

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL

APPEAL NO.00600000010991

M/s. Nahalchand Laloochand Pvt. Ltd.,]
A company duly registered company]
Under Indian Companies Act]
Having their registered office at]
Kantilal House, 14, Mama Parmanand Marg,
Mumbai – 400 004.]... Appellant.

Vs.

1. Mrs. Maya Harsh Karvat,]
2. Mr. Haresh Ramniklal Karvat,]
Both Indian Inhabitant,]
Residing at Flat No.A-602,]
Green Acres CHSL, C.S.C.Road No.5,]
Dahisar (East), Mumbai 400 068.]... Respondents.

Advocate Mr. Ramesh Kachare for the Appellant.

Advocate Mr. Satish Sharma for the Respondents.

**CORAM : INDIRA JAIN J. (Chairperson)
SUMANT M. KOLHE,(Member J.)**

DATE : JULY 31, 2019.

JUDGMENT :

Appellant-original Respondent has challenged correctness, propriety and legality of the order dated 16.11.2018 passed by Member-1/ MahaRERA Authority in complaint No.CC00600000055681 whereby the Appellant-original Respondent is held liable to provide the parking place in accordance with the agreement for sale and if no such parking place is available then to refund the amount of the parking place.

In nutshell material facts are as under :-

Appellant is the Promoter. Respondents are the

Allottees. We refer the parties as per the status of Promoter and Allottees.

2. Promoter launched project namely "NL Aryavarta" having MahaRERA Registration No.P51800004816 situated at Dahisar. Allottees purchased the flat in the said project. Agreement for sale was executed and registered in the year 2016. Promoter agreed to allot one basement parking to the Allottees. However, Promoter allotted stack parking of ground floor to the Allottees at the time of handing over possession of the flat. The Promoter committed breach of the obligation of providing basement parking as per agreement for sale. Allottees sought relief to direct the Promoter to provide basement parking and alternatively to refund the amount of basement parking if it is not available.

3. Promoter has not disputed that basement parking was not allotted to the Allottees. According to Promoter, due to amendment in Development Control Regulations, 1991 in the year 2012, the sanctioned plan was changed and stack parking at ground level was allotted instead of parking at basement level to the Allottees. It is contended that Allottees had taken the possession of ground level parking along with the flat in the month of May 2018 and Allottees cannot make any grievance about the parking place.

4. After hearing the arguments of both the sides and perusing the record, the Ld. Member-1 of MahaRERA Authority

directed the Promoter to provide basement parking to Allottees and alternatively to refund the amount of parking place if basement parking is not available. The Ld. Member-1 of MahaRERA Authority observed that Promoter is under obligation to hand over the possession of basement parking as per the terms and conditions of registered agreement for sale.

5. Being dis-satisfied with the order of Member-1 of MahaRERA Authority, Promoter has challenged the order in this Appeal.

6. The Ld. counsel for the Promoter mainly argued that due to amendment in Development Control Regulations in the year 2012, sanction plan was changed and Allottees were allotted parking place at ground level instead of basement level. He submitted that parking place at ground level allotted to the Allottees is identical with parking place at basement. He further submitted that Allottees accepted the possession of parking place at ground level along with possession of flat and executed possession receipt to that effect. He submitted that Allottees cannot make any grievance about parking place after accepting the possession of the parking place.

On the other hand Ld. counsel for the Allottees supported impugned order of Ld. Member-1 of MahaRERA Authority. He submitted that Promoter is selling parking place at basement level for expressive price and Promoter has no right to unilaterally change the parking place. He referred some documents such as

allotment letter, registered agreement for sale to show that Promoter was liable to provide parking place at basement level to the Allottees. According to him, Allottees are entitled to recover price of the parking place at basement level from the Promoter if such parking is not available for allotment.

7. In view of rival contentions of both sides, the following points arise for our determination;

POINTS

FINDING

1) Whether the impugned order is sustainable in law ?

Affirmative.

2) What Order ?

As per final order.

REASONS :

8. In order to substantiate the claim of parking place at basement level, Allottees relied on copy of allotment letter, copy of possession letter, copy of demand letter of the balance price and copy of agreement for sale. It is revealed from recitals in allotment letter of Promoter dated 02.11.2016 that the Promoter had agreed to hand over the possession of parking place at basement level to the Allottees. Admittedly Promoter delivered possession of the flat along with parking place on 07.05.2018 to the Allottees. Possession letter is executed on 07.05.2018. It is revealed from recitals of possession letter dated 07.05.2018 that Promoter handed over the possession of parking place in basement level along with the flat to Allottees. Promoter was under obligation to hand over the possession of parking place at basement level as per terms and

conditions of agreement for sale and demand letter for payment of balance price of the flat. It appears that possession receipt was also executed on 07.05.2018 in which parking place at upper level was allotted to the Allottees. Allottees had signed some documents such as possession Deed, possession letter, possession receipt on 07.05.2018. Allottees have made out a case that under the pretext of completing the formalities of execution of various documents for taking possession of the flat and parking place at basement level as per terms and conditions of agreement for sale Allottees signed various documents at the time of possession on 07.05.2018. In the ordinary course of nature it is quite possible and probable that the home buyer who is eagerly waiting for years together to take possession of the home might have signed the documents prepared by the Promoter without carefully perusing details of the recitals in such documents. So, possession receipt signed by Allottees was the formality of completing the execution of documents on the date of taking over possession of the flat and parking place. Possession Deed clearly shows that parking place at basement level was handed over to the Allottees on 07.05.2018. In fact such allotment of parking place at basement level as mentioned in possession letter is in accordance with terms and conditions of agreement for sale. The recitals in possession receipt of handing over possession of parking place at ground level is not substantiated by any other document and it is contrary to the recitals in possession receipt as well as terms and conditions of agreement for sale. There is no iota of evidence to show that Promoter had informed the Allottees about change of the place of parking from basement level to ground level

w/s

at any time prior to the date of handing over possession. If at all sanction plan was amended due to change in Development Control Regulations then Promoter was under obligation to inform the Allottees that Allottees will get parking place at ground level instead of basement level on account of amended sanction plan. Allottees were taken to surprise only on 07.05.2018 i.e. the day on which possession of the flat and parking place was delivered to the Allottees. The Ld. counsel for the Promoter made it clear that there are 158 basement parking as per amended sanction plan and 121 basement parking are available as on today for allotment. It is not the case of the Promoter that parking place at basement level is not available in view of changed sanction plan. Allottees have produced letter of Promoter to show that Promoter is offering parking place at basement level. Thus, unilateral change in allotting the parking place on ground floor in lieu of parking place at basement on the part of Promoter is not proper and just. We reiterate that Promoter is under obligation to deliver possession of the flat along with parking place as per the terms and conditions of the agreement for sale.

W/S

9. The Ld. Member-1 of MahaRERA Authority has considered the respective claims of both parties and passed the proper order by directing the Promoter to hand over the possession of parking place at basement level and to comply the terms and conditions of agreement for sale and alternatively to refund the price of parking place to Allottees. Order passed by Ld. Member-1 of MahaRERA Authority is just, proper and legal and it is sustainable in law. It

needs no interference.

10. We therefore answer point No. 1 in the affirmative and point No.2 accordingly. Appeal is devoid of any merit. Hence the following order;

ORDER

- i) Appeal No. 006000000010991 is dismissed.
- ii) Promoter to pay cost of Rs.20,000/-to the Allottee and shall bear his own cost throughout.
- iii) Copy of this judgment be sent to both parties as per Section 44(4) of RER Act.


(SUMANT KOLHE)


(INDIRA JAIN J)