

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI

COMPLAINT NO: CC006000000055619

Sunny Bilaney and 14 others

... Complainants

Versus

Arkade Realty
MahaRERA Registration No. P51700004429

... Respondent

Coram: Shri Gautam Chatterjee, Hon'ble Chairperson

Complainants were themselves present.
Respondent was represented by Ms. Smita Sawant, Adv.

Order
November 28, 2018

1. The complaint has been filed by 15 allottees of the Respondent's project 'ARKADE ART PHASE 1" situated at Mira-Bhayender, Thane. The Complainants have alleged that the Respondent has been selling open parking spaces in violation of the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the *said Act*) and the rules and regulations made thereunder. Therefore, they prayed that the Respondent be directed to forthwith remove all markings affixed to designated ownership of open parking spaces in stilt and in the open compound area of allottees which parking has been illegally sold and/or allotted by the Respondent to the said allottees.
2. The learned counsel for the Respondent denied that they are selling open car parking, in violation of the provisions of the said Act. Further, she submitted that the Respondent has only sold/allotted stilt parking in accordance with the provisions of the said Act and the rules and regulations made thereunder and has handed over the open parking space to the society and has withdrawn all the earlier earmarkings.
3. The Complainants argued that Respondent is not allowed to sell stilt parking area as the same is not covered under the definition of closed parking area. They submitted that

apartment as defined under section 2 (a1) of the Maharashtra Ownership Flats Act, 1963, apartment includes a garage and therefore the Respondent is in contravention of the provisions of the said Act.

4. The Complainants further submitted that it is a settled point of law that open parking cannot be sold under the said Act and further that no parking can be sold as per guidelines laid down by the Hon'ble Supreme Court in:

Nahalchand Laloochand P. Ltd. vs Panchali Co-Op. Hsg. Soc. Ltd.

5. Section 2 (e) of the said Act defines 'apartment' as:

(e) "apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a 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;

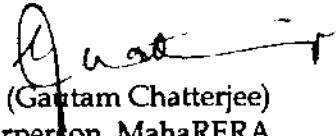
Rule 2(j) of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 (hereinafter referred to as the *said Rules*) defines 'covered parking' as:

"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;

6. In the case law referred to by the Complainants, the Hon'ble Supreme Court has relied on the definition of flat as defined by the Maharashtra Ownership Flats Act, 1963 and was passed when the said Act was not enacted. Further, as seen supra in para 5 "apartment" as defined under the said Act does not include any garage or other parking area. Further, the said Rules permit the promoter to sell covered parking spaces and the definition of the same also includes stilt-parking.
7. In view of the above, the Complainants have failed to prove any violations of the said Act by the Respondent. As submitted by the learned counsel for the Respondent, the open parking spaces have already been handed over to the society and all prior earmarkings done by the

Respondent have been withdrawn. The Society is advised to allot parking in the open spaces as per the provisions of the applicable law.

8. Consequently, the matter is hereby disposed of.



(Gantam Chatterjee)
Chairperson, MahaRERA