

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.

COMPLAINT NO: CC006000000054675.

Archana Kejriwal

Satyanarayan 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 Offic.

... Respondents.

(Crescent Bay-T4)

MahaRERA Regn: P51900006593.

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

13th August 2018.

Whether Real Estate (Regulation and Development) Act 2016 (RERA) lays down the complete code of procedure to be followed by the real estate regulatory Authority or adjudicating officer is a legal question involved in the matter.



2. The complainants contend that they booked flat no. 406, having carpet area of 67.16 sq. mtrs. of the respondents registered project 'Crescent Bay-T4', Parel. The respondents executed the agreement for sale on 21.02.2014. The complainants purchased the said flat for Rs. 3,09,67,831/-. Out of which she paid the respondents Rs. 2,97,52,833/- It is the grievance of the complainants that though in the agreement for sale the respondents contended that the carpet area of the flat is 67.16 sq.mtrs., they were surprised to note while registering the project with MahaRERA, the respondents have shown the area as 62.51 sq.mtrs. Therefore, there is difference of 4.65 sq.mtrs. Therefore, they request to direct the respondents either to provide full area as promised or to revise the sale price. At the time of recording the plea the complainants have submitted that respondents made false statement of more area while offering flat for sale and thereafter reduced it. Therefore, the plea for contravention of Section 12 and 4 of RERA has been recorded to which the respondents have pleaded not guilty.

3. According to the respondents the possession of the flat was to be given by September 2017 with grace period of six months and the respondents have pointed out that they have received the O.C. and also sent the letters to the complainants for taking possession of the flat. Therefore, the learned advocate has not pressed the complaint to claim interest on complainant's investment for delayed possession under Section 18 of RERA. The respondents have contended that the occupation certificate is received on 15.03.2018 and the possession letter is also given to the complainant on 29.03.2018. They claim Rs.15,15,943/- towards the consideration and Rs. 11,74,500/- towards additional charge excluding taxes and Rs. 42,310/- towards interest from the complainant under Section 19 (7) of RERA.

4. The respondents have contended that there is no change in area of the flat. However, due to the definition of the carpet area defined by RERA



there is change in methodology for calculating the carpet area and therefore, they request to dismiss the complaint.

5. 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 agreement for Sale about the area of flat no. 406?	Negative.
2. Whether the complainants are liable to pay the arrears of dues claimed by respondents?	Affirmative.

REASONS.

6. 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.

7. 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 exparte 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.

8. 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.

9. 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 be redressed. Thereafter the particulars of allegations have to be gathered and ascertained by the Authority or the Adjudicating Officer. They explain 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 allegations 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. 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. The Advocates therefore are



requested to quote only those cases which are really relevant to the fact in issue henceforth.

10. After going through of these aspects of the matter I do not find any force in submission that the respondents are going to be taken by surprise.

11. 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/entering into an agreement for sale or not. The facts are admitted by the both the parties that in the agreement for sale the area of the flat is shown as 67.16 sq.mtrs. and on the webpage of the project the area of the same flat is shown as 62.51 sq.mtrs. It is in these circumstances, there is a dispute between the parties. In fact, the complainant wants that the price of the flat should be proportionately reduced.

12. On the backdrop of the facts of the case, it is pertinent to note that the agreement for sale has been executed in the year 2014 when Maharashtra Ownership Flats Act was in force and the area of the flat was to be calculated as per the norms of the said Act. However, RERA came into force with effect from 01.05.2017 and it has brought the new definition of carpet area which reads as under:

“S. 2 (k) -“Carpet area” means net usable floor area of an apartment, excluding the area covered by the external walls, area under services shafts, exclusive balcony or verandah area and exclusive open terrace area but includes the area covered by the internal partition walls of the apartment;

Explanation- For the purpose of this clause, the expression “exclusive balcony or verandah area” means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for exclusive use of the allottee; and “exclusive open terrace area” means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee;”



13. In this context it is also necessary to look at Section 3 (2)(n) of Maharashtra Ownership Flats Act which reads as under -

(2) A promoter, who constructs or intends to construct such block or building of flats shall -

(n) "sell flat on the basis of the carpet area only;

Provided that the promoter may separately charge for the common areas and facilities in proportion to the carpet area of the flat.

Explanation- For the purpose of this clause, the carpet area of the flat includes the area of the balcony of such flat."

14. Since there was confusion regarding the calculation of the carpet area this Authority has issued Circular No. 4/17 on 14.06.2017 and has tried to explain the concept of carpet area of new Act, particularly the space under internal wall is to be included in carpet area and the space lying under the external walls is to be excluded. In view of this change in the methodology the area calculated as per the standard laid down under MOFA is reduced, when the standard laid down by RERA is applied, though, in fact there is no factual change. This being the technical matter parties were referred to Technical Officer of the Authority who examined the documents of the flat and heard the parties. Thereafter, he has filed the report marked Exh. 'A' in which he submits that the assured area as per agreement for sale is 67.16 sq.mtrs. i.e. 722.91 sq.ft. is equivalent to 62.51 sq.mtrs. as per the definition of carpet area defined by RERA. Therefore, he has reported that there is no change in area of the flat no. 406.

15. In view of these facts, I find that the complainant has failed to prove the respondents made false or incorrect statement regarding the area of the flat no. 406 and thus, the complainant has failed to prove allegation regarding contravention of Section 4 & 12 of the Act. Hence they are not entitled to any relief.

16. The respondents have contended that the occupation certificate is received on 15.03.2018 and the possession letter is also given to the



complainants on 29.03.2018. Rs. 15,15,943/- towards the consideration and Rs. 11,74,500/- towards additional charge (excluding taxes) and Rs. 42,310/- towards interest are due from the complainant which they claim under Section 19 (7) of RERA. The complainants are liable to pay the amount of consideration and additional charges and taxes also as per Section 19(6) of RERA. They are also liable to pay interest at prescribed rate on the said amount under Section 19(7) of the said Act. The prescribed rate of interest is 2% above the SBI's highest MCLR which is currently 8.5%. Thus, the complainants are liable to pay the due amount with prescribed interest. Hence, the order.

ORDER

The complainant shall pay the respondents Rs. 15,15,943/- and Rs. 11,74,500/- with interest at the rate of 10.5% per annum from the date when amounts become due till the payment.

The respondents shall hand over the possession of the flat on satisfaction of their claim and then shall execute the conveyance deed in their favour at their cost.

Mumbai.

Date: 13.08.2018.


13.8.2018

(B. D. Kapadnis)

Member & Adjudicating Officer,
MahaRERA, Mumbai.