



Ref. No. MCHI/PRES/17-18/095

4TH BULLETIN OF SUMMARY OF MAHARERA ORDERS

BRIEF SUMMARY | ORDERS PASSED BY MAHA RERA

1. AMIT KUMAR AHUJA VS. DEVISHA INFRASTRUCTURE PRIVATE LIMITED [ES3229](#)

Complaint:

Amit Kumar Ahuja ("**Amit**") has filed a complaint against Devisha Infrastructure Private Limited ("**Devisha**") seeking a refund of the amounts paid by Amit to Devisha in relation to purchase of a 1 BHK flat and a 2 BHK flat in Project Hexworld situated at Kharghar in the year 2010 and 2011 respectively.

Order of MAHA RERA:

Maha RERA vide its order dated 21 November 2017 dismissed the complaint on the ground that the date of possession agreed was 2018 and hence no cause of action has arisen till date.

2. ABBAS SAYED ZULFIQUAR VS. LANDMARK REAL ESTATE DEVELOPERS LIMITED [ES3581](#)

Complaint:

Abbas Sayed Zulfiqar ("**Abbas**") has filed a complaint against Landmark Real Estate Developers Limited ("**Landmark**") requesting Maha RERA to direct Landmark to refund the monies invested by Abbas alongwith interest, as Landmark has failed to give possession of the villas and apartments reserved by Abbas or refund the monies with interest.

Order of MAHA RERA:

Maha RERA vide its order dated 11 December 2017 dismissed the complaint of Abbas on the grounds that there was no violation of RERA because Abbas was a "promoter investor" and not an "allottee" as the letter of allotment and letter of assurance dated 25 September 2012 executed between Abbas and Landmark stated that Abbas would be entitled to 75% to 100% of profit on his investment on possession of the villas and apartment and further sales thereof.

3. AMIT KUMAR BURMAN VS. ARKADE REALTY [ES3283](#)

Complaint:

Amit Kumar Burman ("**Amit**") has filed a complaint against Arkade Realty ("**Arkade**") requesting Maha RERA to direct Arkade to allow Amit to park his vehicle inside the compound of the completed building in which Amit has purchased a flat. Amit also alleged that Arkade was selling open car parking spaces in the compound of the building.

Arguments of Arkade:

Arkade denied selling open car parking spaces in the building and agreed that it will allow Amit to park in the parking spaces in the building.

Order of MAHA RERA:

Maha RERA vide its order dated 15 December 2017 directed Arkade to allow parking of vehicles of Amit in the building as is being done for other allottees of flat in the building and Maha RERA also directed Arkade not to sell open parking space which according to RERA is to be handed over to legal entity to be formed of all allottees.

4. TUPE DEVELOPERS VS. BHANSALI INFOTECH LLP AND OTHER VARIOUS COMPLAINTS [ES3583](#)

Complaint:

Tupe Developers ("**Tupe**") has filed a complaint against Bhansali Infotech LLP ("**Bhansali**") *inter-alia* alleging that Bhansali being the promoter had sold more car parking lots than the sanctioned parking lots, consumed FSI over and above the permissible FSI and had breached various terms and conditions of the development agreement dated 4 July 2014 executed between Tupe as the owner of the land and Bhansali as the developer.

Arguments of Bhansali:

Bhansali stated that Tupe being Co-promoters are required to sign agreement for sale executed in favour of various buyers, however, Tupe avoided signing the same on some pretext or the other. Further, Tupe published a

public notice in Indian Express, Pune Edition on 8 August 2017 and declared that the flat purchasers who entered into agreements or will enter with Bhansali, the same shall not be binding on Tupe.

Order of MAHA RERA:

Maha RERA vide its order dated 27 November 2017 *inter-alia* directed Tupe to extend its co-operation to Bhansali for enabling Bhansali to discharge its obligations and function under RERA and also directed Tupe and Bhansali to resolve the disputes amicably or by approaching the appropriate forum. Maha RERA also sought undertaking from Tupe to withdraw the notices given to allottees declaring their agreements with Bhansali as illegal and not binding on Tupe.

5. SURESH SOHANI VS. HEMANT BHANUSHANKAR VYAS AND NANDRAJ DEVELOPERS PRIVATE LIMITED [ES3614](#)

Complaint:

Suresh Sohani ("**Suresh**") filed a complaint against Hemant Bhanushankar Vyas and Nandraj Developers Private Limited ("**Nandraj**") alleging that though the agreement for sale dated 26 December 2012 executed between Suresh and Nandraj stipulates the date of possession as 31 March 2014, however, till date possession of the flat has not been handed over to Suresh by Nandraj. Suresh also alleged that Nandraj has not disclosed true and correct information to Maha RERA at the time of registering the project. Suresh sought directions from Maha RERA *inter-aliacalling* upon Nandraj to pay interest at the rate of 18% per annum to Suresh on the sum paid to Nandraj.

Arguments of Nandraj:

Nandraj stated that the agreement for sale was executed during the time that RERA was not in force and hence Maha RERA does not have jurisdiction and that the building is almost complete and occupation certificate is awaited. Further, possession of the flat can be handed over by 31 January 2018 and that no suppression of information is done by Nandraj.

Order of MAHA RERA:

Maha RERA vide its order dated 4 December 2017 stated that the date of handing over possession to be recorded at the time of registration of a project should be commensurate to the development already done and hence Maha RERA directed Nandraj to handover possession of the flat to Suresh on or before 31 January 2018 failing which Nandraj would be liable to pay interest, as prescribed to Suresh from 1 February 2018 till date of actual handing over of possession.

6. SUCHITA UPADHYAY VS. NEHA AGGARWAL [ES3281](#)

Complaint:

Suchita Upadhyay ("**Suchita**") filed a complaint against Neha Aggarwal ("**Neha**") alleging that the carpet area of the flat agreed to be purchased by Suchita from Neha under the Agreement for Sale dated 5 December 2015 was 875 square feet, however, as per the measurement done by Suchita, the carpet area of the flat was found to be 646.60 square feet and hence there was a shortfall in the carpet area agreed to be sold and the carpet area actually constructed.

Arguments of Neha:

Neha stated that the carpet area of the flat is actually 806 square feet and the same has been uploaded with Maha RERA and there was a shortfall of 69 square feet and that a sum of Rs 8,86,581 against Rs 13,00,000 which is pending to be received from Suchita would be adjusted by Neha.

Order of MAHA RERA:

Maha RERA vide its order dated 15 December 2017 directed Neha to adjust the amount of Rs 8,86,581 towards shortfall area of 69 square feet with Rs 13,00,000 being the outstanding consideration to be paid by Suchita and that the balance sums of money after adjustment for shortfall of carpet area should be demanded only at the time of handing over possession of the flat to Suchita.

7. SANJAY SAWANT VS. LANDMARK REAL ESTATE DEVELOPERS LIMITED [ES3582](#)

Complaint:

Sanjay Sawant ("**Sanjay**") filed a complaint against Landmark Real Estate Developers Limited ("**Landmark**") seeking refund of the monies paid by him to Landmark for purchase of a flat in the project of Landmark.

Arguments of Landmark:

Landmark stated that Sanjay had failed to come forward to execute and register the agreement for sale for the flat after repeated reminders, which was to be done within a period of 30 days from the date of booking. Further, Sanjay had failed to pay the further amounts to Landmark and hence his booking has been cancelled by Landmark and the booking amount has been forfeited and therefore, Sanjay cannot be deemed to be an allottee.

Order of MAHA RERA:

Maha RERA vide its order dated 11 December 2017 dismissed the complaint by stating that Sanjay is no longer an allottee and his booking has already been cancelled for breach of the terms and conditions of booking and that Sanjay had failed to show which provisions of RERA were breached by Landmark.

8. SATISH KALANI VS. ITMC DEVELOPERS PRIVATE LIMITED AND ANOTHER [ES3580](#)

Complaint:

Satish Kalani ("**Satish**") filed a complaint against ITMC Developers Private Limited and Another ("**ITMC**") seeking interest on the amounts paid by Satish to ITMC at the rate of 24% from July 2015 till actual possession is handed over by ITMC to Satish, as ITMC had delayed in handing over possession of the flat.

Arguments of ITMC:

ITMC stated that there is no registered agreement for sale between ITMC and Satish even after ITMC calling upon Satish to come forward to execute and register the same.

Order of MAHA RERA:

Maha RERA vide its order dated 6 December 2017 stated that Satish desires of continuing with the project of ITMC. However, Satish cannot claim benefit of provisions of RERA as there is no agreement for sale executed between ITMC and Satish where the date of possession is given for handing over of the flat. Further, by not executing an agreement for sale there has been a violation of the provisions of RERA. Maha RERA directed the Parties to execute an agreement for sale on or before 31 December 2017.

9. NAVIN KUMAR VS. LUCINA LAND DEVELOPMENT LIMITED [ES3284](#)

Complaint:

Navin Kumar ("**Navin**") filed a complaint against Lucina Land Development Limited ("**Lucina**") alleging that Lucina has failed to handover possession of the flat purchased by Navin from Lucina vide Agreement for Sale dated 18 October 2011, wherein it was agreed that the possession would be handed over within a period of 60 months from the date of the agreement for sale plus a grace period of 9 months, which end on July 2017.

Arguments of Lucina:

Lucina argued that the timelines for handing over possession of the flat would have to be read with the provisions of the agreement for sale executed with Navin, specially clause 9 thereof which inter-alia provided for force majeure and reasonable extensions. Further, Lucina stated that the construction work of the project was delayed due to reasons which were beyond the control of Lucina and also for reasons such as (1) delay in release of incentive FSI due to change in planning authority from Alibaug Township Authority to City and Industrial Development Corporation, (2) delay in grant of High Rise Committee clearance and (3) change in amenity space policy by MMRDA. Lucina submitted that despite all the delays in obtaining various permissions, Lucina is willing to handover the possession of the flat to Navin on or before 31 December 2018, which is earlier than the revised date submitted by Navin with the Maha RERA at the time of registration.

Order of MAHA RERA:

Maha RERA vide its order dated 13 December 2017 stated that Navin has failed to establish that Lucina has failed to complete or is unable to give possession of the apartment in accordance with the terms of the agreement for sale and hence provisions of Section 18 of RERA does not apply. Maha RERA directed Lucina to handover possession of the flat to Navin, on or before 31 December 2018 failing which Lucina would have to pay interest to Navin from 1 January 2019 till actual date of possession on the entire amount paid by Navin to Lucina at the prescribed rates.

Summarised by the Real Estate Team of Khaitan & Co, Mumbai

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