BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL, MUMBAI

Appeal No. AT00600000053680 of 2022
Alongwith
M.A.No.60/2023 (Interim Application)
In
COMPLAINT NO.CC006000000100373 of 2019

Dhiroj Kumar Barad]
W-12 Casa Sereno A TO E CHS Ltd.]
Lodha Amara Kolshet, Thane-400 607].. Appellant.

Versus

Macrotech Developers Limited]
412, 4th Floor, Vardhaman Chambers,]
Cawasji Patel Street, Fort,]
Mumbai-400 001.].. Respondent.

Mr. Dhiroj Kumar Barad, Appellant in person.
Adv. Mr. Vikramjit Garewal for respondent.

CORAM : SHRI S.S. SHINDE (J), CHAIRPERSON & SHRIKANT M. DESHPANDE, MEMBER (A)

RESERVED ON : 7th May, 2026

PRONOUNCED ON : 12th August, 2026

(THROUGH VIDEO CONFERENCING)

JUDGEMENT

[PER: SHRIKANT M. DESHPANDE, MEMBER (A)]

1. The captioned appeal arises from the common order dated 08.02.2022 passed by the learned Chairperson, Maharashtra Real Estate Regulatory Authority (for short "the Authority") in the captioned complaint filed by the appellant/allottee.
2. The respondent is the promoter of the project in the name and style as "Lodha Amara, Tower 1 to 5, 7 to 19" having MahaRERA Project Registration No. P51700001065.

3. For the sake of convenience, the parties to the appeal will be hereinafter referred to as "appellant/allottee" and "promoter" respectively.
4. The brief facts culled out from the pleadings, the impugned order, and material on record, reveal that the appellant is allottee within the meaning of Section 2(d) of the RERA Act, 2016, who has purchased a flat bearing no.2005/20 in Tower 12 of the promoter's said project. The project completion date of the said project is 30.11.2019. The promoter obtained occupation certificate on 24.01.2018 for the said building which covered the subject flat of the appellant. Accordingly, the appellant has taken possession of the subject flat along with the occupation certificate in 2018.
5. Aggrieved by the non-provision of common amenities as specified in the agreement for sale and among others car parking spaces, two-wheeler parking allotment, maintenance charges, lift issues, club house amenities etc., the appellant filed the captioned complaint on 02.08.2019 before the Authority seeking various reliefs contained therein.
6. The Authority heard the parties. The Authority observed that the complainant/allottee has contended that the following deficiencies for which the complainant is seeking reliefs are as under:

> *"1. No parking provided for two wheelers as mandated in the Environment clearance and also no parking for visitors. Also, that 3 parking spaces have been provided on 13th floor for which OC will never be received.*

2. Toilets for domestic help to be provided on ground floor have not been provided and hence seeks interim relief in terms of restraining the Respondent from selling ground floor flats.

3. A separate stretcher lift which should be rectangular in shape has not been provided.

4. No proper water connection provided.

5. Common maintenance chargers ie. FCAM were to be taken only for 18 months but have been taken for 5 years.

6. An exclusive club house was to be provided but they now understand that this club house could be used by the other new buildings coming up.

7 Leakages that reflects on poor quality of work provided.

8. One single parking building and parking has been provided on higher floors wherein OC has not been received".

Further, it transpires that the Complainant confirmed that at time of possession no written objection was taken but complainant had protested orally and followed up continuously vide emails.

7. The respondent contended as follows:

1. The Society which is formed has also filed a complaint on which the erstwhile, Member-II, MahaRERA has passed an interim order which is now under challenge before the Hon'ble MahaRERA Appellate Tribunal. It is also brought to the notice of the Authority that the said complaint of the Society is coming up for hearing before this Authority on 14.12.2021.

2. The Respondent also clearly specifies that the allotment for parking is the prerogative of promoter and that the parking at lower level was provided only as and by way of a temporary arrangement which cannot be sought as matter of right today. Also, that there is a different understanding on floor numbering and so it is the 12th floor and not 13th as stated by the Complainant.

3. With regard the issue of lift, they have provided reputed brands of lift and the stretcher lift is also provided for

4. Further there is no deficiency of water which is available 24 hours and that the complainant is asking for future plans which he has to get from Thane Municipal Corporation

5. The FCAM charges have been collected as per the agreement for sale, however the apartments were handed over for fit outs at different point in time and so corpus was necessary for maintenance in the interim period.

6. Further, the agreement for sale clearly states that the amenities would be shared and that they shall provide for more as and when required during expansion.

7. The defects brought to their notice has been rectified and few of them are on account of normal wear and tear.

8. After hearing the parties, the Authority passed the impugned order. In the impugned order, the Authority observed that at the time of possession, no written objections were raised by the complainant/allottee. Further, the complainant has filed the complaint on 02.08.2019 whereas the possession of the flat was

taken in the year 2018 itself after the promoter obtained occupation certificate on 24.01.2018. Further, the promoter has formed the society of the allottees of the said project in the name of "Casa Fresco Housing Society Ltd." The Authority also observed that the complainant has filed the captioned complaint with regard to the issues pertaining to common amenities mentioned in the agreement for sale, such as parking spaces, two-wheeler parking allotment, maintenance charges, issues related to lift, club house amenities, and many other facilities as mentioned in the agreement for sale. The Authority further observed that as per the provisions of Section 11(4) of the RERA Act, 2016, the promoter is responsible to allottees till the conveyance of the flat to the allottee as per the agreement for sale. Further, the promoter is responsible to the association of allottees till the conveyance of the common areas to the association of allottees. Further, as per Section 19(3) of the RERA Act, 2016 the allottees shall be entitled to claim the possession to their flats and association of allottees shall be entitled to claim conveyance of the common areas.

