THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO. CC006000000057499

Mahesh Shah
Meena Shah ..Complainants.

Versus

Sunny Vista Realtors Pvt. Ltd.
Persipina Developers Pvt. Ltd. ..Respondents.

MahaRERA Regn. No. **P52000000265**
(Hiranandani Palace Garden, Panvel)

Coram:
Hon'ble Shri. Bhalchandra Kapadnis,
Member-II, MahaRERA.

Appearance:
Complainants: Adv. Mr. Nilesh Gala.
Respondents Adv. Ms Ashwini Sankpal.

ORDER
(20th January, 2020)

The complainants have contended that they have booked a flat no. 2803 admeasuring 153.47 sq. mtr. (1652 sq. ft) saleable area in the building known as Granville-I (now known as Argus) in the project known as Hiranandani Palace Garden, Panvel to be constructed by the respondent no. 1 at village Bhokarpada, Tal. Panvel, Dist. Raigad with the amenities mentioned in their brochures. Respondent No. 1 issued allotment letter showing that the total consideration of the flat is Rs.59,63,720/- excluding other charges such as parking space charges, maintenance charges and taxes. In the allotment letter it is specifically mentioned that complainants will have to pay Rs.4 lakhs for car parking

space. Respondent no. 1 could not repay bank loan, therefore, respondent no. 2 took over project from respondent no.1 by way of auction sale under Securitization and Re-construction of Financial Assets and Enforcement of Security Interest Act. Now respondent no. 2 is developing the project as 'Hiranandani Fortune City, Panvel' and it has changed the name of the building Granville-I to Argus. Respondent no. 2 has claimed ad-hoc maintenance charges, township infrastructure fund from the complainants. According to them, club house is not constructed.

2. After going through the pleading, I have culled out the following material facts on which case of the complainants is based.

(i) Respondents have not executed agreement for sale, even after accepting more than 20% of total consideration of the flat during MOFA regime and 10% during RERA regime.

(ii) The draft of agreement for sale, contains the terms and conditions favourable to the respondents it being one sided. There are certain terms and conditions which are contrary to the provisions of RERA.

(iii) Complainants seek the relief u/s 13 of RERA for getting agreement for sale of the flat executed and registered in consonance with terms and conditions contained in the allotment letter.

(iv) Complainants further contend that when they booked the flat, they were made to believe that possession of the flat would be handed over in June, 2013. Thereafter, they pushed its date to May, 2020. Therefore, complainants are seeking interest on their investment for delayed possession.

(v) Complainants complain that respondents have charged Rs.4 lakhs for parking space, which is not saleable and therefore, they claim its exemption.

(vi) They complain that initially respondents promised that the area of the booked flat would be 153.47 sq. mtr. (equivalent to 1652 sq. ft.). Now respondent no.2 has mentioned that area of the flat would be 101.77 sq. mtr. (equivalent to 1095.45 sq. ft.) and balcony having carpet area of 105.70 sq. ft. aggregating to 1105.27 sq. ft. Thus, area is reduced by 61.73 sq. ft. without prior consent of the complainants. Thereby they contravened Section 14 of RERA.

(vii) They further complain that the respondents have changed/ modified revised building plan without written consent of the allottees including complainants and therefore, they have contravened Section 14 of RERA.

(viii) The complainants therefore, seek the appropriate reliefs regarding reduction of the price proportionately.

(ix) Complainants further contend that respondents are claiming Rs.1,09,032/- as maintenance allowance without handing over the possession of the flat, which they are not liable to pay.

(x) Complainants are also seeking possession of the booked flat with 1 car parking space.

(xi) The complainants complain that respondents have been claiming the amount for stamp duty and registration charges more than prescribed rates. They also seek compensation.

3. The respondent no. 1 has not filed any reply.

4. The respondent no. 2 has filed the reply to contend the following facts:

i) The respondent no. 1 initially started the project by raising loan from Punjab National Bank.

ii) Respondent no. 1 could not repay the loan which became non-profitable asset in the year 2013.

iii) The Bank put the project on auction under SARFESI.

iv) The allottees of the project submitted before DRT-III that their interest may be protected including that of title and date of possession.

v) DRT-III allowed the Bank to proceed with the sale subject to the rights available to the allottees/applicants under their respective agreements of allotment at least in respect of title of their respective flats and payments made by them.

vi) Therefore, the order does not protect the date of handing over the possession of flats promised by the respondent no. 1.

vii) The auction was concluded with issuance of the sale certificate in favour of the respondent no. 2 on 30.10.2014.

viii) Formal approval from SEZ Authority was received on 01.07.2015 and change of developer, the respondent no. 2 was gazetted only in April 2016.

ix) Glees Holloman Consultant (India) Pvt. Ltd. engaged by respondent no. 2 determined the quantum of balance work of incomplete buildings to the extent of Rs.492,55,36,791/-.

x) Respondent no. 1 collected 96% of the amount i.e. Rs. 57,78,247/- from the complainants out of the agreed consideration of Rs. 63,63,720/-.

xi) On insistence of the allottees, the respondent no. 2 applied for removal of SEZ tag but it was rejected on 19.05.2015.

xii) Respondent no. 2 re-applied for dual usage for no-processing zone on 20.08.2015 and it has been approved for recommendation on 09.11.2016.

xiii) The respondent no. 2 applied to Ministry of Commerce & Industries for de-notification of the land which was approved on 17th January 2019.

xiv) After de-notification the respondent no. 2 had to refund back the authorities the statutory tax benefits which caused additional burden.

xv) Though the respondent no. 2 asked allottees to contribute Rs. 500 per sq.ft. for the change of SEZ, none of them paid it.

xvi) Respondent no.2 can collect only Rs. 107,17,46,835/- , the balance amount from allotteesas against Rs. 492,55,36,791/- required for completion of the project.

xvii) Respondent no. 2 registered the project with MahaRERA as 'Argus' by declaring the date of completion as 29.05.2020.

xviii) The respondent no. 2 applied on 03.02.2017 for local clearance for developing the project as Integrated Township Project on 03.01.2017 and received it on 30.12.2017.

xix) The respondent no. 2 submits in the context of complainants' allegation of incomplete amenities, that there is no mention of amenities in the provisional allotment letter issued in favour of the complainants.

xx) Regarding the change in the rates of stamp duty, the respondent no. 2 submits that by writing e-mail on 17.01.2018, the complainants have been informed about the reduction in carpet to built-up area conversion rate causing reduction in stamp duty from Rs. 5,41,000/- to Rs. 5,02,000/.

xxi) The respondent no. 2 denies the complainants' allegation about the change in layout plan. They contend that they shall construct a club house in township with all amenities open to all allottees of the scheme on the completion of the entire project.

xxii) The respondent no. 2, on the allegation of reduced carpet area submits that the allotment was done in the year 2010 and the carpet area was calculated as per the provisions of Maharashtra Ownership Flats Act 1963. It includes open and enclosed balconies in carpet area. Thereafter they calculated the carpet area as per the Circular No. 4 of 2017 issued by this Authority which excludes balconies from carpet area. According to them, if one calculates 1095.45 sq.ft. carpet area and 105.7 ft. balcony then total comes to 1201.15 sq.ft. which is offered to the complainants.

xxiii) The respondent no. 1 agreed to sell the flat to the complainants for Rs. 63,63,720/- and collected Rs. 57,78,247/- from them. The complainants have to pay balance amount of Rs.5,85,473/- of consideration and parking area as well as other charges of Rs. 4,01,632/.

xxiv) The respondent no. 2 admits that the respondent no. 1 agreed to hand over the possession of the flat on or before

June 2014 but thereafter the respondent no.2 took over the project in auction sale. The allottees specifically consented before DRT that their title alone will be protected (and not the date of possession). Therefore, allottees consented for the change in the possession date.

xxv) The respondent no. 2 had to spend extra amount of Rs. 492 crores which is not recovered from the project'.

Therefore, they request to dismiss the complaint.

5. I have heard the arguments of learned advocates of the parties.

Non execution of an agreement for sale.

6. The allotment letter produced by the complainant shows that the total price of the flat is Rs. 59,63,720/- and the complainants affirm it. It is exclusive to other charges and parking space charges. The respondenno.2 has wrongly contended that the agreed price of the unit is Rs. 63,63,720/-. The respondent no. 2 has admitted that the respondent no. 1 received Rs. 57,78,247/- from the complainants before they took over the project on 30.10.2014. This clearly indicates that more than 20% of the total value of the flat was collected by the respondent no. 1 before 2014. In those days the parties were governed by The Maharashtra Ownership Flats Act, 1963(MOFA). Respondent no. 1 was prevented by its Section 4 from accepting more than 20% of the sale price of the unit without first entering into a written agreement for sale and registering it. RERA came into force with effect from 01.05.2017. Section 13 of RERA provides that the promoter cannot accept more than 10% of the total value of the unit without first entering into written agreement for sale and registering it. Respondent no.2 admits that as per the terms and conditions of the auction sale the payments made by

allottees to respondent no.1 are also protected. Therefore, the liability of the respondent no. 2 to execute the agreement for sale of the booked unit continues till the date under Section 13 of RERA. It is fact that the respondents have not executed the agreement for sale till the date and therefore, it is necessary to direct the respondent no. 2 to execute the agreement for sale of the complainants' unit in their favour.

Allegation regarding reduced area.

7. The next issue which causes hurdle in execution of the agreement for sale is the dispute of area of the booked flat. On perusal of the allotment letter produced by the complaints, I find that the respondent no. 1 agreed to allot the booked flat having 1167 sq. ft. carpet area inclusive of balcony and the total area of the unit was 1652 sq. ft. which includes the carpet area of the flat + car parking + portion of common area. It is the grievance of the complainants that area of the flat is reduced by the respondent no.2. The complainants have relied upon the area declared by the respondent no. 2 in the draft of the agreement. At this stage, it is necessary to note that when allotment letter had been issued in the year 2010, MOFA was applicable and its Section 3(2)(m) provides for bifurcation of the area of the flat, balcony, and also provides for proportionate interest of the allottees held in common areas. On its plain reading, one finds that the promoter has to sell the flat to the extent of its carpet area including the area of the balcony but they are to be shown separately. Therefore, the carpet area of the balcony has also been treated as carpet area for sale. The other provisions provided that the common areas and the other facilities should be shown separately with their proportionate price. When RERA came into force it changes the standard of measuring the carpet area. Section 2(k) provides that-

"Carpet area, means net usable floor area of an apartment, excluding the area covered by external walls, areas under service shafts, exclusive balcony or veranda area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

Explanation - for the purpose of this clause, the expression "exclusive balcony or veranda area" means the area of the balcony or veranda, as the case may be, which is appurtenant to the usable floor area of an apartment, meant for the exclusive use of the allottee and "exclusive open terrace area" means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for exclusive use of the allottees;

8. On comparing these provisions of the two different Acts one can easily notice that the balconies are not to be included in carpet area of an apartment/flat as per RERA and it appears that there is difference in area but in fact there is no such difference at site.

9. When one looks at the facts of the case on the backdrop of the aforesaid legal concept, one can find that the respondent no. 2 has declared the area of the flat as 1095.45 sq. ft. This does not include the balcony having area of 107.7 sq. ft. If carpet area of the balcony is added to the carpet area of the flat, the total comes to 1201.15 sq. ft., as against 1167 sq.ft. agreed to be allotted to the complainants. The variation to the extent of 3% is permissible under the Law. Hence, I find that there is no substance in the allegation of the complainants that their flat is of smaller size than agreed one. Since the size of the unit is not reduced, there remains no question of reducing its price.

Allegation regarding contravention of sections 12 and 14 of RERA.

10. The complainants have alleged that the respondents have not been constructing the project as per the layout plan and building plan but no cogent evidence to prove this allegation has been placed before me. There is no whisper that developed project is to their disadvantage except the reduction of area of flat but it has no substance as discussed earlier. Hence, this allegation also has not been proved by the complainants.

Dispute about agreed date of possession.

11. The complainants have contended that when they booked the flat with respondent no. 1, they were assured that its possession would be handed over in the month of June 2013 and now the respondent no. 2 has pushed its date to May 2020. The respondent no. 2 admits in its reply that the respondent no. 1 agreed to hand over the possession of the flat on or before June 2014 but before expiry of the said period the project was auctioned by the Banker and purchased by the respondent no.2. The respondent no.2 has relied upon the orders passed by the DRT-III, Mumbai under Section 17(1) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFESI Act) on various applications filed by the applicants/allottees of the project. The learned Presiding Officer allowed the Bankers to proceed to sell the property subject to the rights available to the applicants/allottees under their respective agreements of allotment at least in respect of title to respective flats. These orders are silent on the protection of date of possession of the flats. The respondent no. 2 admits that even the payments made by them to the respondent no. 1 are also protected. Therefore, it has been submitted on

