

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI.**

COMPLAINT NO: CC00600000044142.

Radha Residency Co-Operative  
Housing Society Limited

... Complainant.

**Versus**

Shri Krishna Chaitanya Enterprises  
Mr. Dattatray Laxman Bhavishe  
Suresh Mohan Bhavishe  
Gurudas Sambaji Desai  
Radhakrishna Sabaji Desai  
(Radha Madhav CHSL)

... Respondents.

MahaRERA Regn: P51800005539.

**Coram:** Shri B.D. Kapadnis,  
Hon'ble Member & Adjudicating Officer.

**Appearance:**  
Complainant: RKS Associate.  
Respondents: Adv.M.V.Raut.

**FINAL ORDER**  
**14<sup>th</sup> February 2019.**

**Factual Matrix.**

The complainant society representing total 288 members of the respondents' Radha Krishna, Radha Madhav, registered project situated at Borivali (west) have filed this complaint for seeking compensation and directions as below:

**No completion certificate/occupancy certificate.**

2. The complainants contend that the respondents mis-guided the purchasers in the year 2010 - 2011 that Radha Krishna, Radha Madhav buildings are having O.C., though only three buildings of Radha Govind got it. One building of Radha Krishna and two buildings of Radha Madhav did not have



occupancy certificate till the date. It is the duty of the respondents under section 11(4)(b) of RERA to obtain the occupancy certificate.

3. On this point the respondents contend that they have received the O.C. of Radha Govind in the year 2009-2010. They submitted the completion certificate issued by their Architect for obtaining the occupation certificate but the Municipal Corporation refused the completion certificate for non-compliance of certain items. Thereafter the respondents complied them. The proposal for utilization of balance FSI/TDR on building Radha Madhav A-wing and B-wing followed by application for occupation certificate is pending before the corporation. New development regulation 2034 has come in force from 20.11.2018 and the corporation has started processing the pending applications. The respondents expect the O.C. within six months of two buildings of Radha Madhav and Radha Krishna.

**Non-execution of conveyance deeds:**

4. The complainants contend that the respondents have failed to execute the deed of conveyance of the land and building in favour of the society and contravened section 14(4)(f) r/w section 17 of RERA.

5. The respondents have showed their willingness to transfer the title and they already forwarded draft of deed of conveyance to the society. They are ready to execute the conveyance deed after receiving the O.C.

**Non-adherence to the sanctioned plans and the project specifications:**

6. The complainants allege that the respondents have failed to adhere to the prospectus as well as sanctioned plans and specifications thereof and thus, contravened section 12 & 14 of the Act. On these grounds they contend that Nana-Nani park, double height entrance lobby, earthquake resistant RCC infrastructure have not been provided though promised. They further contend that commencement certificate up to 20<sup>th</sup> floor has been issued in respect of Radha Krishna building but the respondents constructed 21 floors. Respondents constructed 15<sup>th</sup> floor in Radha Madhav-A-wing when the commencement

certificate is up to 14<sup>th</sup> floor only. They constructed 15<sup>th</sup> floor against the commencement certificate up to 13<sup>th</sup> floor in B-wing of Radha Madhav. Thus, the construction is made beyond the approved C.C.

7. The respondents have denied that they have not adhered to the sanctioned plan and their specification. They contend that they have categorically disclosed in the agreements for sale executed with the members of the society that Radha Madhav-A & B wings comprise of 15 floors. So this fact was known to the allottee since beginning. The 15<sup>th</sup> floor of Radha Madhav has been constructed with the understanding that the respondents are entitled to utilize balance FSI/TDR for construction up to 15<sup>th</sup> floor.

8. On this point the respondents contend that Nana-nani park has been provided and the building is earthquake resistant. They contend that the society has taken the possession of the flats in the year 2010 -2011 and therefore, after the lapse of more than eight years, they cannot allege non-adherence to the advertisement and prospectus. The members of the society inspected their respective flats at the time of taking the possession of the flats. The respondents have provided all the amenities which they agreed to provide enlisted in Annex.- E of the agreement.

**Not-insuring the project:**

9. The complainants contend that the respondents have not insured the project as provided by section 16 of RERA.

10. The respondents contend that the provisions of Section 16 of RERA came into force from 01.05.2017 and Section 16 casts obligation on the promoter to ensure the project before entering into agreement with the allottees and to hand over the documents to the association of the allottees. The agreements have been executed with the members of the society before the Act came into force and the possession had also been given prior thereto. They contend that even the Government has not issued the notification required to be issued under Section 16. Hence, the respondents deny their liability.



