

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

1. COMPLAINT NO. CC006000000057136  
Vipul Jaswantlal Sanghavi and Jaswanatlal Nanalal Sanghavi
2. COMPLAINT NO. CC006000000057204  
Mrs Veenakumari Sehgal and Mr. Lalit Sehgal
3. COMPLAINT NO. CC006000000057206  
Falguni Hemant Sheth and Hemant Devidas Sheth
4. COMPLAINT NO. CC006000000057207  
Mrs Usha Ashok Johari and Mr. Prasun Ashok Johari
5. COMPLAINT NO. CC006000000057370  
Royston Machado & Zania Machado
6. COMPLAINT NO. CC006000000057423  
Nimesh Indravadan Shah
7. COMPLAINT NO. CC006000000078557  
Shalini Shukla and Another
8. COMPLAINT NO. CC006000000078845  
Aamir Khan

... Complainants

Versus

Macrotech Developers Limited  
MahaRERA Regn. No. P51900000314

... Respondent

**Coram:** Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainants were represented by Mr. Arvind Giriraj, Adv. a/w Mr. Kaustabh Patil, Adv. (i/b. P. D. Gandhi & Associates).

Respondent was represented by Mr. Chirag Kamdar, Adv.; Mr. Abir Patel, Adv. and Mr. Akshay Pare, Adv. (i/b. Wadia Ghandy & Associates).

**Interim Order**

February 03, 2020



1. The Complainants have stated that they have purchased apartments in the Respondent's project 'NEW CUFFE PARADE - LODHA DIORO AND ELISIUM 41st to 43rd Floor' situated at Wadala, Mumbai via registered agreements for sale. Further, they submitted that the carpet area of the apartments are not as per the terms of the said agreement, the Respondent has delayed in handing over possession of the apartments, that the Respondent is not taking sufficient steps or cooperating in the formation of the society and that the Respondent cannot charge maintenance charges for the common amenities which are not ready/constructed. Further, they have stated that the Complainants are entitled for compensation for such shortfall in carpet area as the Respondent has deliberately made incorrect statements and has engaged in unfair trade practices.
2. Therefore, they prayed that the Respondent be directed to:
  - i. Pay them interest for delay in handing over possession
  - ii. provide all the amenities as per the Allotment Letter, Promotional Materials and Agreement to Sell and till all such common amenities are provided, not to charge maintenance charges for the same;
  - iii. to form a Society of the flat purchasers as per the provisions of the Maharashtra Cooperative Societies Act, 1960,
  - iv. to obtain full Occupation Certificate in respect of the said buildings,
  - v. to pay compensation of Rs. 50,000/- towards the mental agony and harassment caused as well as the legal charges.
3. The learned counsel for the Complainants has submitted an application dated December 24, 2019, stating that as per provisions of section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the *said Act*) only an adjudicating officer has the power to adjudicate compensation under sections 12 and 18 of the said Act. Further, he has submitted that the Hon'ble High Court, in other Complaints filed against the above referred projects, has directed that the Adjudication Officer, to whom the Complaints have been addressed, to hear the Complaints and pass reasoned Orders. Therefore, he has prayed that the Complaints be transferred/assigned to the Adjudicating Officer, MahaRERA. The present Interim Order deals with the application for transfer dated December 24, 2019.



4. The Complainants have made the following submissions via written submissions on behalf of the applicants/ original complainants dated January 17, 2020; which is taken on record and annexed as "Annexure A" to this Order.
5. The learned counsel for the Complainants has also referred to the Order passed by the Hon'ble High Court in Writ Petition No. 3701 of 2019

Relevant text of the said Order as referred to by the learned counsel for the Complainant is reproduced below:

"...

19. We direct that the adjudicating Officer, to whom the complaints are addressed, will now take up the complaints for adjudication in accordance with law. While adjudicating them, he will consider the objection to the jurisdiction and powers of the Authority raised by Lodha Developers Limited. All objections touching this aspect are kept open for being raised. Equally, we allow the petitioners to raise appropriate pleas in defence of their stand that the order of the Adjudicating Officer of 12<sup>th</sup> September, 2018 clinches the issue, more particularly because it is directed against the same developer in respect of the same project and that the said order has attained finality. We direct that the objections shall not be treated as preliminary nor shall any finding only on the point of jurisdiction be rendered. The complaint as a whole should be taken up and decided in accordance with law. We direct the Adjudicating Officer to deal with all objections while passing the final orders in the complaint. We trust that the Adjudicating Officer will take into consideration all the orders and deal with the submissions of the parties on that basis. He will pass a reasoned/speaking order as required by the law.