behalf of the respondent no. 2 that the date of possession declared by respondent no.1 does not bind it and moreover, it is not specified by respondent no.2 also as no agreement of sale has been executed by it. The respondent no. 2, therefore, contends that the date of completion of the project declared as 29.05.2020 be deemed to be the date of completion/possession. The complainants have brought to my notice that respondent no.1 by its email dated 23.10.2013 has promised fit out possession of the flat by the end of 2014 and respondent no.2 by its email dated 07.10.2015 has promised fit out possession of the flat by October 2016.On this backdrop, I find that since the respondent no. 1 agreed to hand over the possession of the flat on or before December 2014 and when it was within the knowledge of the respondent no.2, it was expected of it to handover the possession of the flat within reasonable time. Hon'ble Supreme Court has held in Fortune Infrastructure -vs- Trevor D'li'ma (2018) 5 SC 442 that when no specific date of possession is specified, it should be given within reasonable period and reasonable period is held to be that of three years. Thus, respondent no.2 was liable to hand over the possession of the flat within three years from taking the project i.e. on or before 30.10.2017.

Extension u/s 8(b) of MOFA.

12. In order to convince me about delay, the respondent no. 2 mentions the long series of events which have taken place after they purchased the project in auction on 30.10.2014. Therefore, I shall summarise them very briefly.

a) There is no dispute that when the complainants booked their flats in the year 2010, The project was under SEZ. Therefore, the status of the allottees would not have been better than the

lessees of the land. The respondent no. 2 took steps to remove the tag of SEZ from 2015 and the first application was rejected on 19.05.2015 and thereafter it re-applied for it on 20.08.2015 and got the approval on 09.11.2016. Thereafter the Ministry of Commerce and Industries de-notified the land on 17.01.2019. The respondent no. 2 contends that it had to refund back the statutory tax benefits but the allottees did not contribute to lessen his burden.

b) The respondent no. 1 left the incomplete buildings which was estimated to Rs. 492,55,36,791/- by independent valuer Geals Holloman Consultant Pvt. Ltd. So far as the complainants are concerned, the respondent no. 1 already recovered the amount of Rs. 57,58,247/- from them and complaints have not made any payment to respondent no.2.

c) The respondents have now converted the project into Integrated Township Project for the betterment of the allottees and though, it applied for location clearance on 03.02.2017, it received it on 31.12.2017.

13 I agree, that the reasons assigned by the respondent no.2 delayed the project but section 8(b) of MOFA allows the extension of only six months at the most. I have accepted the submissions of the respondent no. 2 for extension of six months contemplated by section 8(b) of MOFA for the following reasons:

1. Incomplete project left by respondent no. 1 was a distressed project when respondent no 2 took it.
2. The respondent no. 2 got released the project from SEZ which changed the status of allottees from lessees to the owners but the allottees did not contribute in refunding/returning tax

benefits. It causes additional financial burden on respondent no. 2 to a large extent.

3. The project is converted into Integrated Township Project which brings better facilities to the allottees. These are equitable grounds.

14. Hence, I hold that the date of possession of the flat would be 30.04.2018. It has already been crossed but it shall be mentioned in the agreement for the purpose of ascertaining the rights and liabilities of the parties u/s of section18 of RERA. However, the respondent no.2 shall hand over the possession of the flat on or before declared date 29.05.2020. This is the only practical way out which as a regulator I can find in this circumstance.

Complainants' entitlement for interest u/s 18 of RERA.

15. There is no dispute between the parties that the respondent no. 1 has recovered Rs. 57,78,247/- from the complainants before respondent no. 2 took over the project on 30.10.2014. As held above, the date of possession is deemed to be 30.04.2018 and hence, the respondent no. 2 is liable to pay simple interest at prescribed rate on the complainants' investment from 01.05.2018 till handing over the possession of the flat. The prescribed rate of interest is, 2% above SBI's highest MCLR which is currently 8.2%.

Sale of parking space.

16. Now, the next crucial point involved in this matter is, whether a promoter can sell uncovered or enclosed car parking place or not. Respondent no. 1 agreed to allot a parking place to the complainants by charging Rs. four lakhs which were payable before or at the time of possession. My task has been simplified by the advocates of both the

parties by relying upon the case of Nahalchand Laloochand Private Limited vs. Pancahali Cooperative Society Limited. The Supreme Court considered the following issues:

"(i) Whether stand alone "garage" or in other words "garage" as an independent unit by itself is a "flat" within the meaning of Section 2(a-1) of MOFA;

(ii) Whether stilt parking space/open parking space of a Building regulated by MOFA is a 'garage';

(iii) If the answer to the aforesaid questions is in the negative, whether stilt parking space/open parking space in such building is part of " common areas and facilities"; and

(iv) what are the rights of the promoter vis-à-vis the society (of flat purchasers) in respect of open parking spaces(s)/stilt parking space(s)?

