

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NOS: CC006000000023326

Asset Auto India Pvt. Ltd.

...

Complainant

Versus

Oberoï Constructions Limited
MahaRERA Regn. No: P51800002656

...

Respondent

Coram
Hon'ble Shri Gautam Chatterjee, Chairperson

Order

February 28, 2018

Complainant represented by Mr. Mukul Taly, Adv., Mr. Raj Kumar Rampal, Adv.
(S.Mahomedbhai & Co)

Respondent represented by Mr. Rajeevan Nair, Executive VP with Adv. Richa Singh

1. The Complainant has booked two apartments bearing No. A-1006 and A-1005, along with two parking spaces, in the Respondent's project 'Enigma' situated at Mulund, Mumbai via allotment letters dated May 16, 2015. The MahaRERA Order dated January 29, 2018 in Complaint No: CC006000000012320, had directed the parties, if the allottee intends to continue in the said project, to execute and register the agreement for sale for the said apartments. In the present complaint, the Complainant has alleged that the draft agreement for sale (*hereinafter referred to as the 'said draft'*), as provided by the Respondent for the said apartments is not in conformity with the Model Form of Agreement as annexed to the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017. Further, he argued that the Respondent has uploaded the similar draft agreement for sale in their MahaRERA registration webpage of the project and therefore, they be directed to upload a copy of the draft agreement for sale which is in conformity with the provisions of the Real Estate (Regulation and Development) Act 2016 and the rules and regulations made thereunder.



2. Specifically, he alleged that:

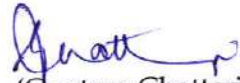
- a) the draft does not specify the location of the Complainant's parking space
- b) at the time of the booking, the Respondent's brochures did not make any mention of the Public Parking Lot (PPL) as now mentioned in the draft.
- c) the draft states that the Respondent shall be entitled to maintain and operate the additional area or facility, helipad or similar facilities, even after conveyance of the said project. The advocate for the Complainant argued, that the entitlement of managing/operating the said facilities/helipad etc. should vest with the society and cannot be reserved by the Respondent.
- d) the draft suggests that only the possession of the said apartment will be handed over, the amenities will be handed over at a later date
- e) the draft provides that the Respondent shall be liable to pay maintenance charge for the unsold apartments only to the extent of INR 1000
- f) the draft's provisions pertaining to Right of First Refusal (ROFR) for sale of apartments is not in conformity with the Model Form of Agreement
- g) the draft stipulates Complainant's consents to have the tower painted once, every 5 years, which ought to be deleted.
- h) the draft stipulates that the Complainant shall indemnify the Respondent against any or all demands, notices, claims, actions, proceedings, losses, damages, expenses, costs or other liabilities incurred or suffered by the Promoter from or due to any breach by the Allottee of any of its covenants, representations and warranties under this Agreement or due to any act, omission, default on the part of the Allottee in complying/performing his/her/their obligations under this Agreement. Advocate for the Complainant argued that the Respondent should also indemnify the Complainant against the same.

3. Advocate for the Respondent submitted that:

- a) the Respondent is willing to specify in the agreement for sale, the location of the two parking spaces to be provided to the Complainant.
- b) the Complainant was made fully aware of the existence of the PPL at the time the said apartments were allotted to the Complainant and produced documents to that effect



- c) the said draft will be modified to state that the entitlement of managing/operating the said facilities/helipad etc shall rest with the Respondent only till such period as the conveyance of the said project is handed over to the society of the said project or as agreed between the society and the Respondent
 - d) the said draft provides that the amenities as mentioned to the Complainant and as registered with MahaRERA will be handed over at the time of handing over possession of the said apartments and that the clause that the Complainant is referring to provides for the amenities to be provided in the larger layout.
 - e) the said draft will be modified to reflect that the Respondent shall be liable to pay maintenance charges for the unsold apartments as shall be agreed between the Respondent and the society.
 - f) the said draft will be modified to reflect that the ROFR for sale of the said apartments will subsist only till handing over conveyance of the said project to the society.
 - g) clause pertaining to having the tower painted once, every 5 years, will be deleted.
 - h) the said draft also provides for representations and warranties by the Respondent and further clarification of the same is not be required.
4. Advocate for the Complainant submitted that, pursuant to the submissions made by the Respondent in para 3 above, the dispute between the parties stands resolved.
5. In view of the above, Respondent is directed to upload in their MahaRERA registration, copy of the draft agreement for sale which is in conformity with the provisions of the Real Estate (Regulation and Development) Act 2016 and the rules and regulations made thereunder, within 7 days from the date of this Order.
6. Consequently, the matter is hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA