

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.**

COMPLAINT NO: CC0060000000044039.

Alok Satyanarayan Kejriwal

Akshat Alok Kejriwal

... Complainants.

Versus

L & T Parel Project

Omkar Realtors and Developers Pvt.Ltd.

Omkar Realtors and Developers

Darshan Realtors Pvt. Ltd.

L & T Realty CRM Office.

... Respondents.

(Crescent Bay-T6)

MahaRERA Regn: P51900004666.

Coram: Shri B.D. Kapadnis,

Hon'ble Member & Adjudicating Officer.

Appearance:

Complainant: Adv. Siddharth Sharma.

Respondents: Adv. Abir P. i/b Wadia Ghandy
& Co.

FINAL ORDER

5th September 2018.

The complainants contend that they booked flat no.2804, having carpet area of 119.69 sq. mtrs. of the respondents registered project 'Crescent Bay-T6', Parel with two car parking. The respondents issued allotment letter on 29.06.2017. The complainants agreed to purchase the said flat for Rs. 6,93,74,250/- out of which they paid the respondents Rs.



6,53,07,515/- . It is almost 90% of the total consideration. It is the grievance of the complainants that the respondents have not executed and registered the agreement for sale for best reasons known to them. Though respondents contended in the allotment letter that the carpet area of the flat is 119.69 sq.mtrs. equivalent to 1280.38 sq.ft. including ancillary areas of 58.23 sq.mtrs. which is equivalent to 626.85 sq.ft., they were surprised to note that while registering the project with MahaRERA, the respondents have shown the area of the flat less by 6.37% i.e. 82.17 sq.ft. This fact is admitted by the respondents by their letter dated 12.02.2018. Therefore, there is difference of 82.17 sq.ft. Complainants request to direct the respondents either to provide full area as promised or to revise the sale price and execute the agreement for sale.

2. The plea for contravention of Section 12 , 4 and 13 of RERA has been recorded to which the respondents have pleaded not guilty. According to the respondents, the complainants have not made out the case regarding violation of Section 4 & 12 of RERA and no specific reliefs have been claimed by them. Therefore, the complainants cannot seek the relief for violation of these provisions. They further contend that the complainants have concealed the fact that they booked flat no. 2704 having carpet area of 119.69 sq.mtrs. equivalent to 1288.38 sq.ft. (including enclosed balcony) for Rs. 6,90,30,500/- and on 07.07.2015 the allotment letter thereof was issued. Thereafter the complainants requested to change their booking to flat no. 2804, in the year 2017. The complainants booked the flat no. 2704 in the year 2015 and shifted to flat no. 2804 on 29th June 2017. The allotment of the said flat is only in continuation of the original allotment of flat no. 2704. They further contend that in the year 2015 when the complainants booked flat no. 2704 the area was calculated as per the methodology used by Maharashtra Ownership Flats Act and the same area is mentioned in the allotment letter dated 29.06.2017. The area appears to be reduced by 7.63 sq.mtrs.(82.17sq.ft.) only because of the change in methodology



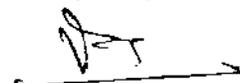
provided by RERA which has changed the definition of carpet area. MahaRERA has issued the circular no. 4 of 2017 dated 14.06.2017 to clarify what can be included while calculating carpet area under RERA. In fact, there is no reduction of area of the flat. The respondents further contend that though they asked the complainants for execution of the agreement for sale by sending letters on 15.06.2015, 01.07.2015, 15.07.2015 the complainants responded them only on 11.07.2018 and requested to postpone the execution of the agreement for sale due to their personal reasons and thereafter they requested to shift to flat no. 2804 from 2704. However, respondents showed their willingness to execute the agreement for sale.

3. Following points arise for determination and I record my findings thereon as under:

POINTS	FINDINGS
1. Whether the respondents made false/ incorrect statement in the allotment letter about the area of flat no. 2804?	Affirmative.
2. Whether the respondents are liable to reduce the proportionate price?	Affirmative.
3. Whether the respondents are liable to execute the agreement for sale?	Affirmative.

REASONS.

4. The learned advocate of the respondents submits that the complainants have not specifically pleaded their case to bring it under Section 4 & 12 of RERA. Relief of compensation is not sought and therefore, this Authority cannot grant the said relief to the complainant. He has relied upon Kalyan Singh Chouhan-v/s-C.P.Joshi (2011) II Supreme Court Cases 786, Bachhaj Nahar-v/s-Nilima Mandal and Another (2008) 17 Supreme



Court Cases 491, Arikala Narasa Reddy-v/s-Venkata Ram Reddy Reddygari and Another (2014) 5 Supreme Court Cases 312, in these cases the Hon'ble Supreme Court has held that material facts must be pleaded and that without pleading them proof cannot be led to prove them and the relief which is not claimed cannot be granted. After going through the ratio laid down by the Hon'ble Supreme Court, I find that it is elementary in civil law that the facts must be specifically pleaded so that the adversary should not be taken by surprise.

5. Now it is necessary to look at the relevant provisions of RERA.

Scheme for adjudication of complaints provided under RERA.

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

Section 38 (2) of the Act provides that while dealing with the complaints, the Authority shall be guided by the principles of natural justice and, subject to the other provisions of the Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.

The Act, rules and regulations have not specified the rules of the pleadings. However, Rule 6 of Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeal, Etc.) Rules, 2017 provides Form 'A' in which the complaint to the Authority should be filed. Rule 7 thereof prescribes Form 'B' for filing complaints/application to the Adjudicating Officer. Necessary information required for adjudication of complaints is to be furnished. It is specifically mentioned in the prescribed forms that complainant has to give concise statement of facts and grounds of claim against the respondent. They have to mention the reliefs, final as well as



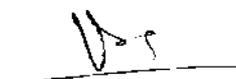
interim in their complaint. Accordingly, the software used by the Authority to file on line complaint requires all these details.

Rule 42 of Maharashtra Real Estate Regulatory Authority (General Regulations) 2017 allows the Authority to amend any defect or error in any proceedings before it and all necessary amendments, rectification shall be made for the purpose of determining the real question or issue arising in the proceedings. So these provisions are analogues to the provision of order VI, VII, VIII of the code of civil procedure.

Regulations 8 & 26 of Maharashtra Real Estate Regulatory Authority (General) Regulations 2017 provide that the language of the Authority shall be English and they make the provision regarding appearance of authorised representatives.

Rule 8 of the Maharashtra Real Estate (Recovery of Interest, Penalty, etc.) Rules 2017 makes the provision for service of notice and order on the parties.

Rule 6 thereof prescribes the Rules of conducting the enquiry/adjudicating process. Sub Clause (2) thereof provides that upon the receipt of the complaint a notice shall be issued to the respondent along with the particulars of the alleged contravention which shall specify the date, time for further hearing. On the date so fixed, the Authority shall explain to the respondent or his authorized representative about the contravention alleged to have been committed. If the respondent pleads guilty, the Authority shall record the plea and pass such orders including imposition of penalty as it deems fit in accordance with the provisions of the Act, Rules and Regulations. If the respondent does not plead guilty then the Authority shall demand explanation from the respondent. Thereafter if the Authority is satisfied on the basis of submissions made in the complaint that further enquiry is not required, it may dismiss the complaint and if it finds the need for further hearing, it may order production of documents or other evidence on the date fixed by it. The



Authority then has to carry out an enquiry in summary manner. It has the authority to summon any witness who is acquainted with the facts of the case or produce any document. Thereafter the Authority has to pass the final order either dismissing the complaint if it lacks merits or to allow it and pass necessary reasoned order granting the permissible reliefs. It also empowers the Authority to proceed ex parte when any person fails or neglects or refuses to appear.

Rule 7 also lays down similar procedure to adjudicate the complaints filed before the Adjudicating Officer.

Rule 9 lays down the manner of filing appeal

The Maharashtra Real Estate Regulatory Authority (General Regulations) 2017 contains following provisions relating to the procedure.

Rule 36 thereof makes the provision of review of the orders.

Rule 37 lays down the provision regarding continuance of the proceeding after the death of the party.

Section 36 of RERA makes the provision for making interim orders including those of temporary injunctions.

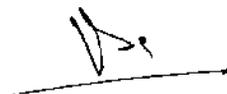
Section 37 of the Act empowers the authority to issue directions from time to time which it deems fit.

Rule 39 of Maharashtra Real Estate (General Regulations) 2017 saves the inherent powers of the Authority.

Rule 40 thereof provides that whenever it is necessary, the Authority can vary from the summary procedure while conducting the cases or class of cases in view of special circumstances of those matters.

Section 39 of RERA permits the Authority to rectify its orders within a period of 2 years from their passing.

Rule 43 of the said regulations empowers the Authority to grant extension of time like Section 152 of CPC.



Section 88 of RERA provides that the provisions of the Act shall be in addition to and not in derogation of provision of any other law for the time being in force.

Section 89 provides that provisions of the Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Section 40 (1) of RERA and Rule 3 of Maharashtra Real Estate (Regulation and Development) (Recovery of interest, penalty, compensation, fines payable, form of complaints, appeals) Rules, 2017 make the provision for recovery of interest, penalty or compensation. Section 40 (2) of RERA and Rule 4 of Maharashtra Real Estate (Regulation and Development) (Recovery of interest, penalty, compensation, fines payable, form of complaints, appeals) Rules, 2017 empower the Authority, Appellate Tribunal to execute the orders containing directions.

Section 80 of RERA makes the provision regarding the persecution of the offenses punishable under the Act.

6. After giving thought to all these provisions, there remains no doubt in my mind that the provisions of RERA and the Rules and Regulations made thereunder provide the complete scheme right from filing of the complaint till its decision, execution and appeal also. I hold, it is complete code of procedure in itself. Therefore, the provisions of Civil Procedure Code are not strictly applicable to the complaints which are to be enquired in summary manner, that too within the period of 60 days only.

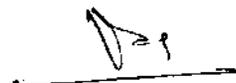
7. MahaRERA has established the mechanism to file online complaints. Very often the allottees who are laymen file the complaints in their own language as briefly as possible because the space left for it is very limited. The Authority or the Adjudicating Officer therefore makes the exercise to know the real grievance of the complainant which he wants to get redressed. Thereafter the particulars of allegations have to be gathered and ascertained by the Authority or the Adjudicating Officer. They explain

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the particulars of allegations to the respondent or his representative and permits him either to plead guilty or plead not guilty. If the respondent pleads not guilty, then his explanation is demanded. So this exercise clearly shows that the respondents are not taken by surprise, on the contrary the real controversial issue is focused and brought to the notice of the respondent. Hence, he gets the complete idea of the allegation which he is required to meet. So the basic principle of law of pleading that nobody should be taken by surprise emphasized by the Apex Court is followed. RERA itself provides the result/consequences of contravention or violation of its provisions and only those reliefs contemplated by the Act can be granted. Therefore, respondents cannot be taken by surprise even though the reliefs may not be specifically claimed. In this case the complainants have specifically pleaded about their grievance regarding the reduction of area and the relief of reduction of the total value of the flat to attract section 4 and 12 of RERA. After going through these aspects of the matter I do not find any force in submission that the respondents are going to be taken by surprise. The Advocates therefore are requested to quote only those cases which are really relevant to the fact in issue and I trust that they shall not burden the record and consume time unnecessarily henceforth.

8. The crux of the matter is, whether the respondents have made any false or incorrect statement regarding the area of the flat at the time of booking or not. The facts are admitted by the both the parties that in the allotment letter the area of the flat is shown as 119.69 sq.mtrs. and on the webpage of the project the area of the same flat is shown less by 7.63 sq.mtrs.(82.17 sq.ft.). There is a dispute between the parties on this issue. In fact, the complainants want that the price of the flat should be proportionately reduced.

9. The learned advocate for the respondents submits that the flat no. 2704 was booked in the year 2015 and its area was calculated as per the



definition of carpet area defined by Maharashtra Ownership Flats Act. The flat no. 2804 is of the same size and the complainants shifted to it in the year 2017 when RERA was holding the field having different definition of carpet area. Due to the change in methodology of calculating carpet area there appears the reduction of the area on paper but there is no such change on actual site. The learned advocate of the complainants submit that the respondents have specifically mentioned in the allotment letter dated 29.06.2017 relating to flat no. 2804 that the said letter confirms the booking dated 29.06.2017. Therefore, he submits that it has nothing to do with the earlier calculations. In this context I have verified the documents placed on record. The allotment letter of flat no. 2704 dated 07.07.2015 shows that flat no. 2704 is of 119.69 sq.mtrs. equivalent to 1288.38 sq.ft. It is sold for Rs. 6,90,30,500/- . The allotment letter dated 29.06.2017 of flat no. 2804 also shows that it is of the same size but its consideration is Rs. 6,93,74,250/-. It is specifically mentioned therein that the allotment letter is issued with reference to complainants' booking dated 29.06.2017. After perusing these documents there remains no doubt in my mind that on 29.06.2017 flat no. 2804 has been booked and the allotment is confirmed on that date. The price is also changed.

10. The respondents are well experienced promoters having good reputation in the market. They have their team of legal assistants and experts. It is very difficult for me to digest that even after coming of RERA into force they calculated the carpet area of the flat by old methodology. The respondents have referred to the Circular issued by MahaRERA to clarify the concept of carpet area defined by RERA on 14.06.2017 itself. This shows that the respondents were aware of the new definition of carpet area and methodology for calculating it. Respondents are conscious while issuing the allotment letter dated 29.06.2017 that the booking was made on that day, they are also vigilant to increase the cost of the flat and therefore, it does not stand to the reason that they applied the old methodology in



mentioning the carpet area of the flat. Such a plea appears to be their afterthought.

11. The respondents themselves have admitted the fact that they mentioned in allotment letter that the flat bearing no. 2804 is of 119.69 sq.mtrs. and now its area is less by 7.63 sq.mtrs. (82.17 sq.ft. Therefore, I hold that the complainants have proved that the respondents made incorrect statement about the area of flat at the time of its booking/allotment and hence, the complainants are entitled to get the relief of compensation under Section 12 of RERA because the complainants want to continue in the project. In the facts and circumstances of the case, I feel that the proportionate reduction of the cost would serve the purpose of justice.

12. Promoter is bound to execute the agreement for sale under Section 13 of RERA on receiving more than 10% of total consideration of the flat. The respondents have referred to complainants' letter dated 11.07.2018 asking them to postpone the date. In view of this fact, I find it necessary to permit the respondents to execute the agreement for sale of the booked flat of the complainants within next seven days from today without imposing any penalty for contravention of Section 13 of RERA. Needless to say, the parties shall reduce the amount of consideration in proportion to the reduced area.

13. The complainants are entitled to get Rs. 30,000/- towards cost of the complaint. Hence, the order.

ORDER

The respondents shall reduce the price of the flat in proportion to the reduced area of flat no. 2804 by way of compensation for contravening Section 12 of RERA.

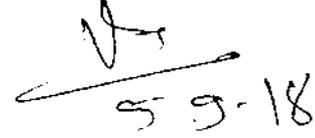


They shall execute and register the agreement for sale of flat no. 2804 in complainants' name by mentioning the correct (reduced) area and reduced consideration of it, as per other terms and conditions regarding car parking etc. at complainants' cost within seven days from this order.

Respondents shall pay the complainant Rs. 30,000/- towards the cost of the complaint.

Mumbai.

Date: 05.09.2018.



(B. D. Kapadnis)

Member & Adjudicating Officer,
MahaRERA, Mumbai.

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.**

COMPLAINT NO: CC006000000044039.

Alok Satyanarayan Kejriwal
Akshat Alok Kejriwal

... Complainants.

Versus

L & T Parel Project
Omkar Realtors and Developers Pvt.Ltd.
Omkar Realtors and Developers
Darshan Realtors.
(Crescent Bay - T6)

... Respondents.

MahaRERA Regn: P51900004666.

Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

Appearance:

Complainants: In person.

Respondents: Adv. Abir Patel.

FINAL ORDER

13th December 2018.

This complaint has been decided by the Authority by passing Final Order on 5th September 2018 whereby the respondents have been directed to reduce the price of the flat no. 2804 of their Crescent Bay T6 in proportion to reduced area by way of compensation for contravening Section 12. They have been further directed to register the execution for sale of flat no. 2804 by mentioning the correct (reduced area) and reduce consideration of it as per the terms and conditions regarding car parking etc. at complainants' cost within 7 days of the order and they have been directed to pay Rs. 30,000/- to the complainant towards the cost of the complaint.

2. The respondents have carried this order in Appeal No. AT006/10683 before the Hon'ble Appellate Tribunal. The Hon'ble Appellate Tribunal



has remanded the matter by allowing the appeal partly to get opinion from the Technical Officer of the Authority and then pass appropriate order by giving audience to the parties. In view of this direction, by way of Interim Order dated 22.11.2018, the Technical Officer has been directed to submit his report. The Technical Officer has filed his report which reads as follows:

“During the meeting the Respondent informed that this letter is correct but the area as per Section 2(a) of RERA Act definition works out to be 112.06 sq.mtrs. by reducing the balcony 12.31 sq.mtrs. and adding wall area 4.676 sq.mtrs. Hence, the effective area becomes 112.06 sq.mtrs. is correct.

It is true that, there is a change in the mode of measurement of area, as per MOFA Act and as per the RERA Act. However, the flat remain one and same. But even after, RERA came into effect, the developer intimated them area of 119.694 sq.mtrs. (which should have been 112.06 sq.mtrs.). Hence, the developer is liable to either give Carpet area of 119.694 sq.mtrs. or proportionate decrease in cost.”

3. After receiving the report of the Technical Officer, the matter has been adjourned for the arguments of the parties. Both the parties have submitted their written statements which are placed on record. I have gone through the said submissions. There is no shift from the earlier stands taken by the parties except the complainants' submission that if the respondents do not want to act upon the decision of the Authority, they may be asked to refund their amount with prescribed interest and compensation also.

4. The Hon'ble Appellate Tribunal refers to the order passed in the case of Satyanarayan Kejriwal vs L & T Parel Project dated 13th August 2018 wherein the issue regarding the area computed by applying the standard of MOFA and RERA has been considered. The principle applied therein is not applicable to the case on hand because in that case the allotment was



made when MOFA was applicable. Therefore, the carpet area of the subject matter of that dispute was considered by applying parameters of MOFA.

5. The issue in this matter is restricted to the area of the flat. I have already dealt with this issue in my earlier order, particularly in Para 8 to 11. Even after giving re-thought to the facts of the case, the submissions of the parties and documents on record, I find that the reasons assigned in the earlier order still hold the field and therefore, I re-affirm the order passed on 05.09.2018, for the same reasons. However, if the respondents do not want to act upon the decision of the Authority, they are at liberty to refund complainants' amount with prescribed interest which is currently 10.5%, from the date of receipt of the amount till its refund. In the facts and circumstances of the case, they are liable to compensate the complainant by paying Rs.2,00,000/as compensation for harassing the senior citizen mentally and financially and for causing loss of opportunity. Hence, the matter stands disposed off accordingly.

Mumbai.

Date: 13.12.2018.


13-12-18

(B. D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.