**Other deficiencies & claim for compensation.**

**11. A. Construction of compost pit-** respondents have not constructed the compost pit though it is necessary as per the guidelines of MCGM. Society did it at their own cost by spending Rs. 1,00,000/-. It requires compost machine of Rs. 20,00,000/-.

**B. Faulty lifts** - lifts are of inferior quality and complainants have to spend to keep them in workable condition. Pain and sufferings are caused to the members because of the frequent break downs of the lifts and therefore, complainants seek compensation of Rs. 78,65,264/- till December 2017.

**c. Illegal occupation of refuge area-** Respondent no. 4 & 5 are in exclusive possession of entire floors from 18 to 20 in Radha Krishna Building and they have installed an access (priority card) for the lift. Those four floors are not accessible to other members. Part of floor 20 is refuge area controlled by the respondent nos. 4 & 5.

**D. Illegal Occupation of the terrace by the respondent nos. 4 & 5 -** Respondent nos. 4 & 5 have kept the terrace of Radha Krishan building in their exclusive possession and they have terrace garden there which consumes 25% of total water consumption of the building.

The respondents contend in reply that the allottees agreed in clause-16 of the agreement for sale that the terrace exclusively belongs to the developer. They contend that upper floors belong to the developers and they have exclusive right to use it. These floors are accessible by staircase and lift.

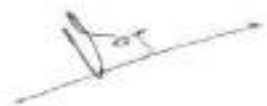
**E. Firefighting mechanism** - The respondents failed to install firefighting mechanism. The complainants have installed the same at the cost of Rs. 3,18,916/-. They have to put fire restraint doors, windows and glasses in duct in Radha Madhav A& B wings costing Rs. 10,00,000/-.

The respondents contend in reply that the BMC has issued firefighting certificates dated 18.05.2011 and 12.08.2011 in respect of Radha



Krishna and Radha Madhav showing that proper firefighting arrangement is made in those buildings.

- F. **Water tanks** –The complainant alleges that the water tanks of smaller size have been provided. The water supply connection from BMC is also of small size and therefore, the water is inadequate. The society spent Rs. 5,68,694/- till 31.03.2017 for getting adequate water by engaging tankers.
- G. **Generator set** – Generator set of 'leypower' make is installed which is of inferior quality. The complainants incurred a cost of Rs. 1,08,844/- to repair the same.
- H. **Insurance** – Complainants spend Rs. 1,22,533/- for insurance of both the buildings.
- I. **Property tax/sewerage tax** – Complainants spend Rs. 2,58,72,082/- on these taxes.
- J. **Termite and Rivers osmosis plants treatment** – complainants spent Rs. 4,93,287/- for this treatment.
- K. **Inferior tiling / flooring** – Tiling flooring in the compound of society was of inferior quality which broke down. The complainants spent Rs. 19,75,869/- to replace them till March 2017. They require Rs. 1 crore for replacing entire old tiles.
- L. **Kid play area** – Respondents failed to provide kid play area as promised and therefore, the society had to make it available by spending Rs. 4,22,306/-.
- M. **Club House & Swimming Pool**- are of inferior quality and equipment were few. Filter machines and pump in good condition were not provided for swimming pool and the society paid Rs. 4,33,966/- for the same.
- Respondents contend that the completion certificate issued by Millennium pools shows that it is completed.
- N. **Rain water harvesting system**. This system has not been provided, therefore, the complainants were compelled to provide it at the cost of Rs. 7,80,986/-.



O. **Improper formation of the society-** society has been formed without getting O.C. and respondents' failure to hand over accounts.

P. **General deficiencies** – The society incurred expenses from time to time with regard to remove leakages of pipes, pressure walls, overhead tanks, to maintain services of intercom and electricity, amounting to Rs. 12,62,361/-.

Thus, the complainants claim Rs. 4,43,74,769/- from the respondents towards reimbursement as according to the complainants the respondents are liable to provide the aforesaid services and maintain the building till receiving the occupation certificate.

12. Respondents have denied their liability to compensate the society by contending that they have constructed the project as per sanctioned plans and O.C. is awaited. They have provided all the agreed amenities. Society members have occupied the buildings from last 7/8 years and now they cannot claim compensation.

13. following points arise for determination and I record my findings thereon as under:

POINTS	FINDINGS
1. Whether the respondents have failed to obtain completion/occupation certificate of one tower of Radha Krishna and both the towers of Radha Madhav and thereby contravened section 11 (4)(b) of RERA?	Affirmative.
2. Whether the respondents failed to clear property tax, sewerage and water tax and thereby contravened section 11(4)(g) of RERA?	Rs. 25,56,360/- extra water Charges.



- |   |                         |
|---|-------------------------|
| 3. Whether the respondents have failed to provide adequate facilities though agreed and thereby contravened section 11 (4) of RERA?   | Does not survive.       |
| 4. Whether the respondents have failed to develop and complete the project in accordance with the sanctioned plans, layout plans and specifications approved by Competent Authority and thereby contravened section 14 of RERA? | Does not survive.       |
| 5. Whether respondents are guilty of deficiency of services as alleged?   | Does not survive.       |
| 6. Whether the respondents failed to insure the project and thereby contravened section 16 of RERA?   | Directions issued.      |
| 7. Whether the respondents have failed to transfer the title of the land and building in society's favour and thereby contravened section 17 of RERA?   | Directions issued.      |
| 8. What relief or order?  | As per the final order. |

#### REASONS.

##### **Completion/Occupation certificate:**

14. The complainants have brought to my notice that section 11(4)(b) of RERA provides that the promoter shall obtain the completion certificate or occupancy certificate(O.C.). In **Fakirchand Gulhatti-v/s-Uppal Agency Pvt. Ltd.** (Civil Appeal No. 3302 of 2005) the Hon'ble Supreme Court has held that it is the responsibility of the promoter to obtain completion certificate, if the builder fails





to do so, he will be liable to compensate the allottees for all losses or damages. Admittedly, there is no completion certificate or occupancy certificate for one building of Radha Krishna and two buildings of Radha Madhav. The respondents have tried to blame the municipal corporation for delayed O.C. but I do not find any justifiable reasons to blame it. On the contrary, documents placed on record do show that the respondents applied for O.C. without complying with conditions required to be complied and therefore, the O.C. was refused. It appears that more floors than permitted have been constructed on Radha Krishna and Radha Madhav buildings. The respondents are waiting for the implementation of revised DCR for getting them regulated and this is the crux of the matter. However, it is the responsibility of the respondents to develop the real estate project according to the sanctioned plan, layout plan and specifications as approved by the competent authority and to obtain completion certificate or occupancy certificate as the case may be. Therefore, it is necessary to direct the respondents to comply with the legal requirement and obtain the completion certificate or occupancy certificate as the case may be at the earliest. I take this opportunity to put on record that the Urban Development Department of Government of Maharashtra has issued a Circular No. TPS-1816/CR/452 of 16/UD-13 dated 29.11.2017 under section 3 of the Maharashtra Right to Public Services Act 2015. The Municipal Corporations have been directed to issue occupancy certificate within eight days from the receipt of the proposal.

15. There is no dispute between the parties that the members of the society have been occupying their premises from the year 2011/2012 onwards without obtaining the completion/occupation certificate to be issued by the Competent Authority. Section 3 (2)(i) of Maharashtra Ownership of Flats Act 1963 prohibits the promoter from inducting any person without completion certificate into the flat and it also prohibits the buyer from entering into possession of such flat without the completion/occupancy certificate. Section 353A(2)(a) of Mumbai Municipal Corporation Act 1888 provides that no person shall occupy or permit to be occupied any such building, or use or permit to be used the building or part



thereof affected by such work until the permission referred to Sub-section (1) has been received. Section 1(b) relates to the permission for occupation of the building. Section 471 makes it an offence and prescribes fine for its violation, the maximum fine is Rs. 25,000/- and minimum is Rs. 5,000/- a day, it being continuing offence. This issue has been considered by the Hon'ble Bombay High Court in *M/s Sion Kamgar CHS Ltd.-v/s-Municipal Corporation of Gr. Mumbai* in Writ Petition No. 829 of 2013, wherein the Hon'ble High Court has held that occupying the building without occupation certificate cannot be permitted in law. The promoter and the occupants have to be proceeded against by the Municipal Corporation under Mumbai Municipal Corporation Act 1888. In view of this legal position, I find that both the parties are guilty because the respondents permitted the allottees to occupy their respective premises and allottees have also occupied their premises without getting the O.C. Hence, their possession is illegal and both are guilty of commission of the penal offence under Section 471 of Municipal Corporation Act. It is the responsibility of this Authority as a regulator to control such activities to avoid untoward incidents and to save the lives of the occupiers from the accidents. Hence it deems it fit to intimate the Municipal commissioner to do the needful in the matter.

