

THE MAHARASHTRA REAL ESTATE REGULATORY  
AUTHORITY, MUMBAI.

COMPLAINT NO: CC00600000079084

Lavina Dsouza ... Complainant.

**Versus**

Natasha Developers. ... Respondents.  
(Natasha Enclave)

MahaRERA Regn: P51700002459

**Coram:** B.D. Kapadnis,  
Member II.

**Appearance:**

Complainant: Adv. Mr. Avinash Pawar.

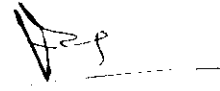
Respondents: Mr. Parth Chande AR.

**FINAL ORDER**

**5<sup>th</sup> March 2020.**

The complainant has booked the flat no. 1201, A-wing in the respondents' registered project 'Natasha Enclave' situated at Thane. It is the allegation of the complainant that the flat has not been constructed as per the plan shown to them and it is lesser in area than agreed one. Therefore, the complainant wants to cancel the booking and he claims refund of her amount with interest from the respondents. She also complains that the respondents are guilty of fraudulent practices.

2. The respondents have pleaded not guilty and they have filed their written statement. They contend that the flat no. 1201



admeasuring 46.45 sq.meters/499.98 sq.ft.(usable carpet area) has been agreed to be sold. They deny that the said flat has not been constructed as per the specifications and it is smaller in area. According to them, the definitions of carpet area are different under MOFA and RERA. Therefore, methodology in measuring the carpet area is also different. They deny that they acted fraudulently and hence, they request to dismiss the complaint.

3. Heard the learned advocates of the parties.
4. Pending the complaint, I have passed one Interim Order on 5<sup>th</sup> July 2019 when the complainant wanted to get the area of the flat measured with the help of qualified Architect and respondents were not permitting her to do so. I directed the respondents to take measurement of her booked flat with the help of qualified Architect to verify whether the area of the constructed flat is in accordance with the terms of the agreement and specifications thereof or not. The measurement was to be carried out in the presence of respondents or their representative preferably, if they wanted to remain present and accordingly the complainant's Architect has measured the flat and filed the report.
5. The agreement for sale executed by the respondents in complainant's favour shows that the respondents agreed to sell one BHK flat no. 1201 admeasuring 46.45 sq.meters including balcony, flower bed, service area, amenity and dry yard to the complainant. The agreement has been executed on 23.06.2017 i.e. after RERA coming into force. Therefore, as per the provisions of RERA, the respondents were required to mention the carpet area of the flat as

  
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defined by it. The carpet area has been defined by the Act which reads as under:

“carpet area” means the net usable floor area of an apartment, excluding the area covered by the external walls, areas 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 verandha, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the 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, meant for the exclusive use of the allottee; “

MahaRERA has also explained the concept of carpet area more elaborately by issuing circular No. 4/2017 which reads as under:

“whereas the MahaRERA Authority, under Section 37 of the RERA Act,2016 carpet area of the apartment to be sold by the promoter is defined as “carpet area” means net usable floor area of an apartment, excluding the area covered by the external walls, area under services shafts, excluding balcony or verandah area and exclusive open terrace area, but including the area covered by the internal partition walls of the Apartment.

Explanation - for the purpose 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



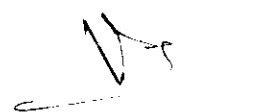
usable area of an apartment, meant for the exclusive use of the allottee and "exclusive open terrace area" means the area of the open terrace which is appurtenant to the net usable area of an apartment, meant for the exclusive use of the allottee.

Whereas there are various interpretations being given to the words "internal partition walls" and "external walls" by different professionals and Architects and therefore there is need to clarify the terms "internal partition walls" and "external walls" in order to have uniformity in the calculation of carpet area of an Apartment across all the projects being registered with MahaRERA.

For the purpose of Real Estate (Regulation & Development) Act, 2016 "walls" would mean walls made of Reinforced Cement Concrete (RCC) or Shear wall(s) or wall made from bricks or blocks or precast materials or drywalls or wall made of any material or composition of one or more of any of the materials and shall include column(s) within or adjoining or attached to the walls."

6. In view of the provisions of RERA as explained by the Circular of MahaRERA, it was required for the promoter to mention the correct carpet area of the flat while executing the agreement for sale. It appears from the contents of the agreement for sale referred to above, that the respondents have not calculated the "carpet area" defined by RERA. Thus, they violated Section 4(i) of RERA as it includes service area, amenities etc.

7. Even if it is taken for granted that they agreed to construct flat no. 1201 having 46.45 sq.meters, I have to see whether they made construction accordingly or not. The respondents have relied upon the certificate issued by their Architect dated 17.09.2019 which