9. The Authority further observed that the these provisions make it clear that the grievances pertaining to the common areas and common amenities shall be raised by the association of allottees of the project and it is not open for the individual allottee to raise individual grievances regarding common areas and common amenities as it may cause multiplicity of proceedings and promoter shall never be free from litigations of the project, which shall hamper the handover activities constraining the interests of the larger majority of allottees. Hence, individual

allottees in the complaints have no locus standi to raise dispute regarding common areas and common amenities, which squarely fall within the purview of association of allottees. Further, the association of allottees has also been formed. The association of allottees has also filed separate complaint regarding common areas and common amenities. With these observations, the Authority dismissed the complaint as not maintainable.

10. Aggrieved by the impugned order, the appellant allottee has filed the captioned appeal on the grounds set out in the memorandum of appeal and has sought following reliefs:

"(i) *That this Hon'ble Appellate Tribunal be pleased to quash and set aside the Order dated 8th February 2022 passed by the Learned Chairperson MahaRERA in the Complaint No. CC0600000100373 of 2019.*

(ii) That the Hon'ble Appellant Tribunal may direct the Respondent to allot car parking space anywhere in P1, P2 or P3 Parking Levels of MLCP which parking levels existed on the date of the possession and where the appellant has been parking there since the date of possession.

(iii) That the Hon'ble Appellant Tribunal may direct the Respondent to provide a Stretcher Lift as promised in the Agreement to Sell failing which the Respondent may be ordered to compensate the Appellant or alternatively, provide an option to the Appellant to return the Flat against return of consideration with interest and compensation against loss or damage suffered by the Appellant.

(iv) That the Hon'ble Appellant Tribunal may direct the Respondent to provide Common Washroom in each Building as promised under the Agreement for Sell.

(v) That the Hon'ble Appellant Tribunal may order the Respondent to provide the common amenities of 12 playgrounds with play equipment, 4 Party Halls, 100 Plus Seating capacity of Cinema Hall, Children Water Play Plaza, in the Project as promised in the Agreement for Sell.

(vi)That the Hon'ble Appellant Tribunal may, in case of failure by the Promoters to discharge its obligations under the Agreement for Sell, order such relief including compensation as the Hon'ble Appellate Tribunal may deem fit and necessary in the facts and circumstances of the present case."

11. We have heard the appellant in person and the learned Advocate for the respondent/promoter. Their submissions are nothing but re-iteration of the contents of the memorandum of appeal, reply, rejoinder, and written submissions.

12. The appellant has submitted that the Authority has failed to appreciate that the law as envisaged under Section 11(4) of the RERA Act, 2016 as well as under Section 19(3) of the RERA Act, 2016 is about in whose favour the conveyance as well as the possession of common areas/amenities should be made/given and not about the rights of individual allottees over the common areas and common amenities. Section 11(4) of the RERA Act, 2016 has clearly laid out that the promoter shall be responsible for all obligations/responsibilities and functions under the

provisions of the Act or the Rules and Regulations made thereunder or to the allottees as per the agreement for sale or to the association of allottees as the case may be, till the conveyance..... It is pertinent to note that the appellant is not seeking conveyance of common areas in his favour nor in favour of his society. The learned Advocate submitted that Section 19(2) provides that the possession of the flat shall be given by the allottees and the possession of common area shall be given to the association of allottees. It is pertinent to note that the appellant is not claiming possession of the common area. The learned Advocate submitted that the appellant has neither any rights nor having any intention to claim either conveyance or possession of the common area or common amenities in his favour. The appellant is aggrieved by the failure of the promoter to fulfill its promises and obligations as promised under the agreement for sale.

13. The appellant further submitted that Section 11(4) has clearly laid out that the promoter is responsible towards both the allottees as well as association of allottees, therefore both the allottees as well as association of allottees can claim against the promoter and seek justice. It is not the intention of the legislature to allow only association of society to have right to redress grievances in respect of common areas and common amenities. The appellant as an allottee has rights in proportionate to his area under the law over the common areas in the project. Therefore, the Authority has erred in holding that it is not open for individual allottees to raise individual grievances pertaining to common areas and common amenities

as the same fall within the purview of the society/association of allottees. The appellant submitted that the association of society is an independent and separate from its members/allottees and decide based on majority of its members or managing committee in the affairs of the society. It would be unfair and unjust if the society does not file any complaint about grievances of its members regarding common areas and common amenities and member/allottee is not allowed to file complaint against the failure on the part of the promoter in respect of common areas and common amenities. Therefore, the view taken by the Authority is not in accordance with the provisions of RERA Act, 2016 and law. The complaint is therefore maintainable even so far as the grievances against the common amenities or common areas raised by the individual allottee is concerned.

14. The appellant, with regard to the allotment of parking space is concerned, has submitted that the appellant is aggrieved by the wrongful and forceful allotment of car parking at a parking level that did not exist on the date of possession. On the date of possession car parking allotment, only P1, P2 & P3 parking levels had existed for which the promoter obtained occupation certificate. It may be noted that the only occupation certificate that existed at the time of possession in the month of September, 2018 was the first occupation certificate dated January 2018, covering parking level P1, P2 and P3. Accordingly, car parking ought to be done in these 3 parking levels. The second occupation certificate was only received in March 2019 covering parking levels P4 to P 11. Therefore, the

parking allotments made on papers in September, 2018 of the higher parking levels P12 to the appellant, when there was no occupation certificate existed at that time for the said parking level may be declared void ab-initio. The appellant therefore prayed that the parking allotment to the allottee be directed to be provided anywhere in the parking level even P1, P2 and P3 which existed when the possession was handed over having valid occupation certificate. The allotment of parking spaces on higher level P12 of the Multi-level Car Parking (for short "MLCP") building in the slot numbers 543 and 544 was forcefully accepted on paper as it was not known to the appellant that the allotment was just paper allotments. The promoter did not allow the appellant to visit and see the parking slot numbers as the levels beyond level P3 in the multi-level car parking was neither existing at that time nor having occupation certificate when the possession was handed over and allotment of parking spaces on level P12 when allotment was done in favour of the appellant.

15. The appellant has submitted that the promoter has to exercise its right to allocate the parking at its sole discretion within the levels having occupation certificate and entitles the promoter to carry out allotment. The appellant submitted that the as per the agreement for sale, the appellant was entitled to occupy car parking spaces along with flat at the time of possession in September 2018. As a result, the possession of the flat along with fixed car parking space was incomplete in terms of the aforesaid agreement for sale due to the inability of the of the promoter to handover the physical possession of the fixed car

parking as agreed in the agreement for sale at the time of possession.

16. The appellant has submitted that he was issued car parking allotment letter at the time of possession with car parking spaces in the level P12 of the multi-level car parking that did not exist on the date of possession, therefore possession is not in accordance with the agreement for sale for want of occupation certificate for level P12 which was allotted to the appellant. During the pendency of the appeal, this Tribunal vide its order dated 20.02.2023 granted status-quo in relation to existing parking spaces at level P1. Therefore, the appellant prayed for direction to the promoter to provide permanent parking slots in level P1 as per the status quo orders or any other level that existed at the time of possession of the flat.

17. With regard to the specific grievances related to the stretcher lift as promised in the agreement for sale, the appellant has submitted that the he is aggrieved by non-provision of stretcher lifts as promised by the promoter in the agreement for sale. As per the annxure-7 of the agreement for sale which provides for 2 elevators with one of them being a stretcher elevator. However, the promoter has merely provided 2 lifts of square dimension with none of them being stretcher lift. The appellant submitted that on demand from the allottees of the project the promoter has provided "made to order" stretcher in one of the lifts that only fits diagonally in particular position in the lift which amounts to attempt to eye wash the allottees including the appellant. The stretcher that the promoter has provided "made to order" is not a normal stretcher and does not have handle to

push or pull nor soft cushion for lying down. Without a standard stretcher lift, it would be very difficult for high floor residents to deal with in case of emergency. By not providing a stretcher lift of standard size, the promoter has failed to provide stretcher lift as promised in the agreement for sale. The appellant submitted that, in the report of the independent Architect "Shetgiri & Associates", whose report has been submitted by the promoter along with the written submissions and on which the promoter has placed reliance, has identified this deliberate attempt of the promoter to bypass a smaller lift as stretcher lift. In the said report of the Architect, it has recorded that "*the stretcher lift is observed to be adequate in terms of sizing since a hospital full sized stretcher would be difficult to be accommodated with the said lift in the usual horizontal resting position. Certain compromise in the orientation of the stretcher would be required to accommodate the same within the lift. The lift installed within the building and referred to as stretcher lift would not actually suffice the requirements during the state of emergency*". The factual position, the shape and size of the lifts as provided are not what is promised by the promoter in th4e agreement for sale which has been clearly established in the said report that demonstrates that promoter is in breach of the agreement to sell as well as the provisions of RERA Act 2016.

18. With these submissions the appellant prayed that the promoter be directed to replace the smaller lift with standard stretcher lift as promised in the agreement for sale and in case the same is not doable due to construction limitations, it may be directed to

provide another lift as the promoter has provided in other similar new buildings in the said same project.

19. With regard to washroom in each/every building is concerned, the appellant submitted that he is aggrieved by the non-provision of domestic help toilet/shower facilities in each building as promised in the agreement for sale. Item no.5 of the annexure-7 to the agreement for sell provides for domestic help toilet/shower facilities for each building. However, no such toilet/shower is provided in many of the buildings. The promoter has failed to provide domestic washroom in every building. Out of the 5 buildings of Wing-12 to Wing 16, only Wing-12 has domestic washrooms. The learned Advocate submitted that non-provision of domestic washrooms in every building, despite committed in the agreement for sale, has caused or likely to cause pressure on one washroom in a society of more than 750 flats. Such non-provision of the washroom in each building is clear breach of the agreement for sell by the promoter and also violates the provisions of RERA Act, 2016.

20. With regard to the common amenities of 12 playgrounds with play equipment, 4 party halls, 100 plus seating capacity of cinema hall, children water play plaza the appellant submitted that the he is aggrieved by non-provision of common amenities as promised under the agreement for sell by the promoter. The said amenities have not been provided even after more than 5 years of the possession. The cinema hall capacity is only 80 as per count and not 100 as promised in the agreement for sell. This is also confirmed by the Architect Shetgiri and Associates, in its report which has been filed on record by the promoter.

There is no children water play plaza provided by the promoter. Twelve playgrounds with play equipment have not been provided. Same is also confirmed by the said Architect's Report. Thus, the promoter has failed to provide the said amenities as promised in the agreement for sale.

21. The appellant submitted that he is also aggrieved by excess collection of maintenance and other charges. The promoter collected money from the appellant towards federation common area maintenance charges (for short "FCAM"), a per sq. ft. rate for 5 years for common areas of amenities as listed in annexure-3 to the agreement for sale. However, many of the common area amenities are not yet built for use of the appellant at the time of possession and not even now after 6 years of possession. The appellant submitted that the FCAM charges collected in advance may be adjusted proportionately in future years due to unavailability of all the amenities for use of the other owners. The promoter has forcefully collected the FCAM charges in advance without giving details of the past FCAM expenditure details and without adjusting the expenses when complete amenities were not available or during the covid-19 period, when amenities were not maintained. The promoter has been charging interest for delay FCAM payments in order to force the appellant to pay current FCAM charges without questioning the advance collected FCAM dues. The promoter has been resorting to arm-twisting the appellant by not issuing NOC for its tenants and causing disturbances in peaceful use of the parking lots. The promoter has collected the electricity deposit reimbursements of an amount of Rs.14,000/- for 3 BHK

under the head of electricity security deposit but to the utter dismay to the appellants, the actual deposit is made only Rs.4,000/- as exhibited in the respective monthly electricity bills. Therefore, the promoter should be directed to refund excess electricity deposit along with interest collected from the appellant but not deposited with Electricity Department.

22. With these submissions, the the appellant prayed to allow the appeal.

23. Per contra, the learned Advocate for the respondent/promoter has submitted that the present appeal clearly indicates that the appellant from the captioned appeal is not only raising grievances and seeking relief in respect of his flat, but also with respect to common amenities, which fall within the purview of society. It is well settled principle of law that upon become a member of a co-operative housing society, an individual allottee relinquishes their personal interests in matters concerning societies affair and cannot independently raise grievances regarding common areas and amenities. Therefore, the present appeal is not maintainable and deserves to be dismissed with costs.

24. The learned Advocate submitted that by an order dated 15.02.2022 passed in the complaint filed by the said society M/s. Shetgiri & Associates was appointed to inspect the common areas and amenities of the said project. Inspection was conducted on 20.08.2024, to assess the status of the common areas and amenities. Subsequently, the Architect submitted its inspection report on 25.11.2024 pertaining to its findings concerning the said project. The Inspection Report

unequivocally establishes that the amenities stipulated in the agreement for sale have been duly provided, pictures of the said amenities are also annexed to the report. Accordingly, the present appeal is devoid of merit, not maintainable in law and deserves to be dismissed in the light of said Inspection Report. The learned Advocate submitted that the contentions raised by the appellant in the said appeal are wholly misconceived, unsubstantiated and devoid of merit and ought not to be entertained by this Tribunal. The appeal is premised on an erroneous narration of facts and a flawed interpretation of law rendering the claims therein baseless and unworthy of consideration.

25. The learned Advocate submitted that it is trite law that grievances pertaining to common areas and common amenities shall be raised by the society and it is not open for an individual flat purchaser to raise separate complaints to avoid multiplicity of proceedings. Thus, while the said complaint was under jurisdiction before the Authority, several allottees of the said project in their individual capacity, simultaneously filed similar or identical complaints seeking reliefs before the Authority. When the said complaint was listed for hearing on 08.02.2022, the promoter herein apprised Authority of the pendency of the complaint filed by the society. The Authority in a detailed order on 08.02.2022 conducted a comprehensive comparative analysis of the grievances and prayers in both complaints and was pleased to dispose of the said complaint holding that grievances concerning common amenities fall within the exclusive purview of the society and not individual members.

Thus, it is abundantly clear that the appellant had no locus-standi to institute the said complaint and/or captioned appeal. It is trite law that judicial and/or Quashi Judicial forums must discourage multiplicity of proceedings as it may lead to conflicting outcomes in respect of the similar set of facts and result in anomalies in the process of justice dispensation. The Authority in the order dated 08.02.2022 has carried out an elaborate and meticulous exercise of analyzing and assessing each of the prayers in the voluminous compilation filed by the appellant vis-à-vis the said complaint and inferred that there is substantial overlap in the prayers in both sets of complaints. Therefore, the Authority correctly observed that entertaining various identical prayers may lead to multiplicity of proceedings and promoter shall never be free from litigations of the projects, which shall hamper the handover activities, constraining the interest of the larger majority of allottees.

26. The learned Advocate submitted that in the present appeal the averments made in the complaint have been re-iterated and appellant has made a feeble attempt to pass off common grievances as individual ones. The appeal is nothing but a coercive tactic to arm-twisting the promoter into giving into the appellant false and pre-emptively misconceived demands. The conduct of the appellant has been less than wholesome on more than one count, and as such, granting any reliefs/interim reliefs as prayed for in the appeal would lead miscarriage of justice. In the light of the foregoing, the grievances raised by the appellant concerning the common area amenities are adequately represented in the society's appeal. Therefore, the

present appeal is not maintainable *qua* the issues pertaining to common area and common amenities and/or FCAM charges and or MLCP and/or stretcher lift and/or domestic washroom, as the same is barred by the doctrine of *res sub judice*. Therefore, the learned Advocate prayed that the present appeal is not maintainable in law.

27. The learned Advocate submitted that the appellant has filed the captioned complaint at belated stage after satisfying himself with the quality of the flat and amenities provided and then accepting the possession of the said flat. Admittedly, the appellant has taken possession of the said flat in the year 2018, while expressly signing a possession letter and waiving off any right and claim against the promoter, after satisfying himself of the specifications of the said flat, parking and the amenities thereto. The promoter has handed over the possession of the said flat in terms of the duly executed agreement for sell and has in fact supplied amenities over and above those promised in the agreement for sale.

28. The learned Advocate submitted that the subject project is a premium state of the art, wide scale residential township consisting of various shared facilities for all its several towers spread over various clusters, including but not limited to the multi-level car parking (for short 'the MLCP'). The project is being constructed in several phases, each of which is duly registered on the website of the MahaRERA. The learned Advocate submitted that the appellant has suppressed the material facts that the entire development of the project consisted of phase wise development and that Wings W1 to

W12 are just a few of the several projects as defined under RERA Act 2016 and only a part of the said development and not the entirety of the development itself. Under the agreement to sell, elaborate disclosures were made to the appellant which includes but is not limited to the specifications, extent and the development of the project in a phase wise manner. The relevant clauses of the agreement for sale evidently discloses that all the disclosures have been made to the appellant as early as 2018 at the time of execution of the agreement for sale. Therefore, the allegations of coercion and/or misrepresentation are not factually correct.

29. With regard to the specific amenities, particularly the lift and elevators, the learned Advocate submitted that in order to ensure comfortable and quick access to different floors of the towers and comfortable and safe transport of individuals with health issues and/or medical emergencies, each tower in the said project is equipped with passenger lift and one custom designed stretcher lift. These lifts are high end lifts manufactured by company having more than 24 years of experience in the manufacturing industries. Despite the above, the appellant has sought to falsely allege that the promoter has failed to provide a brand of elevators as set out in the agreement for sale. Particularly, the brands mentioned in the agreement for sale are only indicative and not exhaustive. Therefore, the provision of lifts of the company that promoter has provided is in consonance with the agreement for sale. The promoter has provided stretcher lift and provided custom

designed stretcher in each cluster to ensure safe and quick transport of individuals in cases of medical emergencies.

30. The learned Advocate submitted that with regard to the parking space as claimed by the appellant, the MLCP is an independent tower and the right of allotting individual parking spots is the sole prerogative of the promoter as clearly set out in clause 8 of the agreement for sale. The possession of the flat was handed over, the occupation certificate for the higher floors of MLCP on which the allotted parking spot of the appellant stood i.e. spot no.543 and 544 was not received. A mere receipt of the occupation certificate for the lower floors of MLCP can in no manner be read to mean that car parking slots at the lower floors of the MLCP were for the exclusive use of the residents of the said wings. Record indicates that the promoter had time till November, 2021 to handover the said car parking slot. Notably, the promoter had in fact handed over the allotted car parking slot, well in advance and on the receipt of the occupation certificate for the higher floors in or around 2019. The learned Advocate for the promoter submitted that admittedly, only for an interim period, temporary parking slots were allocated to the appellant on the lower levels of the MLCP. A simple review of the car parking allotment/demarcation letter dated 07.09.2018 clearly identifies their parking spots allocated on the higher floors. This letter was accompanied by a communication expressly stating that the temporary parking spots were provided solely for convenience until possession of the permanent parking spots was handed over.

31. The learned Advocate submitted that the occupation certificate for the 4th to 11th levels of the MLCP was received on 22.03.2019 and for the 12th floor on 29.11.2019, both well before the first hearing of the complaint and the impugned order. This demonstrates that the permanent parking spots were made available to the appellant significantly before the deadline stipulated under the agreement for sale. The promoter, has in principle allocated parking spaces with due consideration for the convenience of all current and prospective residents and commercial users of the entire project. This allocation has been made based on a calculated distance principle, whereby users residing farthest from the MLCP tower allocated parking on the lower floors, while those residing closer to the MLCP tower, such as the appellant are allocated parking on the higher floors. The rights of the appellant arise exclusively from the respective agreement for sale, which were executed willingly, without protest or objection. Clause 8 of the agreement for sale specifically provides that the exclusive right to allot the car parking slots rests solely with the promoter. The promoter holds the exclusive authority to determine the exact location of the car parking slots to be allocated to the appellant and the appellant has expressly waived his right to dispute the allocation of car parking slots.

32. Without prejudice to the above, the learned Advocate submitted that the appellant's prayer for the allotment of four-wheeler parking spots on the lower levels of the MLCP is beyond the jurisdiction of this Tribunal. There is no provision under the RERA Act, 2016 empowering this Tribunal to restrain, control or

direct the allocation of parking spots in a project unless the appellant demonstrates a breach of the provisions of the Act or the agreement for sale. The Act does not prescribe a mechanism for the allotment of parking spots. Therefore, the terms of the agreement for sale which encapsulates the intentions of the parties must govern such matters. Furthermore, as specifically outlined in the agreement for sale, the exclusive right to allocate the car parking spots rest with the promoter. The Act does not govern or regulate the manner in which a promoter is required to demarcate and/or allot closed four-wheeler parking spaces.

33. The learned Advocate submitted that the appellant has failed to make out a case for being allotted a parking spot on the lower levels of the MLCP. The appellant vide parking allotment letter was allotted a spot on the MLCP building of the project. The appellant has suppressed certain e-mails exchanged between the promoter and the appellant. A mere perusal of the said e-mails shows the fact that the appellant has not raised a grievance with respect to the possession of his parking slots when it was informed that the same was under construction and would be provided as soon as it is ready, moreover, the appellant was also provided a temporary parking spots at the lower levels of the MLCP which was ready to be used.

34. With regard to the two-wheeler parking space, the learned Advocate submitted that under the agreement for sale only four-wheeler parking slots was agreed to be handed over. The agreement for sale nowhere mentions a parking slot for two-wheelers and hence the promoter is under no obligation to provide a two-wheeler parking slot to the appellant. It is not

even the case of the appellant that *qua* the two-wheeler parking slot, the promoter is in breach of its promise under the agreement for sale or otherwise.

35. With regard to the toilets for domestic help, the learned Advocate submitted that the same has been provided as per the terms of the agreement for sale.

36. With regard to the federation common area maintenance (for short 'the FCAM') charges, the learned Advocate submitted that a bare perusal of the agreement for sale, it shows that the flat purchasers including the appellant were notified of all charges to be levied and each disclosure was elaborately made in the agreement for sale, more specifically, in annexure-6 of the agreement for sale. The aforesaid is further explained by the definition of the FCAM charges, which stipulates that the said charges would be for 5 years, only with a view to maintain the common area amenities such as maintenance of roads, sewage treatments plant, federation common areas etc. for the benefit of the residents. FCAM charges are collected for maintenance of those areas which physically fall outside the notional boundary of the relevant society and/or services which are largely shared between different societies forming a part of the larger development. It is pertinent to highlight, that in view of clauses 15.5 to 15.12 of agreement for sale, the promoter is entitled to collect the FCAM charges from the date when the possession of the flat was offered to the appellant till the time the federation is formed and property is handed over to the federation of the ultimate organization.

37. The learned Advocate submitted that thus, the FCAM charges have been sought for a period of five years, in compliance with the terms of agreement for sale and the possession demand letter only with a view to maintain the common area amenities such as maintenance of roads, sewage treatments plants, federation common areas etc. for the benefits of the residents. FCAM charges are collected for maintenance of those areas which physically fall outside the notional boundary of the relevant society excluding BCAM charges and/or services which are largely shared between different societies forming a part of the larger development.

38. With regard to the water supply, the learned Advocate submitted that in view of water shortages, the promoter has procured water supply from the MIDC and the Thane Municipal Corporation does not have enough provisions for supply of water to Thane. There have been no water cuts on and from the date of handing over possession to the flat purchasers and the flat purchasers of the project enjoy 24 x 7 of the supply of the water.

39. The learned Advocate submitted that in the light of the above submissions, the appeal is not maintainable both in law and facts. The appellant failed to establish a case for setting aside the impugned order and thus no reliefs ought to be granted to the appellant. The appellant has filed the captioned appeal with malafide intent as an extortionary tactic.

40. With these submissions, the learned Advocate for the promoter has prayed to dismiss the appeal with costs.

41. The learned Advocate for the promoter in support of the above contention has placed reliance on the following judgments:

    i) *Daman Singh and others V/s. State of Punjab and others* [(1985) 2 Supreme Court Cases 670].

42. Having heard the learned Advocates for the parties at length and with due regard to the contents of the memorandum of appeal, reply, written submissions and material placed on record, the following points arise for our consideration, and we have recorded our findings thereupon, for the reasons to follow, as under.

Sr.No.	Points	Findings
1.	Whether the captioned complaint is maintainable under the provisions of section 44 of the RERA Act, 2016?	In the Affirmative.
2.	Whether the impugned order warrants interference in this appeal?	In the affirmative.
3.	What order?	As per final order.

REASONS

Point No.1 and 2

43. On ensemble of the facts as submitted by the parties above, it is not in dispute that the appellant has purchased the subject flat vide agreement for sale dated 09.03.2018 in the promoter's said project. As per the agreement for sale the due date of possession is 30.11.2018, subject to 18 months grace period i.e. on/or before July, 2020. The promoter obtained occupation

certificate for the building where the subject flat is situated on 24.01.2018. Thus, the promoter has handed over possession in of the flat the year 2018, which is much earlier than the due date of possession with grace period of 18 months, as agreed upon by the parties in the agreement for sale. Thus, there is no delay in handing over possession of the flat to the appellant.

44. The appellant has filed complaint before the Authority on 02.08.2019 after lapse of long time after taking over possession of the flat and accepting the allotment of the parking spaces. It is also not in dispute that the promoter obtained occupation certificate for multi-level car parking tower on 24.01.2018 for P1 to P3 level. It is also not in dispute that the promoter obtained occupation certificate for the MLCP tower for the level P4 to P11 on 22.03.2019. It is not in dispute that vide allotment letter dated 07.09.2018 the promoter has allotted the car parking spaces to the appellant spot no.543 and 544 on the higher floor for which the occupation certificate was obtained on 22.03.2019.

45. As mentioned above, the due date of possession for the subject flat along with car parking spaces was July, 2020. Therefore, we are of the view that the parking spaces allotment made by the promoter at higher floors in the MLCP tower and obtaining occupation certificate for those floors was much prior to the due date of possession. The contention of the appellant is that when the subject flat was handed over to the appellant, there was no occupation certificate for the higher floors of the MLCP space, on which the allotment of parking slots for the appellant was made and therefore appellant must be given the allotment on

lower floors for which the occupation certificate was obtained when the flat was handed over. We do not find any merits in these submissions of the appellant requiring the promoter to allot the car parking spaces on lower floor. The allotment of the parking spaces on higher floor was made by promoter vide an allotment letter dated 07.09.2018, the appellant made no grievances against that allotment, the promoter obtained occupation certificate for the higher floors of MLCP building on 22.03.2019, and the due date of possession of the flat with car parking spaces is July 2020. Hence allotment of car parking spaces is as per the terms of the agreement for sale. Mere allotment of car parking spaces on lower floor on temporary basis till the occupation certificate for higher floors is obtained does not entitle the appellant the car parking spaces at lower floor for which occupation certificate was obtained by the promoter on 24.01.2018. On the other hand, the promoter handed over the flat and the temporary car parking spaces much prior to the due date of possession of July 2020 thereby avoiding any inconvenience to the appellant, besides obtaining occupation certificate for the higher-level car parking on 22.03.2019 that is also prior to the due date of possession.

46. The promoter has by applying the principle based on a calculated distance principle, whereby users residing farthest from the MLCP tower are allocated parking on the tower floors, while those residing closer to the MLCP tower, such as appellant are allotted parking on the higher floor. Therefore, we do not find it arbitrary on the part of the promoter having allotted the parking spaces to appellant at higher floor. There is no malafide

on the part of the promoter in allotment of the parking spaces on higher floors. Thus, there is no merit in the case of the appellant that promoter having allotted parking spaces at the higher floor has violated the terms of the agreement for sale. Pertinently, clause-8 of the agreement for sale provides that car parking space allotment is exclusively prerogative of the promoter which has been agreed by the parties in the agreement for sale. Further, the appellant has waived its right to dispute the allotment of the car parking spaces as per the said clause. When the flat was handed over to the appellant the temporary car parking was allotted, however that does not entitle the appellant to make a claim on the said slots or at lower floors.

47. It is the contention of the appellant that the promoter has collected in excess the maintenance and other charges particularly towards federation common area maintenance charges (FCAM). It is the submission of the promoter that bare perusal of the agreement for sale, it shows that the flat purchasers including the appellant knew all charges are notified and disclosures of which was elaborately made in the agreement for sale. Agreement for sale has been clearly explains the definition of FCAM charges which stipulates that the said charges would be for a period of five years only with a view to maintain common area amenities such as maintenance of roads, sewage treatments plant, federation common areas etc. for the benefit of the residents. The said FCAM charges are collected for maintenance of those areas which physically fall outside the notional boundary of the relevant society and or

services which are largely shared between different societies forming a part of the larger development. Perusal of the clause 15.5 to 15.12, it reveals that the promoter is entitled to collect the FCAM charges from the date when the possession of the flat was offered to the appellant till the time of federation of societies is formed and property is handed over to the federation of the ultimate organization. The said charges have been sought for a period of five years in compliance with the terms of the agreement for sale and till the federation of societies is formed. Therefore, we are of the view that the said charges have been levelled and demanded by the promoter is in accordance with the terms of the agreement for sale.

48. The moot question that arises for our determination is whether the complaint itself is maintainable under Section 44 of the RERA Act, 2016.

49. The Authority has taken a view that Section 11(4) (a) read with section 19(3) of RERA Act, 2016, it is the association of allottees which have exclusive jurisdiction to raise dispute and file complaint before the Authority over the common areas/amenities and individual allottee has no jurisdiction to raise any complaint under RERA about the common amenities/areas. Therefore, the Authority has held a view that these provisions make it clear that the grievances pertaining to the common areas and common amenities shall be raised by the association of allottees of the project and it is not open for the allottees to raise grievances with regard to the common amenities and common areas as it may cause multiplicity of proceedings and promoter shall never be free from litigation of

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the project. Hence, individual allottees has no locus standi in raising dispute with regard to the common areas and common amenities, which clearly fall within the jurisdiction of association of allottees.

50. We do not agree with the above observations and findings of the Authority. It will be apposite to reproduce the relevant provisions of Section 11(4)(a) and Section 19(3) of the RERA Act, 2016.

> "***Sec.11 (4)*** *The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.*
>
> ***Sec. 19 (3)*** *The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the*

declaration given by the promoter under sub-clause (C) of clause (1) of sub-section (2) of section 4'.

51. The said provisions primarily stipulate that the promoter is responsible to the individual allottees as per the agreement for sale and promoter is also responsible for the common areas and common amenities to the association of allottees. It is pertinent that the said provision is very clear that the promoter is responsible to the allottees as per the agreement for sale. Whatever is committed by the promoter in the agreement for sale, to that extent promoter is responsible to the allottees.

52. It is pertinent to reproduce Section 18 (1) of the RERA Act, 2016, which is as under:

"18. (1) 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; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, 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.*

53. The said provision also stipulates two cases of failure to hand over possession namely (a) in accordance with the terms of the agreement for sale and (b) in accordance with the dates specified therein. Thus, the promoter is obligated to handover possession in accordance with the terms of the agreement for sale. If the promoter fails to handover possession in terms of the agreement for sale, there is a reason for the allottee to be aggrieved.

54. The agreement for sale reveals that the promoter has committed the following common amenities as per the annexure-7 to the agreement for sale, are as under and the appellant has purchased the flat based on this representation:

Annexure-7
"(Common Areas and Amenities)

***Amenities for each building**:*

- *Entrance lobby*
- *Lift lobby on each level*
- *2 elevators (Including one stretcher elevator) from Otis/Schindler/Kone***
- *Fire-fighting equipment*
- *Domestic help toilet shower facilities*
- *DG power backup for common area lighting, elevator and fire fighting system,*
- *Fibre optic connectivity providing hi speed internet access,*
- *Direct to Home TV connectivity by select service providers,*

Amenities Inside each apartment:

- *Full height windows in Living room and Master Bedroom,*
- *Air-conditioned apartments with split unit A/C,*
- *Marbital flooring for living, dining, passage and bedrooms,*
- *Kitchen with granite platform, hi-end stainless steel sink and vitrified tile flooring,*
- *Toilets finished with sanitary ware from Roca/Kohler/Kerovit*" and CP fittings from Jaquar/Kohler/senberg"*
- *Separate Store room in each apartment"*
- *Separate Pooja room in each apartment*
- *Separate Utility area in each apartment*
- *Separate cupboard area in each bedroom*
- *Provision for telephone and TV connectivity*

Complex Amenities:

- *Grand entrance to neighbourhood*
- *Sports arena with sports facilities,*
- *Football field ground,*
- *400 m athletics track,*
- *2 multipurpose courts for Basketball Volleyball/Tennis etc.*
- *Cricket pitch,*
- *Outdoor kids play area with play equipment and slides,*
- *Children's splash pad,*
- *Children's Play areas,*
- *Ganesha Temple,*
- *Jain Temple,*
- *Swimming Pools,*
  Lap Pool,
  Family Pool,
  2 Kids Pools
  Toddler Pool,
  Indoor covered pool for ladies

Each Project with its own clubhouse with:

- *Gymnasium,*

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- *Indoor Games Room,*
- *Outdoor kids play area,*

Clubhouse facilities:

- *Cinema (& auditorium) with capacity of 80+,*
- *Health Club with steam and changing rooms,*
- *Gymnasium,*
- *Indoor games area with Table Tennis, Carrom, Chess and Snooker,*
- *Children's play area,*
- *2 covered Badminton Courts,*
- *Café and library lounge,*
- *Party halls*

Picnic area with hammocks and outdoor seating
Barbeque areas
Mini Amphitheatre
Multipurpose lawn
Covered parking with facilities like driver's waiting area and car wash provision
Best in class 4 tier security system with:

- *Intercom for each apartment,*
- *Access control to entrance lobby,*
- *Electronically controlled RFID access for cars,*
- *24 x 7 CCTV monitoring for key areas,*

Above height of 300 mm above Finished Floor level
Excluding kitchen, toilets and any service areas
"or equivalent
Only in 2BHK Optima and 2BHK Ultima apartments
Only in 2BHK Ultima apartments
Monthly services on chargeable basis from provider
Only in living room and master bedroom."

55. Therefore, the promoter is responsible to provide all the said amenities as specified in the annexure-7 in the agreement for sale. The allottee has also proportionate right over the common areas and amenities and therefore if the promoter fails to provide the said amenities, allottee is within its right to take

recourse to under section 31 of the RERA Act 2016, being an aggrieved person. Further, there is no bar in filing such complaint by allottee. Further, the home buyer is entitled to enjoy common amenities. The allottee being aggrieved person can file complaint. Not providing any of the common amenities as committed by the promoter in the agreement for sale is violation of RERA Act, 2016. The promoter is under obligation to hand over possession of the flat in terms of the agreement for sale under the provisions of RERA Act, 2016.

56. Section 31 of the RERA Act, speaks about violation of provisions of RERA Act. Section 31 stipulates that any aggrieved person may file a complaint with the Authority or the Adjudicating Officer, as the case may be for any violation or controversy of the Act or rules made thereunder against any promoter, the allottee or real estate agent, as the case may be. Therefore, the notion that the society has exclusive right to be aggrieved and therefore to file a complaint with regard to common amenities and common areas is misconceived. The allottees also entitled to the commitments made by the promoter and as recorded in the agreement for sale. It would be apposite to reproduce Section 31 of the RERA Act, 2016, which reads as under:

> "*Sec.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."

57. The said provision entitles any aggrieved person to file the complaint if aggrieved by any violation and contravention of the provisions of the Act. Section 11(4) stipulates that the promoter is responsible to the allottees as per the agreement for sale. Therefore, if the promoter does not provide any of the common amenities specified in the agreement for sale, the allottee can file complaint under Section 31 of the RERA Act, before the Authority, which is maintainable under law.

58. In view of the above, we come to the conclusion that the views of the Authority and the contention of the promoter that the complaint is not maintainable under the provisions of RERA Act, 2016, is misconceived and therefore are rejected. Accordingly, we answer point no.1 in the affirmative and point no.2 in the affirmative. In the event the society does not file any complaint with regard to the common areas and amenities, the allottee will be rendered remediless if we accept the contentions of the promoter and findings of the Authority, which is not the intent of the RERA legislation.

59. Now, we will discuss the points raised by the allottees, particularly in relation to the common amenities. (a) **Stretcher lifts**: It is the contention of the appellant that the Annexure 7 to the agreement for sale, specifically provided, two elevators, one of them being stretcher elevator. However, the promoter has provided lifts which do not accommodate the hospital

stretcher. The custom-made stretcher that promoter has provided has not been designed as per standard size which makes the allottees to face hardship to use the said stretcher lift in the emergencies.

60. It is the contention of the promoter that the promoter has provided stretcher lift from the best of the manufacturers in the industry. The promoter has placed on record the report of technical inspection report dated 25.11.2025 in support of its contention about the status of the common amenities as specified in Annexure 7 of the agreement for sale. The said report reveals the status of the work of the amenities which are specified in Annexure-7 to the agreement for sale. The said report records the status of "Two lifts including one stretcher life" as defined OEM's. The said report states that the lifts have been provided, however it has specifically observed as under:

> "*The stretcher lift is observed to be inadequate in terms of sizing since a hospital full sized stretcher would be difficult to be accommodated within the said lift in the usual horizontal resting position. Certain compromise in the orientation of the stretcher would be required to accommodate the same within the lift. <u>The lift installed within the building and referred to as Stretcher lift would not actually suffice the requirements during the state of emergency situations.</u>*"

It clearly shows that the inadequacy of the stretcher lift in terms of its size. It further states that the stretcher lift would not suffice the requirement during the state of emergency. Hence, the same is required to be fixed by the promoter. We are of the view that it is obligatory on the part of the promoter to rectify this deficiency in the light of observations made by the said technical inspection committee report.

61. (b) Domestic **help toilet/Wash room:** The said technical expert inspection report states that the same is provided, it however state that:

> "*Although the toilet has been provided, there was a debate between the parties on the location of the said domestic help toilet as committed over the old plan and the amended plan &/or As-built facility on site.*"

It reveals that there is dispute with regard to the location. It does not mention about inadequacy of the common domestic help toilet/shower facilities. Therefore, we do not think it proper to pass any directions in this regard.

62. (c) **Common amenities of 12 play grounds with play equipment-** With regard to the said facilities technical report records that:

> "*Multiple playgrounds have been provided. Although, the exact number could not be ascertained and especially specific number of playgrounds to be 12 nos. provided for Wings A to E, which seems to be not the case in existence.*"

The report therefore reveals the inadequacy of the provision of the said amenities which is required to be addressed by the promoter

63. (d) **Four party halls**: the technical report has recorded that the said facility is provided, however it has recorded that:

"4 Party halls have not been provided, 1 single hall and additional 1 no. of hall which could be divided into two by means of a sliding folding partition could be observed to have been provided."

Thus, it appears that the said common amenities is not provided as per the agreement for sale, which the promoter is required to address.

64. (e) **100 Plus sitting cinema hall**: The technical inspection report has recorded that the facility is provided, however only capacity is of the place as per the 2017 and not 100+ as per 2015 list.

It further records that:

"Although the facilities have been provided. However, whether the facilities are specific to Wings A to E and/or all other wings within the complex is unknown and requires further clarity or undertaking from the Respondents."

Therefore, the said report reveals that the deficiencies in the services which is required to be addressed by the promoter.

65. (f) **Children's water play plaza**: The said technical report has stated in its report that the facility is provided and therefore no further directions are required in this regard.

66. In view of the above discussion, we pass the following order.

<u>ORDER</u>

1. The caption appeal No.AT006000000053680 of 2022 in complaint no. CC006000000100373 of 2019 is partly

allowed and impugned order is modified to the extent below:

i) The respondent promoter is directed to remove the deficiencies and address those issues with regard to the amenities of stretcher lift, common amenities of 12 play grounds with play equipment, 4 party halls, 100 plus sitting capacity cinema hall in the light of the observations made hereinabove and in the light of specific observations in the technical inspection committee report in a time bound manner and within the period of 4 months of this order.

2. In view of disposal of the appeal, nothing survives for our consideration in M.A.No.60/2023 (Interim Application) and same stand disposed of.
3. Parties to bear their own costs.
4. Copy of this Order be communicated to the Authority and the respective parties as per Section 44(4) of RERA Act, 2016.
5. Accordingly, the appeal stands disposed of in above terms.

(SHRIKANT M. DESHPANDE) **(S.S. SHINDE, J.)**

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