**Reimbursement of extra charged water bills & Compensation for not obtaining the occupancy/completion certificate:**

16. Supreme court has held in *Fakirchand Gulhatti-v/s-Uppal Agency Pvt. Ltd.* (Civil Appeal No. 3302 of 2005) that the promoter will be liable to compensate the allottees for all losses or damages for not receiving the occupancy certificate. So far as compensation for not obtaining the occupancy/completion certificate is concerned, the complainants themselves have acknowledged by their letter dated 10.08.2016 the receipt of Rs.30,00,000/- paid by the respondents as a security for obtaining the O.C. The respondents have contended that they have paid Rs. 14, 93,301/-towards the extra water charges from 2014 to 2018. However, in principle, it is the duty of the respondents to bear the water charges imposed on the project which are higher than the normal charges, till obtaining



the occupancy/completion certificate as they have agreed to bear them. The parties are not at dispute that because of lack of occupation certificate the corporation charged the bills with excess of 50%. According to the complainant Rs. 20,43,531/- for Radha Krishna and Rs. 20,06,130/- for Radha Madhav have been charged extra till 31.03.2017. It is the responsibility of the respondents to bear these losses caused to the complainant for paying excess water bills. They have produced the statement of extra water charges paid by them during the period from 14.10.2014 till 17.04.2018 amounting to Rs. 14, 93,301/-. Now their liability is to pay the society Rs. 25,56,360/- extra water charges charged till 31.03.2017.

17. Society members being users of water have to bear the normal water charges charged by BMC and if additional water is supplied by tankers, society must bear their charges.

**Non-adherence to the sanctioned plan and specifications, deficiency in services-compensation.**

18. Admittedly the completion certificate is awaited in respect of the project. The Commissioner or his delegate is expected to inspect the site to verify whether the project is developed in accordance with sanctioned plan layout plan and specifications. Therefore, it is possible that if any illegal construction is made, the Municipal Corporation may get it demolished or regularized. Therefore, it is premature stage to press this issue. Same is the case in respect of the deficiency in the promised services. The respondents are bound to complete the project as per the sanctioned plan, layout plan and specifications thereof. If there is any deficiency the Municipal Commissioner is the proper authority to deal with it. Hence, I restrain myself from going deep into the said issue. This is one aspect of the matter. The other aspect of the matter is, the complainants have been residing in the buildings from last seven to eight years and therefore, there is every possibility of natural wear and tear of the equipment like the firefighting system, lifts, generator, damage to tiles, leakages etc. Since the society has taken the control from last seven to eight years it is for it to get the equipment repaired and

put them in working conditions and maintain the building. If the society has spent on maintenance of building for making it better and suitable for its members, the society has to bear their expenses. It can claim compensation for losses/damage caused to it or its member only due to lack of the O.C. Hence the claims about them do not survive. Moreover, there is no evidence to show that the equipment are of poor quality. In fact they have been working from 7/8 years and in natural course they require maintenance/replacement. It is the duty of the users to look after them. Taxes are to be paid by the occupiers. Members of society want to enjoy the benefits of the project at the cost of the promoter which is not permissible in law. There is no adequate evidence to hold that the construction is of poor quality and it is not earth quake resistant.

19. Section 11(g) of RERA requires the promoter to pay all outgoings until he gives physical possession of the real estate project to the allottees or association of the allottees from the funds collected by him from the allottees for payment of outgoings. In this case, as the respondents have formed the society and admittedly, the possession has been given to the society, it appears that the society has carried out certain repairs in the buildings. This indicates that the control is given to the society. Under these circumstances, the society is bound to make payment of all outgoings. The society, at the most is entitled to seek account from the promoter regarding the amount collected by him for maintenance of the buildings from the allottees and recover the balance from him, if any. Since the accounts are yet to be settled it is difficult in this summary enquiry to find out the exact amount which is due and that too from whom to whom. The parties are at liberty to get the forensic audit done.

20. Complainants allege that the respondents failed to clear property tax, sewerage and water tax. The learned advocate of the complainants submits that the respondents are liable to pay all out goings till receipt of the O.C. For this purpose, he relies upon Fakirchand Gulhatti's case and submits that in the absence of the completion/O.C., the promoter has to maintain the project at his cost but I do not find any such observation in the judgement. It simply lays down

that promoter must compensate the allottees for all losses or damages. Therefore, I do not agree with the complainant that the respondents are bound to make payment of outgoings as claimed by them.