shows that the carpet area of the flat no. 1201 located on 18<sup>th</sup> floor of the proposed building would be 33.99 sq.meters (365.87 sq.ft.) and enclosed balcony area would be 2.85 sq.meter (30.68 sq.ft.). It is also mentioned therein that Elevational Projection Area of 5.63 sq.meter (60.60 sq.ft.) is attached to the said flat. After reading this certificate, I find that the respondents' Architect refers to the proposed building and therefore, I have drawn the inference that the measurement mentioned by him is not based upon the actual measurement of flat. It appears that he has mentioned the measurement on the basis of approved plan or the layout, as the case may be. As against the report of the Architect of the respondents, the complainant has produced the report of qualified Architect Mr. Chandresh Sharma. His report shows that he practically measured the area of constructed flat. According to him, portion A which relates to living/dining room, flowerbed in kitchen, flowerbed in bed room with attached toilet, detached toilet and the passage is 35.22 sq.meters. He reports that Portion B, habitable area, exempted from FSI comprising of flower bed is 5.28 sq.meters. Then he reports that third Portion C which is not habitable and exempted from FSI is that of service duct measuring 2.16 sq.meters. On the basis of this measurement, he certifies that the carpet area of the flat is only 35.22 sq.meters which is significantly short of carpet area of 46.45 sq.meters mentioned in the agreement for sale. Even adding the three portions the area comes to 42.66 sq.meters which is not equivalent to the carpet area mentioned in the agreement. He further opines that the flat is sold as premium quality standard but the quality of the material and workmanship

was found highly sub-standard. So he draws the conclusion that there are violation of various D.C. Rules and developer has violated the commitments regarding the carpet area. After perusing the documents to which I have referred to above, there remains no doubt in mind that the respondents have not constructed the flat as per its specifications contained in the agreement. The area of constructed flat is smaller than the agreed area. Hence, this fact has been proved by the complainant.

8. It is the allegation of the complainant that the promoter played the mischief of constructing the smaller flat than agreed, used sub-standard materials and workmanship and thereby acted fraudulently. There is reason to believe her but I am not going deep in it because the complainant seeks the refund of her amount. I find that the complainant is entitled to get refund of her amount with interest under Section 18 of RERA.

9. The complainant has produced the payment statement. Its contents have not been denied by the respondents. It shows that the complainant has paid the amount of consideration, tax, stamp duty, registration charges and TDS totalling Rs. 61,63,750/-. Therefore, the respondents are liable to refund the amount of consideration and reimburse the complainant the other expenses incurred by her except the amount of stamp duty of Rs. 3,61,440/- because as per Section 47 & 48 of the Maharashtra Stamp Act, the complainant can seek the refund of stamp duty on cancellation of the agreement without taking the possession of the flat within five years of the registration. The agreement has been registered in the year 2017.



10. The complainant is entitled to get the interest on her amount from the dates of their payments till they are refunded at the prescribed rate. The prescribed rate of interest is 2% above the SBI's highest MCLR which is currently 8.15%. She is also entitled to get Rs. 30,000/- towards the cost of the complaint. Hence, I pass the following order.

### ORDER

The respondents shall refund/reimburse the amount mentioned in the payment schedule marked Exh. "A" except the amount of stamp duty with simple interest at the rate of 10.15% per annum from the dates of their respective payments till refund.

The payment schedule shall form the part of the order.

It is hereby clarified that if the respondents fail to satisfy the complainant's claim within five years of the registration of the agreement for sale, they shall reimburse the stamp duty amount of Rs. 3,61,440/- with interest from 21.06.2017 till its payment.

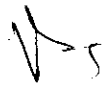

The charge of the aforesaid amount shall be on the booked flat till the satisfaction of the complainant's claim.

The complainant shall execute the Deed of Cancellation of agreement for sale on the satisfaction of her claim and respondents shall bear its cost.

The respondents shall pay Rs. 30,000/- towards the cost of the complaint.

Mumbai.

Date: 05.03.2020.

  
  
(B. D. Kapadnis)  
Member II, MahaRERA,  
Mumbai.

Name-Natasha Enclave Flat 1201

Property Details and Address:- Flat 1201, A wing, 18 floor, Natasha Enclave,  
Vartak Nagar, Thane (West).

Details of Payment done to Natasha Developers Private ltd

PAYMENT SCHEDULE

r.No.	Date	Amount	Purpose	Cheque No.	Name of the Bank
1	17-May-17	100000	Agreement Value	781810	IndusInd Bank
2	19-Jun-17	490000	Agreement Value	781814	IndusInd Bank
	6-Jul-17	225900	Service Tax	781819	IndusInd Bank
4	28-Jun-17	60240	Vat	781820	IndusInd Bank
5	21-Aug-17	4542230	Agreement Value	RTGS	HDFC Loan disbursement
6	19-Jan-18	294940	Agreement Value	RTGS	HDFC Loan disbursement
7	21-Jun-17	361440	Stamp Duty	UTR:INDBH17172254974	IndusInd Bank
8	21-Jun-17	30000	Registration	UTR:INDBH17172254974	IndusInd Bank
9	17-Jan-18	59000	TDS Paid		ICICI Bank

Total:-61,63,750

Name of the complaint Lavina Dsouza

Signature



Date 3/3/2020



THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI.

COMPLAINT NO: CC006000000079084.

Lavina Dsouza.

... Complainant.

**Versus**

Natasha Developers.

...Respondent.

MahaRERA Regn: P51700002459

**Coram:** Shri B.D. Kapadnis,  
Member-II.

**Appearance:**

Complainant: Adv. Mr. Avinash Pawar.


Respondent: Absent.

**ORDER ON THE RECOVERY APPLICATION**

21<sup>st</sup> December, 2020

The complainant reports non-compliance of the final order passed in the complaint. None appears for the respondent. Issue recovery warrant under section 40(1) of the RERA. The complainant to submit statement of claim.

Date: 21.12.2020.

  
21.12.2020  
(B. D. Kapadnis)  
Member-II,  
MahaRERA, Mumbai.