

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC00600000023003

Mahaveerprasad Chavda ... Complainant

Versus

Kesar Realty Pvt. Ltd. ... Respondent

MahaRERA Regn.No. P52000010572

Coram: Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant was present himself and was represented by Dr. Vipin V Kumar, Adv, Ms. Trupti Bharadi, Adv.

Respondent represented by Mr. Parag Tilak, Adv a/w Aditi Rane, authorised representative.

Order

November 5, 2020

1. The Complainant was an allottee in Building No. 6 named 'Moana' in the Project 'Kesar Exotica'. The Complainant alleged that, while booking the apartment, the Respondent shown him the typical floor plan - brochure in which floor 2nd – 17th were mentioned. However, the Respondent, though, had approval up to 14th floor only, sold the said flat which did not have the requisite statutory permission from the Competent Planning Authority to construct the upper 3 floors i.e. 15th, 16th, 17th. The Complainant further claimed that due to illegal construction of the 15th, 16th, 17th floors and also due to violation of height restriction, the Airport Authority of India and the Planning Authority – CIDCO have issued notices to the Respondent for demolition of illegal construction, if the floors are not regularized by November, 2018. Further, the Complainant has alleged that since the Respondent did not have the requisite approvals nor the money to refund, he was forced to purchase apartment bearing no: 502 in building no: 5 of the said project.
2. The Complainant had approached this Authority with the following prayers:

- a) to direct the Respondent to refund the entire sum paid to the Respondent together with interest and compensation under Section 18 of the Real Estate (Regulation and Development) Act 2016.
 - b) to direct the Respondent to refund the amount taken in excess for two parking slots with applicable interest
 - c) to direct the Respondent to refund the cost of stamp duty and registration and various other charges such as maintenance etc. collected from him
 - d) direct the Respondent to pay 'Interest' wherever applicable as defined under Section 2(z) of the said Act.
 - e) grant any and all other benefits, compensation, as and where applicable due to me as envisaged under section 18 of the said Act for the time being in force
 - f) cancel the Respondent's RERA Registration under Section 7(b)(c)(d) of the Act.
3. Vide Order dated April 17, 2018, the Complainant's prayer for withdrawing from the said project was rejected since the Complainant had already taken possession of his apartment and therefore, the provisions of section 18 of the said Act are not applicable. The Respondent was directed to complete the procedure for formation of society within 30 days from the date of the said order and to disclose, on their webpage, all pending litigations and orders issued by Competent Authorities like Airports Authority, CIDCO etc., within 15 days from the date of the said Order.
4. The Complainant preferred an appeal against the said Order praying that the matter be remanded for a fresh hearing by giving opportunity to both the sides to file pleadings, documents and evidence to substantiate their respective cases before the Authority. Further, he referred to Section 38 sub-section 2 of the said Act which says that Authority shall be guided by principles of natural justice and also Section 35 of the said Act which empowers the Authority to call for information and conduct the investigation in respect of complaint filed before the Authority. he has also referred to Rule 6 of the Maharashtra Real Estate (Regulation and Development) Recovery of Interest, penalty, compensation, Fine payable, Forms of Complaints and Appeal etc.) Accordingly, the Hon'ble Maharashtra Real Estate Appellate Tribunal, vide Order dated April 9, 2019 remanded the matter to the Authority for a fresh hearing after giving opportunity to both the sides to file the pleadings, documents and evidence for

decision on merit. The remanded order was passed ex-parte as the Respondent did not appear in the appeal matter.

5. The Complaint was then listed for hearing on July 10, 2019. The learned counsel for the Respondent requested adjournment in lieu of review application dated July 09, 2019 against MahaREAT order dated April 09, 2019.
6. The review application filed by the Respondent merely on the ground that they were not represented when the MahaREAT remand order was passed, was rejected by the Hon'ble MahaREAT vide Order dated August 8, 2020, and therefore, final hearing on the remanded matter was held through video conference as per MahaRERA Circular no: 27/2020 on October 22, 2020.
7. The Respondent has uploaded their affidavit in reply on October 22, 2020. They have stated that the allegations regarding not having the requisite approvals, are not true. Further, they have submitted that the Complainant chose to upgrade to a bigger apartment out of his own volition and that if as alleged by the Complainant that the Respondent did not have the requisite approvals, the Complainant would not have booked an alternate apartment on the said project. They have denied any financial or other wrongdoing in the project.
8. The Complainant has uploaded his rejoinder on November 3, 2020. He has stated that the Respondent has taken excess amount from him, under duress, just before registration of the agreement and the Respondent has not given any break up and/or receipt of the amount taken from the Complainant. He has also alleged that the Respondent has illegally collected huge sums of money collectively from many allottees by putting them under duress, though this allegation has not been substantiated by any supporting evidence or document. He has further alleged that the Respondent has taken an exorbitant amount as ad-hoc two years advance maintenance charges in violation of the provisions of the Act.
9. The Complainant has, on November 3, 2020, also uploaded an amendment application dated October 31, 2020 praying that the Respondent be also directed to refund the excess amount taken by the Respondent under the pretext of selling two parking slots and hold the Respondent liable for illegally selling the said parking slots

to the Complainant. In the amendment application the Complainant has modified the amount he seeks to be refunded by the Respondent. Therefore, the Complainant has submitted that the Respondent has indulged in financial irregularities and that the Respondent has failed to maintain transparency and fairness with respect to financial accounting and management and prayed that investigation be done.