**Insurance.:**

21. It is fact that the RERA for the first time makes the provision for insuring the project in respect of the title of the land and building as a part of the real estate project and construction thereof. This law has come into effect from 01.05.2017. The insurance required by the promoter to be obtained are yet to be notified by the government, this is one reason. The second reason is as per section 16, the project is to be insured before entering into agreement for sale and on formation of the association of the allottees, the documents of the insurance are to be handed over to such association. In this case the agreements have been executed with the allottees before section 16 came into force and therefore, I hold that the respondents cannot be blamed for not insuring their project.

22. However, the project has been registered with RERA and now section 16 is applicable to the project. Hence, it is necessary to direct the respondents to insure the project under section 16, as soon as the government notifies.

23. The complainants have the grievance regarding the exclusive occupation of the terrace by the respondents. In this respect the respondents relied upon clause-16 of the agreement for sale wherein the parties have agreed that terrace shall belong to the developer exclusively. The respondents have relied upon Ram Gauri Keshavlal Virani-v/s-Walkeshwar CHS Ltd. AIR 1999bom 385. In this case after taking the review of the provisions of Maharashtra Ownership Flats Act, 1963, the Hon'ble Bombay High Court has held that they do not permit the promoter to sell terrace and therefore, the terrace belongs to the society of the allottees. Hence the allottees have right to have an access to it. Similarly refuge area is to be kept accessible to all the occupants of the building for assembling in case of any accident for evacuating the trapped persons.



**Non-execution of conveyance deeds:**

24. The complainants contend that the respondents have failed to execute the deed of conveyance of the land and building in favour of the society and contravened section 14(4)(f) r/w section 17 of RERA. I have gone through these provisions. Section 17 of RERA casts obligation on promoter to execute a registered conveyance deed in favour of the allottee and execute registered conveyance deed in favour of the Association of the allottees of undivided proportionate title of common areas and land thereunder. The proviso provides that the conveyance deed in favour of the allottee or association as the case may be shall be carried out by the promoter within three months from the date of issue of occupancy certificate, in the absence of local law. Similar provision is made under section 11 of Maharashtra Ownership Flats Act 1963. The rules under Maharashtra Ownership Flats Act 1963 have been framed and they are local laws. The rules provide during the course of four months the conveyance deed is to be executed after receipt of O.C. Admittedly, O.C has not been received and hence, the respondents cannot be directed to transfer the title of the apartments to the allottees and of the undivided proportionate title in the common areas to the society.

25. The complainant allege that the society is not properly formed. In fact, section 11(4) (e) of RERA allows formation of the society when majority of the allottees have booked their flats. Now for formation of society OC or Completion Certificate is not required. Hence I do not find any substance in the allegation.

26. I pass the following order to meet the ends of justice.

**ORDER**

The respondents shall apply within one month from this order to obtain the occupancy/completion certificate of the project by complying with all the building conditions, if not applied before.

If they have applied, they shall comply with all the building conditions and shall pursue the matter by taking help of the Right to Service Act if necessary.





The Municipal Commissioner is requested to take the decision on the respondents' application in time and to do the needful.

The respondents shall bear the extra water charges, charged by the Municipal Corporation till obtaining the occupancy/completion certificate.

The respondents shall bear the extra water charges, charged by the Municipal Corporation namely Rs. 25,56,360/- for Radha Krishna and Radha Madhav charged till 31.03.2017.

The society/allottees to bear the normal property/water charges.

The respondents shall hand over the account books regarding the maintenance of the project together with the balance amount in their hand to the society within a month.

The parties shall settle the account in accordance with the provisions of the law by getting forensic audit done and shall clear the dues if any.

Other claims/reimbursements claimed in the matter are not allowed.


The respondents shall keep the terrace and refuge area of Radha Krishna building accessible to all it allottees.

The Secretary of the Authority is requested to bring to the notice of the Municipal Commissioner, Greater Bombay, the observations of the Authority regarding taking the quick decision on the respondents' application for occupancy/completion certificate and for prosecution of the parties under section 471 of Mumbai Municipal Corporation Act.

Parties to bear their own cost.

Mumbai.

Date: 14.02.2019.

  
14.02.19  
(B. D. Kapadnis)  
Member & Adjudicating Officer,  
MahaRERA, Mumbai.