..."

As seen from the text above, the Hon'ble High Court has held that the specific Complaints against which the said writ petitions has been filed are to be heard by the Adjudication Officer and accordingly those are listed for hearing before him, however, no such direction has been passed in the said Complaints.

6. In various Complaints viz CC006000000078497, CC006000000078655 and CC006000000089747, it has already been elaborated at length that a complaint for violation of the provisions of the said Act is to be made to the Authority only, who after coming to the conclusion that compensation need to be adjudicated in favour of the Complainants, for violation of provision pertaining to award of compensation under Section 12, 14, 18 or 19, refers the matter to the Adjudicating Officer for adjudicating compensation.



7. Accordingly, in terms of provisions of section 31 of the Act read with Regulation 24 and Rule 7 as stated above, the present Complaint was listed before the Chairman of the Authority for hearing.
8. In the present complaint, the learned Counsel for the Complainants has stated that they are seeking interest and compensation under sections 12 and 18 of the said Act.
9. As explained above, section 71 of the said Act would come into play only where the Chairperson/ Member comes to the conclusion that compensation is required to be adjudged, which will be decided in due course after hearing rival submissions from both parties.
10. The Hon'ble High Court in *Civil Application No. 683 of 2018 in Second Appeal (stamp) No. 9717 of 2018*

Relevant text of the said Order as referred to by the learned counsel for the Complainants is reproduced below:


*77. As against it, the Adjudicating Authority under the RERA is defined in Section 2(a) as the 'Adjudicating Officer' appointed under subsection (1) of Section 71. This 'Adjudicating Authority', as can be seen from Section 71(1) of the Act, is established for the purpose of adjudging the compensation under Sections 12, 14, 18 and 19 of the said Act. Section 31 provides that, the complaints are to be filed by the aggrieved persons under the RERA with the 'Adjudicating Authority' for any violation or contravention of the provisions of this Act.*

As seen from the text above, the Hon'ble High Court has also held that the as per section 71 of the said Act, the Adjudicating Officer is the competent forum to decide the quantum of compensation.

11. In view of the above facts, the Authority and the bench/ benches constituted by the Authority in accordance with the provisions of the Act and rules and regulations made thereunder, as explained above, are duly empowered to decide matters related to the provisions of the said Act except for adjudging compensation as stipulated under the provisions of section 12, 14, 18 and 19.
12. Since, at this stage before going into the merits of the Complaints, the question of adjudging compensation does not arise, the application stands rejected.



13. Next date of hearing, to decide on the merits of the complaints and the prayers therein, to be scheduled accordingly.

  
(Gautam Chatterjee)  
Chairperson, MahaRERA

# ANNEXURE 'A'

BEFORE THE MAHARASHTRA REAL ESTATE TRIBUNAL  
Complaint Nos. 57816, 57449, 57451, 78556, 57870, 57204, 57136, 57206,  
57423, 57207, 57370, 57094, 110730, 110729, 89855, 78557, 78845

Viren Doshi and others

Complainants

V/s.

M/s. Lodha Developers Ltd.

Respondents

## Written Submissions on behalf of the Complainants :

1. The Complainants are filing the present consolidated written submissions in respect of all the seventeen complaints in which separate applications have been filed. At the outset it is submitted that the Complainants have not been served with the copy of reply of the Respondents and thus without considering the same, present written submissions are being filed. Complainants crave leave to address the reply if necessary. The seventeen complaints have been filed in respect of four buildings out of which two buildings Elisium and Dioro (Floors 41st to 43<sup>rd</sup>) are registered under Registration No. P519000000314 and the other two buildings i.e. Enchante (Floors 41st to 43<sup>rd</sup>) and Evoq (Floor 41st) are registered under Registration No. P519000000367 and P519000000567 respectively.

