondent is likely to further harm their interests by selling/ borrowing more on the project and misappropriating the funds. In view of the facts above, the complainant respectfully prays that the respondent be directed to pay interest for the delay in possession, to pay PEMI to the financial institutions as provided in the subvention scheme / tripartite agreement / loan documents and to hand over possession of the flat along with all the amenities, fixtures etc. Further, the respondents be directed to provide a copy of project completion timeline chart, project progress report to the complainant every month and to pay compensation and to form homebuyers' society for the project and be restrained from creating third party rights.

5. The respondent filed its reply denying the contentions of the complaint and stating that there is no default under section 18 of RERA as alleged. It is stated that in view of Covid-19 pandemic and consequent lockdown from March 2020, there were problems of labourers and construction material and MahaRERA passed orders twice invoking force majeure regarding extension of registration of



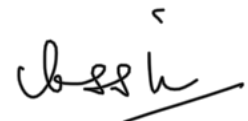
real estate projects. Further one Altico Capital defaulted in interest payment to Dubai based Mashreq Bank in September 2019 due to which the funds intended for the project could not be released. It is stated that the respondent has raised funding from Altico Capital (India) Ltd. by way of issuance of debentures to lender and company created the mortgage charge of Rs.370 crores over the project property to secure the lender which has been updated on MahaRERA website as per the compliance requirement. Further, the complainant had agreed to settle the disputes amicably however eventually has shirked away from the agreement. It is stated that as per the terms of the said agreement for sale due to the ongoing global Covid-19 pandemic which has been declared as a force majeure situation, the respondent is entitled for exclusion of time to hand over possession. Further, the complainant has failed to disclose any documents in relation to alleged apartment taken on rent or in relation to the alleged home loan obtained. It is stated that even if the date of possession is taken as May 2016 on face value it is quite shocking and surprising that the complainant waited for 3 years before lodging the present complaint. It is stated that in view of the general financial distress in the real estate and banking sector aggravated by the prolonged lockdown, this Hon'ble Authority must adopt a balanced approach not only to protect the rights of the complainant but also all those stakeholders in the project since there are huge no. of flat purchasers in the project. Thus the respondent denies that that he guilty of deficiency of service and complainant is entitled to any reliefs.

6. The complainant filed its rejoinder on record on 14-2-2022 stating that



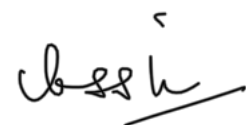
in cases of agreement for sale (executed prior to 2016/2017), the possession date is blank / nil. However, in cases of agreement for sale (executed post 2016/2017), the possession date is 31 December 2019 and in case of Flat no. 1401 allotted to Mr. Michael Tauro & Mrs. Muriel Tauro vide allotment letter dated 15 March 2017, it is observed that there is no promised date of possession. Further, the respondent unilaterally declared 31 December 2019 as date of possession on MahaRERA & further without the consent of allottees sought extension to complete the project by 30 June 2021, however, the project is stalled and is far from completion. Further, by admitting its inability to handover the said flat by the date of possession specified in the agreement for sale, the respondent has made itself liable under section 18 to pay the interest for delay in possession and compensation towards monetary loss and mental harassment. Further the respondent is constructing additional floors without seeking consent of the buyers which is violation of Sec 7 of MOFA and Sec 14 of RERA. The complainant has denied the contentions of the reply parawise. It is stated that the rest of the averments are mere repetitions of what is stated hereinabove.

7. In the present case, by filing this common complaint the complainant who is a registered association of 42 flat purchasers have approached MahaRERA mainly seeking preliminary reliefs under sections 12,14 and 18 of the RERA for interest and compensation for the delayed possession from the agreed date of possession mentioned in the registered agreement for sale/ allotment letter till the actual date of possession. The complainants also sought direction to the respondent



to provide the project completion chart. The said claim of the complainant has been assailed by the respondent promoter by filing its reply on record of MahaRERA. It has mainly denied the allegations made by the complainant about the deficiency of services and the reasons of delay due to Covid-19 pandemic.

