

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

COMPLAINT NO. CC005000000011691

Ramendra Shivram Kotharkar

... Complainant

Versus

Macrotech Developers Limited  
MahaRERA Regn. No. P52100000350

... Respondent

Corum: Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant did not appear.

Respondent was represented by Mr. Sunilraja Nadar, Adv.

**Order (Ex-parte)**

January 31, 2020

1. The Complainant has stated that he has purchased an apartment bearing No. 302 in the Respondent's project 'LODHA BELMONDO Pebble Beach E, Estancia A' situated at Gahunje, Pune via a registered agreement for sale dated April 4, 2018. The Complainant stated that he has already paid a substantive amount towards the consideration price of the said apartment and that for the balance payment he has applied for loan. Further, he stated that since there were some discrepancies in the said agreement, the Complainant asked the Respondent to execute a correction deed; however, the Respondent refused to carry out the said correction. Therefore, he sought to cancel the said agreement and sought refund from the Respondent, but the Respondent has informed him that the amount will be refunded after certain deductions. Therefore, the Complainant has prayed that the Respondent be directed to refund the amount paid along with interest and compensation.
2. The Complainant did not appear despite having served the notice of hearing.




3. The learned counsel for the Respondent submitted that the Complainant has defaulted on making payments in the past. He further submitted that the Respondent has already obtained the occupancy certificate for the said project in April, 2017.
4. Section 18 (1)(a) of the said Act reads as:

*“ if the promoter fails to complete or is unable to give possession of an apartment, plot or building, – (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;  
he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. ”*

Simple present tense used in the starting line of Section 18 clearly indicated that the provision shall apply only till the project is incomplete or the promoter is unable to give possession. Once the project construction is complete or possession is given, as the case may be, the said provision ceases to operate.

5. In view of the above facts, in case the Complainant intends to withdraw from the said project then such withdrawal shall be guided by the terms and conditions of the said agreement and not in accordance with the provisions of the said Act.
6. Consequently, the matter is hereby disposed of.

  
(Gautam Chatterjee)  
Chairperson, MahaRERA