

## **Om Shanti Ambika Welfare Association Vs Rajguru Developers Pvt. Ltd**

This article attempts to discuss the issues regarding the maintainability of the complaint filed by the Association seeking individual relief for the allottee.

### **Issues:**

- a. Whether the composite complaint containing individual as well as common grievances is maintainable?
- b. Whether, the complaint filed by the Association for seeking individual relief in respect of allottee is maintainable?

### **Provisions:**

#### **Section 31 Filing of complaints with the Authority or the adjudicating officer.**

*31. (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.*

*Explanation. For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.*

*(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations.*

**(zg) "Person" includes,—**

*(i) an individual;*

*(ii) a Hindu undivided family;*

*(iii) a company;*

*(iv) a firm under the Indian Partnership Act, 1932 or the Limited Liability Partnership Act, 2008, as the case may be;*

*(v) a competent authority;*

*(vi) an association of persons or a body of individuals whether incorporated or not;*

*(vii) a co-operative society registered under any law relating to co-operative societies;*

*(viii) any such other entity as the appropriate Government may, by notification, specify in this behalf;*

### **Fact of the Case:**

In the present case the complaint was filed by the registered Association of purchaser who purchased the flat in the project "Raj Alteza". In the complaint the association claimed that 42 Members booked the flat in the said project and even after the execution of agreement to sale the promoter has neither handed over possession nor paid interest for delay in possession. Further, it is claimed by the association that construction of additional floor was made by the promoter without consent of the allottee and the promoter failed to pay the Pre-EMI as per subvention scheme.

By filing the above complaint association sought the relief for payment of interest on delay possession, payment of Pre-EMI, handing over of possession along with the common amenities, to provide the time line for completion of the project, compensation of Rs 15 Lacs to each allottee, formation of Homebuyer society, not to create third party right, revocation of registration, handing over the project to Association to facilitate the development of project, forensic audit of the project etc.

### **MahaRERA Authority Order**

The MahaRERA Authority passed the order wherein it is observed that the validity of the Project lapsed on 31.12.2021 and Association was seeking individual claims of 42 Allottees. Therefore, the Authority held that since validity of the Project had expired the common

reliefs inter alia relating to construction of additional floor cannot be considered and directed the Promoter to apply for extension of the project.

In respect of the claim of interest for delay possession, the authority held that violation of Section 12,14 and 18 can not be proved due to non-submission of the documents like ATS, Payment receipts and allotment letter. Further, it is held that as per MahaRERA Order no. 11 dated 23.10.2019 group complaint filed by one association can be entertained only for common relief therefore the complaint seeking individual relief which is required to be filed by the concerned allottees separately, is not maintainable.

Aggrieved with the order of the MahaRERA Authority, the complainant approached MahaRERA Appellate tribunal on the ground that necessary details regarding the agreements executed by the parties, payments made, date of possession, etc. were provided and as per Section 2 (zg) (vi) as well as explanation provided under Section 31 of RERA, AOA is defined and recognised as a person who, if aggrieved, is competent and has a right to represent individual Allottee.

#### **MahaRERA Appellate Tribunal order**

The MahaRERA Appellate Tribunal partially allowed the appeal. While decide the appeals it is observed that Contention of the Association cannot be accepted for the reason that the reliefs as sought on behalf of individual Allottees with regard to interest on account of delay in possession/ payment of EMI due to violation of the terms of agreements under subvention scheme, for not charging interest to individual Allottees etc. are governed by the contractual terms executed by the respective parties. Further it is observed by the MahaRERA Appellate tribunal that 'One-size-fit-all' approach cannot be adopted considering the variety of facts depending on performance or violation of obligations as per contractual terms involved in individual cases. Such an approach as sought to be adopted by the AOA is not only legally untenable and flawed but the same also appears to be unwieldy and cumbersome from the point of ease of adjudication of the controversies placed before the Authority in the complaint and hence cannot be accepted.

The MahaRERA Appellate tribunal agreed with the view of the MahaRERA Authority and hold that individual claim of the allottee members can not be adjudicated without examining the obligation performed by the concerned parties as per contractual terms of the respective parties. Further, it is observed that facts and circumstance of the judgement of the MahaRERA Appellate tribunal in the matter of M/s Olivia Buyers Association & others Vs' M/s T. Bhimjani Realty Pvt. Ltd. (Appeal No.AT006000000010565 dated 12.04 2019) and CCI Projects Pvt. Ltd' Vs. Rivali Park Wintergreen Buyers Association & Anr. (Appeal No. AT006000000052725 dated 29.09.2022) are distinguishable on facts as it deals with grievance of a common nature regarding registration of a land owner as Promoter under RERA and had nothing to do with the individual claims of Allottees.

However, while deciding the present appeal the MahaRERA Appellate tribunal held the validity of the contentions of the AOA that the Authority is not justified in declining the adjudication of the reliefs of common nature as sought with regard to alleged construction of additional floor by Promoter without consent of requisite number of Allottees merely for the reason that registration of the project had lapsed on 31.12.2021.

With the above observation MahaRERA Appellate Tribunal held that view taken by the Authority declining the common reliefs inter alia regarding construction of additional floor on account of lapse of registration is not acceptable and the Authority ought to adjudicate the common reliefs sought in the complaint which have hitherto been not considered.

#### **Conclusion:**

Composite complaint containing individual as well as common grievances is not maintainable and the member of association can file individual complaints, if they so desire, for redressing their grievances arising on account of violation of various provisions of RERA.