10. The application for amendment cannot be allowed at such a belated stage, especially after the Complaint had also preferred an appeal against the said Order. There is no reason to either allow any amendment to the original complaint and the prayer therein or amend the ruling given in the said complaint vide Order dated April 17, 2018. Under Section 14(3) of the said Act, an allottee who has taken possession of his apartment, has the liberty to file a complaint, within a period of five years of his taking possession, for defects as well as breach of any obligations of the promoter as per the agreement for sale.
11. The Respondent has completed the said project on November 28, 2017 with completion certificate from the Competent Authority and the Complainant has been occupying the said apartment since 2017 after the parties have executed and registered the agreement for sale for the said apartment No 502 in building No 5. A housing co-operative society of the allottees has also been registered in July 2019. The Respondent is required to hand over the accounts of the maintenance charges collected from the allottees, to the registered society upon its formation. The registered society has, till date, also not come up with any complaint alleging malpractice regarding the maintenance charges.
12. There are no documents that have been brought to the notice of MahaRERA that warrant conducting investigation into the affairs of the promoter under Section 35 of the said Act, as prayed for by the Complainant. However, the Respondent is hereby directed to give the break up/ receipt of the amounts collected from the Complainant.
13. Consequently, the remanded matter is hereby disposed of.

Gautam Chatterjee Digitally signed by Gautam Chatterjee
Date: 2020.11.05 17:02:12 +05'30'
(Gautam Chatterjee)
Chairperson, MahaRERA

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Respondents

MahaRERA Regn.No. P52000010572

Corum:

Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant was himself present along with Mr. Nithianandan Balagopalan, Adv. (Nithia & Co)

Respondents represented themselves along with Mr. Parag M. Tilak, Adv.

Order - Rectified

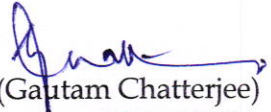
17th April 2018

1. The Complainant has stated that he purchased an apartment No. 1601, 16th Floor, in Building No. 6 named 'Moana' in the Project 'Kesar Exotica' situated at Sector 10, Kharghar, Navi Mumbai from the above mentioned Respondent. The Complainant alleged that, while booking the apartment, the Respondent had shown him the typical floor plan - brochure in which floor 2nd - 17th were mentioned. However, the Respondent, though, had approval up to 14th floor only, sold the said flat which did not have the requisite statutory permission from the Competent Planning Authority to construct the upper 3 floors i.e. 15th, 16th, 17th. The Complainant further claimed that due to illegal construction of the 15th, 16th, 17th floors and also due to violation of height restriction, the Airport Authority of India and the Planning Authority - CIDCO have issued notices to the Respondent for demolition of illegal construction, if the floors are not regularized by November, 2018. The Complainant has approached this Authority with the following prayers:

- a) to direct the Respondent to refund the entire sum paid to the Respondent together with interest and compensation under Section 18 of the Real Estate (Regulation and Development) Act 2016, as he wants to withdraw from the Project.



- b) to direct the Respondent to disclose 'full and true' facts of pending litigations in the Project
 - c) to direct the Respondent to form the Cooperative Housing Society of allottees
2. During the hearing, the advocate for the Respondent argued that, as per the request made by the Complainant, they have allotted apartment No. 502 in the Building No. 5 named 'MESI' and executed registered agreement on 12th May 2017 in the same Project instead of apartment No. 1601, and accordingly the Complainant has already taken the possession of apartment No. 502. Therefore, he stated, the question of withdrawing from the project does not arise. In regard to the alleged illegal construction of 15th, 16th and 17th floor of Building No. 6, he stated that one of the other apartment purchasers has filed a writ petition against the grant of OC and other consequential reliefs. Further, the Respondent submitted that they have filed their reply in the said petition and clarified that the alleged illegal construction is not an illegal construction and that the same is within the permissible plot area as well as the FSI available, but in respect of the same, approval of AAI is pending.
3. Regarding formation of Housing Society, the Advocate of the Respondent mentioned that they have already initiated the process of formation of Housing Society. However, they are not getting the necessary cooperation from the allottees.
4. In view of the above facts, since the Complainant has already taken possession of his apartment, the provisions of section 18 of the said Act are not applicable. The Respondent is, hereby, directed to complete the procedure for formation of society within 30 days from the date of this order. The Respondent is further directed to disclose, on their webpage, all pending litigations and orders issued by Competent Authorities like Airports Authority, CIDCO etc., within 15 days from the date of this Order.
5. Consequently, the matter is hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA