

COMPLAINT NO: CC006000000100297

1. The Complainants have stated that they have booked apartment bearing no 1703 in the Respondent's project 'INDIAN OCEAN WING C' situated at Andheri, Mumbai via a Letter of Allotment dated October 22, 2015 and Memorandum of Understanding (MoU) executed on October 27, 2015. The Complainants have alleged that the Respondent illegally sold the said apartment on 17th floor by making false representation that approval would be obtained. Further, they have stated that in spite of having paid 81% of the consideration amount, the Respondent but has failed to obtain approval and enter into an agreement for Sale. They have also stated that the Respondent has permission to construct only up to 15 floors as per the MCGM approvals and has not been able to acquire further approvals till date. Therefore, they prayed the Respondent be directed to refund the amounts paid along with interest and payment of arrears of compensation towards rent at promised rate from November 2018 till the date of refund, under Section 12 and 18 of the Real Estate (Regulation and Development) Act, 2016.

2. On the first date of hearing on January 15, 2020, the learned counsel for the Respondent submitted the Respondent does not have the requisite approvals for the 17th floor and the Respondent has been paying compensatory rent to the Complainants and is willing to adhere to the Memorandum of Understanding (MoU) executed on October 27, 2015 executed between the parties.
3. On the next hearing on February 27, 2020 the learned counsel for the Respondent submitted that the Respondent has not been able to obtain approvals for the higher floors of the project and therefore is willing to offer an alternate apartment to the Complainant. But the learned counsel for the Complainant stated that the alternate apartment offered was not to the liking of the Complainant. Parties were given further time to settle the matter amicably.
4. On the next two dates of hearing on August 20, 2020 and September 29, 2020, no one appeared on behalf of the Respondent.
5. On review of the Respondent's registration webpage it is observed that the Respondent has registered the said project till up to 16 slabs of super structure and the Complainants' apartment is not part of the registered project. Hence, strictly speaking, the Complainant is not an allottee in the registered project MahaRERA Regn.No. P51800010364. Therefore, the provisions of Section 12 and 18 which the Complainant has sought relief under will not apply in this case.
6. The learned counsel for the Complainants submitted that no settlement could be reached between the parties. Further, he submitted that by a letter dated February 1, 2019 the Respondent had given the option to the Complainants to mutually end the transaction of sale of the said apartment, in case the Respondent fails to provide possession of the apartment before the period ending December, 2019 and that the said letter shall form part of the Letter of Allotment dated October 22, 2015 and Memorandum of Understanding (MoU) executed on October 27, 2015
7. Though the Complainant's apartment is not registered with MahaRERA, the act of the Respondent to take money from the Complainant for a proposed apartment and issue him an allotment letter, with an MoU in the said registered project, amounts to the

promoter being involved in a kind of “unfair practice” by promoting sale by adopting unfair method like representing that the promoter has approval which he does not have. Thus the promoter is guilty of violating Section 7(1) (c) of the Real Estate (Regulation and Development) Act, 2016.

8. In view of the above, the Respondent is directed to refund the amounts paid by the Complainants as per the terms agreed between the parties in the Memorandum of Understanding (MoU) executed on October 27, 2015 and the Respondent's email dated February 1, 2019.
9. Accordingly, the matter is hereby disposed of.

Gautam Chatterjee  Digitally signed by Gautam Chatterjee
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(Gautam Chatterjee)
Chairperson, MahaRERA