17. These issues arose for consideration in the context of the provisions contained in Section(a-1) of the MOFA which defines the expression 'flat' as follows;

"2.(a-1) 'flat means a separate and self-contained set of premises used or intended to be used for residence, or office, or showroom or shop or godown or for carrying on any industry or business (and include a garage), the premises forming part of a building and includes an apartment.

Explanation. - Notwithstanding that provision is made for sanitary, washing, bathing or other conveniences as common to two or more sets of premises, the premises shall be deemed to be separate and self-contained;"

18. The principles laid down by the Supreme Court can be summarised thus:

(i) The legislature in enacting Section 2(a-1) has indicated an intent to include a garage as appurtenant or attaching to a flat which satisfies the ingredients of Section 2(a-1);

(ii) A stand alone "garage" or, in other words a "garage" as an independent unit by itself is not a "flat" within the meaning of Section 2(a-1);

(iii) An open parking space does not constitute a "garage" within the meaning of Section 1(a-1);

(iv) For the purposes of the MOFA, and particularly Section 2(a-1), the term "garage" must be considered as would be understood by a flat purchaser and such person would contemplate a garage as one which has a roof and walls on three sides;

(v) Having regard to the object and purpose of MOFA, there is no justifiable reason to exclude car parking areas whether open to the sky or falling within stilts from the purview of "common areas and facilities";

(vi) A promoter cannot exclude certain "common areas" from the purview of what the statute regards as "common areas and facilities" by not defining that expression in the agreement with a flat purchaser to include what are in substance, common areas and facilities. Consequently, parking spaces including those in stilts do not cease to be part of the "common areas and facilities" merely because the promoter has not described them as such in the agreement with the flat purchaser;

(vii) Stilt parking spaces being part of the common areas of a building developed by the promoter, the only right which the promoter has, is to

charge the cost thereof in proportion to the carpet area of the flat to each flat purchaser. Such a parking space which is neither a "flat" under Section 2(a-1) nor a "garage" within the meaning of that provision is not saleable;

(viii) The promoter has no right to sell any portion of the building which is not a flat within the meaning of Section 2(a-1) and the entire land and building has to be conveyed to the co-operative society. The only right which remains with the promoter is to sell the unsold flats. "

19. This leads me to hold that the promoter cannot sell parking space which is not a garage,under MOFA. Once I have recorded the finding that the promoter cannot sell the car parking space then what is the entitlement of respondent no.2 in this regard. Hon'ble Supreme Court has pointed out that such car parking space is a part and parcel of the common area and the promoter is entitled to charge its cost proportionately. Therefore, the promoter is entitled to charge its cost.

20. The issue which requires my attention is, whether there is any change in the Law after coming into force of RERA. Before entering into the arena of the controversy, I put on record the fact that the ratio laid down by the Hon'ble Supreme Court in Nehalchand's case cited Supra in respect of MOFA is binding on this Authority while deciding the issues under the said Act under Article 141 of the Constitution of India. Now I have to examine the provisions of RERA to find it out whether the same ratio applies to the provisions of RERA or not. In this context Mr. Gala brings to my notice the definitions of apartment and garage defined by Section 2 of RERA. The definitions read as under:

2(e) "apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means separate and self-contained part of any

immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade or for any other type of use ancillary to the purpose specified;

(y) "garage" means a place within a project having a roof and walls on three sides for parking any vehicle, but does not include an unenclosed or uncovered parking space such as open parking areas;

On the basis of these definitions he submits that the provisions of the two Acts are almost similar and therefore, the ratio in Nihalchand's case will have to be followed in the cases arising out of RERA.

On perusal of judgement passed in Nihachand's case I find that the Hon'ble Supreme Court has referred to common area defined by Section 3(f) of MOFA. The relevant portion of it provides,

"common areas and facilities" unless otherwise provided in the declaration of unlawful amendments, thereto means -

(3) The basement, cellars yards, gardens, parking areas and storage space.