2. There are various others complaints which have been referred to the Hon'ble Adjudicating Officer by the Hon'ble High Court by order dated 11<sup>th</sup> September 2019, passed in Writ Petition No. 3701 of 2019. The said complaints being eight in number are in respect of all the four buildings and projects individually as stated herein below. Thus the complaints in respect of all the above four buildings are already before the Hon'ble Adjudicating Officer who has been directed to hear the complaints on all issues.

3. The present complaints are similar in nature to the complaints which have been referred to the Hon'ble Adjudicating Officer by the Hon'ble High Court and as such it is in the interest of justice that all the matters be heard by the Hon'ble Adjudicating Officer.

4. Further it is submitted that per Section 31 of the RERA Act, the complaints can filed with the Maharashtra Authority or the Adjudicating Officer as the case may be. Section 71 of the RERA Act, states that complaints under Section 12,14,18 and 19 are to be heard by the Hon'ble Adjudicating Officer. All the present complaints are under Section 12 and 18 of the RERA Act. Further the Maharashtra State Legislature in pursuance of the rule making power framed the Rules being the Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaint and Appeal etc) Rules, 2017 which provides for the manner of filing the complaints. Rule 6 provides for complaints before the Authority and Rule 7 provides for complaints before the Adjudicating Officer. All the present complaints have been filed in accordance with Rule 7 of these Rules and as such the complaints are addressed to the Hon'ble Adjudicating Officer.

5. The Hon'ble High Court by order dated 11<sup>th</sup> September 2019, passed in Writ Petition No. 3701 of 2019 in complaint Nos. 56939, 57442, 57444, 57447, 57450, 57445, 57446, 56889, (Project Registration No. P519000000367, P519000000314, P519000000567) has directed that the said complaints alongwith other complaints shall be heard and decided by the Hon'ble Adjudicating Officer. The present complaints are also in respect of the same project as that of the above referred complaints and addressed to the Hon'ble Adjudicating Officer under Section 12 and 18 of RERA Act, 2016.

6. The Complainants state that for the following reasons the said complaints are required to be transferred to the Hon'ble Adjudicating Officer:

- a. The Complaints at the inception have been addressed to the Hon'ble Adjudicating Officer.
- b. The Complaints have been filed under Section 12 and 18 of the RERA Act for which the Hon'ble Adjudicating Officer is the authority to adjudicate and decide the same.
- c. The Hon'ble High Court after taking note of the constitution of the Full Bench of the MahaRera Authority for hearing the said



complaints has directed the Hon'ble Adjudicating Officer to hear the complaints. For the sake of convenience, the observations of the Hon'ble High Court are extracted hereinbelow:

*18. Upon a careful perusal of the writ petition and annexures thereto, we are of the opinion that the rights and equities can be balanced by keeping all courses open for the parties and at the same time ensuring that the adjudication in the complaints is not delayed.*

*19. We direct that the Adjudicating Officer, to whom the complaints are addressed, will now take up the complaints for adjudication in accordance with law. While adjudicating them, he will consider the objection to the jurisdiction and powers of the Authority raised by Lodha Developers Limited. All objections touching this aspect are kept open for being raised. Equally, we allow the petitioners to raise appropriate pleas in defence of their stand that the order of the Adjudicating Officer of 12th September, 2018 clinches the issue, more particularly because it is directed against the same developer in respect of the same project and that the said order has attained finality. We direct that the objections shall not be treated as preliminary nor shall any finding only on the point of jurisdiction be rendered. The complaint as a whole should be taken up and decided in accordance with law. We direct the Adjudicating Officer to deal with all objections while passing the final orders in the complaint. We trust that the Adjudicating Officer will take into consideration all the orders and deal with the submissions of the parties on that basis. He will pass a reasoned/ speaking order as required by the law.*

- d. Thus the Hon'ble High Court specifically observed that the complaint should be heard by the Adjudicating Officer to whom the complaints were addressed. In the present case also the complaints are address to the Adjudicating Officer and hence they should be heard by them in accordance with law.



- e. No harm or prejudice would be caused to the Respondent as already other matters in respect of the same project are already before the Adjudicating Officer for hearing.
  - f. If all the matters are heard by the Adjudicating Officer, it would save the vital time of the Tribunal and also avoid conflict of decisions.
7. Therefore it is prayed that the application may kindly be allowed.

Dated this 17<sup>th</sup> January 2020.

Mumbai

  
Advocate for Complainants