8. Before going into merits of the case, the MahaRERA has noticed 2 issues in this complaint. - i) the project validity period granted by MahaRERA to this project registered by the respondent is lapsed on 31-12-2021 i.e. after the matter was finally heard by m on 09-12-2021 and till date the respondent has not sought any extension from MahaRERA. ii) The complainant association by filing this complaint seeking common sought of reliefs.
9. As far as the first issue observed by MahaRERA is concerned, the promoter of such project should apply for extension of the project and should enable the formation of association of allottees / society us 11(4) (e ) of the RERA by sharing the project related information to the allottees , however, in the present case the association has been form by the allottees of this project. As far as the second issue is concerned, on bare perusal of online complaint it is admitted fact that 42 allottees of this project have formed the complainant – association and the said association has filed this common complaint in the name of the association agitating the individual claims of the said 42 allottees mainly under section 12, 14 and 18 of the RERA. The complainant though have contended that 42 allottees have purchased their flat since the

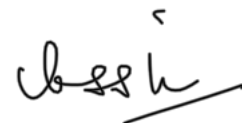


year 2013 to 2018 by executing the registered agreement for sale, the complainant has failed to produce the copies of the registered agreement for sale, allotment letters, payment recites duly issued by the respondent in this project to substantiate their claim for violation of sections 12,14 and 18. In absence of such crucial mandate documents it is not possible for MahaRERA to conclusively prove that the provisions of sections 12, 14 and 18 has been violated.

10. In addition to this, the MahaRERA further perused the MahaRERA Order No.11 dated 23-10-2019, wherein the clause nos. 2 and 3 state as under: **“2. Group Complaint shall be entertained only in respect of common reliefs claimed under section 7 and 8 of the RERA or for common amenities.**

**3. Individual complaints need to be filed separately for individual reliefs otherwise they will be held not maintainable for mis-rejoinders for cause of action and parties.”**

11. In view of the above, the MahaRERA is of the view that the present complaint is not maintainable since it is filed in group complaint and not for seeking relief under sections 7 and 8 of the RERA. The members of the complainant-association therefore should have filed separate complaints agitating their individual claims under sections 12, 14 and 18 of the RERA if they were genuine allottees of the project registered by the respondent. Hence, the MahaRERA cannot proceed to decide the individual claims of the complainant-association under sections 12, 14 and 18 of the RERA in this

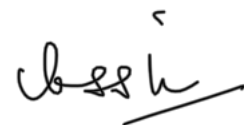


common complaint which is also filed without the mandatory documents viz registered agreement for sale/ the allotment letters/ payment receipts duly issued by the respondent in this project.

12. In addition to this, the complainants have also agitated the other grievance with respect to the construction of additional floors and project completion of chart to ensure the timely completion of the project. The said reliefs can be considered by MahaRERA since the project validity period in this project has already been lapsed.

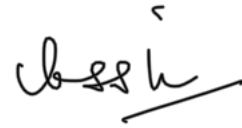
13. Considering these facts, the following order would end justice:

- a) The respondent-promoter is directed to apply for extension for project validity period of this project within a period of one month from the date of receipt of this order.
- b) The respondent-promoter is also directed to take appropriate action for formation of society as provided under section 11(4) (e) of the RERA.
- c) The respondent-promoter is also directed to provide the project completion chart/ CPM / PEART chart showing the project completion schedule to the complainant.
- d) The members of the complainant association are at liberty to file individual complaints agitating their claims for violation of provisions of RERA, if they so desires.





14. With the above directions, the complaint stands disposed of.
15. The certified copy of the order will be digitally signed by the concerned Legal Assistant of MahaRERA and it is permitted to send the same to both parties by e-mail.



(Dr. Vijay Satbir Singh)

**Member – 1/MahaRERA**