RERA defines "common areas" as under:

2.(n) "common areas" mean-

(i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase the entire land for that phase;

(ii) the staircases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;

(iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;

(iv) the premises for the lodging of person employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;

(v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable enter;

(vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;

(vii) all community and commercial facilities as provided in the real estate project;

(viii) all other portion of the project necessary or convenient for its maintenance, safely, etc., and in common use;

21. After going through the definitions of the common areas one finds that under MOFA parking areas fall under common area whereas in RERA only 'open' parking areas are covered by it. This clearly shows that the covered parking space does not come within the definition of common areas under RERA. The use of word "open" is sufficient to indicate that it excludes "covered" space from common area. Now I shall refer the definition of " covered parking space" defined by Rule 2 (j) of 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 which reads as under :

Rule 2 (j) " covered parking space" means an enclosed or covered area as approved by the Competent Authority as per the applicable Development Control Regulations for parking of vehicles of the allottees which may be in basements and/or stilt and/or podium

and/or space provided by mechanised parking arrangements but shall not include a garage and/or open parking;

22. For exclusion of covered parking space from the definition of common areas under RERA, it must have following ingredients

a. It must be enclosed or covered area,
b. It must be approved by the Competent Authority as per the applicable Development Control Regulations for parking of vehicles of the allottees,
c. It may be in basements and/or stilt and/or podium and/or space provided for mechanised parking arrangements,
d. However, it should not be garage and/or open parking.

23. Therefore, I find that the legal position regarding open car parking space is unchanged and hence, the law laid down in Nihalchand's case will be applicable to the sale of open car parking but it will not be applicable to the covered parking space. This has happened only because of change in law and not more than that.

24. I have been told that the parking space allotted to the complainants is covered car parking. If the parking space to be allotted to the complainants fulfils all the ingredients of covered parking space, then be respondent no. 2 is entitled to recover Rs. four lakhs as the price thereof otherwise not.

Quantum of stamp duty and registration charges.

25. There is dispute between the parties on account of the quantum of stamp duty and registration charges. I find that as per usual practice, unless agreed to the contrary, it is the responsibility of the purchaser to bear the amount of stamp duty and registration charges. Therefore, I find that the complainants will have to shoulder this burden. It is the

allegation of the complainants that the respondents have been claiming the stamp duty and registration charges at higher rate than prescribed by the Government. By way of clarification, the respondents have informed the complainants by their email dated 17.01.2018 that there has been revision in the carpet to built up area conversion rate, causing reduction in the stamp duty amount to be paid by the complainants which in turn will reduce the stamp duty amount from Rs. 5,41,000/- to 5,02,000/-. Therefore, it is sufficient to mention here that the complainants will have to bear the stamp duty and the registration charges at prevailing rate prescribed by the government.

Demand for maintenance charge.

26. The complainants make the grievance that the respondent no. 2 is claiming the maintenance charges without giving the possession of their flat. Section 11(4)(d) makes the promoter responsible for providing and maintaining essential services on reasonable charges till taking over the maintenance of the project by the society/association of the allottees. In this case the project is incomplete and the possession of the flat has not been given to the complainants, therefore, the respondent no.2 cannot claim maintenance charges from the complainants without giving possession of the flat with occupation or completion certificate as the case may be.

Conclusions/directions.

a. The respondent no. 2 shall execute the agreement for sale of the booked flat within one month of this order in consonance with the terms and conditions of the allotment letter and provisions of RERA in the light of my finding on the points of consideration and date of possession. The complainants shall bear the cost of

the stamp duty and registration charges at the current rate prescribed by the Government.

b. The respondents shall hand over the possession of the flat to the complainants on or before 29.05.2020 with occupation certificate.

c. The respondent no. 2 shall not claim the charges of the amenities which are not provided. The respondent no. 2 would be able to charge them when they would be made available.

d. The respondent no.2 shall charge Rs. 4,00,000/- towards covered car parking, if the car parking fulfils the ingredients of the definition of covered car parking otherwise not.

e. In case of open car parking, though the respondent no. 2 shall not be entitled to charge cost of car parking space, it shall be entitled to charge proportionate cost of it as common area.

f. The respondent no. 2 shall pay the simple interest at the rate of 10.2% on the complainants' investment of Rs. 57,78,247/- from 30.04.2018 till handing over the possession of the flat with O.C.

g. The respondent no. 2 shall pay the complainants Rs. 20,000/- towards cost of the complaint.

h. The respondent no. 2 is entitled to recover the refund of tax benefits on removal of SEZ tab from the allottees in proportion to the carpet area held by them.

20. 1. 2020

Mumbai
Date : 20.01.2020

(B. D. Kapadnis)
Member-II, MahaRERA,
Mumbai