

**BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,  
MUMBAI**

**Complaint No. CC006000000171559**

Mr. Vijendra Singh  
Mrs. Sangeeta Singh

..Complainants

**Vs**

M/s. Macrotech Developers Limited

..Respondent

MahaRERA Project Registration No. **P51900005378**

**Coram: Dr. Vijay Satbir Singh, Hon'ble Member - 1/MahaRERA**

Adv. Aditya Dewlekar a/w Adv. Avdhut Bidaye and  
Adv. Madhumitha Srinivasan appeared for the complainants  
Adv. Akshay Pare a/w Adv. Nitin Waghmare appeared for the respondent

**ORDER**

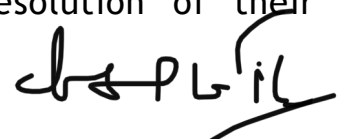
(18<sup>th</sup> November, 2020)  
(Through Video Conferencing)

1. The complainant has filed this complaint seeking refund of the entire amount paid by him to the respondent along with interest at the rate of 9% p.a under section 18 of the of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of booking of a flat no. 3101 on 31<sup>st</sup> floor, in the respondent's registered project known as "Lodha Venezia 49<sup>th</sup> to 65<sup>th</sup> floor" bearing MahaRERA registration No. **P51900005378** at Worli, Mumbai.
2. This complaint was heard on 3-02-2020 in the presence of both the parties when the respondent was directed to file its reply and the matter was adjourned to 2-03-2020. On 2-03-2020 the respondent filed preliminary reply on record of MahaRERA raising an issue of maintainability of this complaint. A copy thereof was given to the complainants and they were directed to file their rejoinder if any and the matter was adjourned for further date of hearing.



3. Thereafter, this complaint was again heard on 6-10-2020 as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions, if any. Accordingly, on 06-10-2020, both the parties appeared for the hearing through their respective advocates and made their submissions. On that date, both the parties were directed to upload their respective written submissions on record of MahaRERA in digital form as per the SOP dated 12-06-2020 and the matter was adjourned to 3-11-2020. Accordingly, on 3-11-2020 the parties appeared through their advocates and made their arguments and thereafter one week time was again granted to both the parties, to upload their respective written submissions if any on record of MahaRERA. Pursuant to the said directions, the complainants have uploaded their written submission dated 11-11-2020 on record of MahaRERA on 17-11-2020. However nothing has been uploaded by the respondent. The MahaRERA has perused the submission made by the both the parties as well as the record.

4. It is the case of the complainants that they have jointly purchased the said flat admeasuring about 1100.00 sq. ft carpet area together with 2 unmarked car parking lots for a total consideration of Rs. 4,15,79,244/- vide agreement for sale dated 16-12-2014, duly registered on 2-1-2015. As per the said agreement, the respondent had promised and assured to provide several amenities as well as facilities along with the said flat. However, even after more than 1 year of taking possession of the said flat such amenities as well as facilities are yet not ready and hence same are not provided to them, though the respondent has collected cost and charges towards them. They are also facing several issues regarding the poor and sub-standard interior works and also due to deviations from agreed terms and conditions as set out in the agreement in respect thereof. Therefore, they were constrained to send several correspondences to the respondent seeking resolution of their



grievances. However, the respondent has miserably failed to satisfactorily address the same. Hence, being aggrieved by the conduct of the respondents and its sheer failure to resolve such grievances, the complainants have no other option to withdraw from the project and to have refund of the entire amount paid by them along with interest and compensation under section 18 of the RERA.

5. The respondent on the other hand resisted the claim of the complainants by filing an application for maintainability of this complaint. The respondent has stated that the complainants have booked the said flat on 31<sup>st</sup> floor of the said building. It has obtained the occupancy certificate for the said floor on 25-07-2017 and hence it has not registered the said completed phase with MahaRERA. However, in this project it has registered the floors from 49<sup>th</sup> to 65<sup>th</sup> floors of the said building. The complainant's flat is not covered in the project registered by it. Hence the present complaint filed in this project is not maintainable. To support its contention, the respondent has relied upon the judgment and order dated 3-02-2020 passed by the Hon'ble Chairperson / MahaRERA in Complaint No. CC00600000005621 along with other 5 connected complaints filed with respect to similar issues. In the said order it has held that the phase of building which has received part occupancy certificate will not require RERA registration. However, the allottees of such phase can approach MahaRERA under section 11, 14(3) and 17 of the RERA. The respondent therefore prayed for dismissal of this complaint.

6. The complainants by filing their rejoinder have denied the preliminary issue raised by the respondent for maintainability of this complaint. They have also relied upon various judgements and order passed by the Hon'ble Maharashtra Real Estate Appellate Tribunal and stated that the since the occupancy certificate was not obtained by the respondent on the date of commencement of RERA, the respondent was liable to



register the said project with MahaRERA. Further though the phase of the project complainant's flat has not been registered with MahaRERA, however, the amenities are common for entire building and hence the complainants have a claim in this project. The complainants further stated that if this complaint is not maintainable, liberty may be granted to them to file the complaint under unregistered project. Hence the complainants prayed for dismissal of the application filed by the respondent.

7. The MahaRERA has examined the arguments advanced by both parties as well as perused the record. In the present case, the respondent has filed an application for maintainability of this complaint mainly on the ground that the flat of the complainants does not fall within the phase registered by the respondent with MahaRERA. The complainants denied the said application mainly on the ground that the complaint is against the amenities which are not provided to them and the said amenities are common for entire building.
8. In the present case, admittedly, the complainants had booked a flat on 31<sup>st</sup> floor of the said building and the respondent while registering this project with MahaRERA has registered the floors from 49<sup>th</sup> to 65<sup>th</sup> floors of the said building. It shows that the complainants' flat does not fall within the phase registered with MahaRERA. Hence, the MahaRERA is prima facie of the view that the present complaint filed in this particular project is not maintainable. However, if the complainants have any grievance about the non-registration of their flat before the MahaRERA, they are at liberty to file a fresh complaint under the category of unregistered project for the alleged violation of section 3 of the RERA by the respondent.
9. Moreover, the MahaRERA is of the view that the Full Bench of Hon'ble High Court of Bombay in para 86 of its judgment and order dated 6<sup>th</sup>

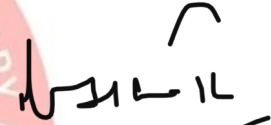


December, 2017 passed in W.P.No. 2737 of 2017 has clearly observed that the provisions of the RERA Act, 2016 shall apply to registered projects only or after the project gets registered. In the present case, since the alleged phase of the project, wherein the complainant's flat is situated is not registered with MahaRERA, the claim of the complainants under section 18 of the RERA cannot be considered in this project which is registered by the respondent.

10. In view of the aforesaid facts and observation made by the MahaRERA in aforesaid paras 7 and 8, the MahaRERA feels that there is substance in the application filed by the respondent. Hence same is allowed.

11. Consequently, the complaint stands dismissed being not maintainable.



  
(Dr. Vijay Satbir Singh)  
Member - 1/MahaRERA