

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC00600000089765

Ashish Vohra ... Complainant

Versus

Indiabulls Properties Private Limited ... Respondent (1)
MahaRERA Regn. No. P51900000467

Indiabulls Housing Finance Ltd. ... Respondent (2)

Coram: Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant was represented by Adv. Laxmi Singh.

Respondent (1) was represented by Mr. Abir Patel, Adv. (i/b. Wadia Ghandy & Co.).

Respondent (2) was represented by Adv. Tejas Mahamuni a/w Adv. Indrajeet Hingane.

Order

February 20, 2020

1. The Complainant has stated that he had booked an apartment bearing no. 2312/A2 in the Respondent's project 'Indiabulls Sky Forest -A2' situated at Elphinstone Road, Mumbai through an Allotment Letter dated July 18, 2013. Further, he submitted that at the time of booking, the Respondent had promised to handover possession of the said apartment by 2017 but has failed to do so. He also submitted that the carpet area of the apartment being offered is not the same as what was being offered at the time of the booking. Therefore, the Complainant has interalia prayed that the Respondent be directed to refund the entire amount paid by him along with interest and compensation.
2. The learned counsel for the Respondent (1) submitted that the Respondent (1) is willing to execute and register the agreement for sale. Further, he submitted that the carpet area of the said apartment is the same as what was promised and that draft



agreement for sale exchanged in December 2018 with the Complainant explains the carpet area calculation as per MOFA and RERA and the area being given now is more than the MOFA carpet area.

3. The Respondent (1) has submitted his written submissions dated November 14, 2019, which is annexed as "Annexure A" to the Order.
4. The Complainant has submitted his rejoinder dated December 24, 2019, which is annexed as "Annexure B" to the Order.
5. Section 18 (1) of the Real Estate (Regulation and Development) Act 2016 reads as:

" 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;

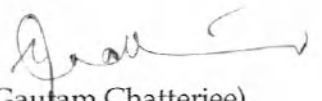
he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him (ii) respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed 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. "

Accordingly, since no agreement for sale has been executed and registered between the parties, no directions to refund the amounts under the provisions of section 18 of the said Act, can be given in the present case.

6. In view of the submission of the learned counsel for the Respondent (1) that the said apartment is still available and the Respondent (1) is willing to execute and register the agreement for sale for the same, the Complainant is advised to execute and register the agreement for sale as per the provisions of section 13 of the Real Estate (Regulation and Development) Act 2016 and the rules and regulations made thereunder within 30 days from the date of this Order.
7. In case, the Complainant is still firm on his decision to cancel his bookings and his intention to withdraw from the said project, then refund, if any, shall be guided by the

terms and conditions of the allotment letter and not under any provision of the Real Estate (Regulation and Development) Act 2016.

8. Consequently, the matter is hereby disposed of.


(Gaujam Chatterjee)
Chairperson, MahaRERA

"ANNEXURE B"

BEFORE THE MAHARASHTRA REAL ESTATE TRIBUNAL
IN
COMPLAINT NO. CC006000000089765 OF 2019

Ashish Pushpinder Vohra ..Complainant

Versus

Indiabulls Properties Pvt. Ltd. & Ors ..Respondents

AFFIDAVIT IN REJOINDER ON BEHALF OF THE
COMPLAINANT TO THE REPLY FILED BY RESPONDENT NO. 1

I, Ashish Pushpinder Vohra, Indian inhabitant, the Complainant abovenamed, residing at Row House 1, Juhu-Versova Link Road, 4 Bungalows Junction, Behind Skylark Building, Andheri (West), Mumbai - 400 053, do hereby state on solemn affirmation as under:



1. I say that I am the Complainant in the abovementioned matter, I am well conversant with the facts and circumstances of the present case, and therefore competent to depose thereto. I say that I have received the copy of the Affidavit in Reply dated 14th November, 2019 filed by the Respondent No. 1 and I am filing this Rejoinder in response thereto. I crave leave to file a further additional affidavit, if and when necessary, with the prior permission of this Hon'ble Tribunal.
2. At the outset, I deny all and singular contents of the said Reply which are contrary to and inconsistent to what is stated herein and the Complaint and nothing contained in the said Reply should be deemed to be admitted by the

Complainant for want of specific denial. I repeat, reiterate, confirm and adopt in toto the contents of the Complaint dated 11th June, 2019 filed by before the Maharashtra Real Estate Regulatory Tribunal ("**Tribunal**").

3. I say that I have booked the said flat in the year 2013, thereafter there have been several amendments in the approved plan of the said project but the Respondent No. 1 neither informed nor intimated me which is a clear breach of provisions u/s. 7 MOFA as well as u/s. 14 of RERA
4. I say that the Respondent promised to hand over the possession of the said flat by December 2018, however, the Respondent have failed and neglected to handover the possession. It is pertinent to note that as per RERA website the proposed date of possession of the flats in the said project was 30th September 2019, which is further revised to 30th September, 2022. I say that I cannot be kept waiting indefinitely for a period of 9 years (i.e.2013-2022) for the possession of my flat. I state that it is decided by the Supreme Court in **Pioneer Urban Land & Infrastructure Ltd. v/s Govindan Raghavan** "*that a buyer can be expected to wait for possession for a reasonable period. A period of seven years is beyond what is reasonable*".
5. I say that an Application for transferring the captioned matter to an Adjudicating Officer is made on 07.08.2019 to the Hon'ble Tribunal. I say that as the captioned matter is made under section 12, 18 and 19 of RERA and is ought to be decided by an Adjudicating Officer, however, no action has been taken on the aforementioned Application.
6. Without prejudice to anything stated herein above or in the Complaint, I shall now deal with the said Reply Para-wise as under:



- a. With respect to Para 1 of the said Reply, there is no specific response requisite, however, I deny anything stated therein as is contrary to the case of the Complainant.
- b. With respect to Para 2 of the said Reply, I deny each and every statements and allegations made therein under. I deny that the Complainant is only trying to take advantage of the fact that the methodology for calculation of carpet area has undergone a change with the advent of the Real Estate (Regulation & Development) Act, 2016 ("RERA) and the rules made thereunder.
- c. With respect to Para 3 of the said Reply, I deny each and every submissions and allegations made herein and put the defendant to strict proof thereof. I state that the carpet area as per the MCGM approved plan dated 22.06.2016 is 1742.70 sq. ft. I state that as per the MCGM approved plan, at the time of booking the Respondent was never in a position to allot 2149 sq. mtrs. of carpet area. Hereto annexed and marked as **Annexure 'A'**^(copy) is the layout of aforesaid approved plan drawn by an Architect as per the MCGM provisions. It is pertinent to note that the carpet area calculation of the Respondent is as per its own calculations and not as per the provisions of law. The Respondent is under the obligation to provide the carpet area as per the approved plans of the MCGM which is the Planning Authority.
- d. With respect to Para 4 of the said Reply, I deny that the Respondent No. 1 had forwarded the draft agreement for sale in respect of the subject flat, wherein, at the request of the Complainant, both the carpet area as computed under the MOFA and under RERA was forwarded to the Complainant. I further deny that the onsite, the carpet area of the subject flat remains



unchanged and as such there has been no reduction and put the Respondent to strict proof thereof.

e. With respect to Para 5 of the said Reply, I deny that the present complaint is not maintainable as the Complainant has not shown which one of the provisions of the RERA has been violated, as is the mandatory requirement under Section 31 thereof, I deny that in the present case, there has factually been no alleged reductions in the carpet area of the subject flat and further deny that no case of misrepresentation is made out as falsely alleged. I state that the Complainant have duly established the fact that the carpet area promised by the Respondent at the time of booking differs to the actual carpet area.

f. With respect to Para 6 of the said Reply, I deny that the Complainant to create prejudice has annexed to his Complaints emails exchanged with another allottee in respect of another flat located in tower A3. I further deny that the complainant has deliberately furnished on record documents in respect of another flat to mislead this Hon'ble Authority. I state that the aforementioned another allottee is the Brother of the Complainant. I further state that all the communications were done by the brother of the Complainant on behalf of the Complainant and the Respondent No. 1 was well aware of this fact and now cannot use it as a tool to mislead this Hon'ble Tribunal.



With respect to Para 7 of the said Reply, I deny that the Complainant is allegedly adamant not to execute an agreement for sale as per the Application form. I say that the Complainant was and is always willing to enter and execute the Agreement of sale, however due to the deliberate misrepresentations on part of the Respondent No. 1, the Complainant sought clarification

in respect of the actual carpet area of the subject flat. Further, the delay in the execution of the Agreement of sale in respect of the said flat is solely due to the Respondent No. 1's mala fide acts and defaults.

- h. With respect to Para 8 of the said Reply, I deny each and every allegations made herein which are contrary to or inconsistent with the case of the Complainant. I specifically deny that the Complainant's alleged action of refusing to execute an agreement for sale has jeopardized the housing finance company who is today not having any security for the loan disbursed. I say that the execution of the agreement of sale of the said flat is delayed only because of the default on part of the Respondent no. 1 and the Respondent No. 1 is putting the blame of its wrong doings on the Complainant with oblique motives and dishonest intentions.
- i. With respect to Para 9 of the said Reply, I deny each and every allegations made herein which are contrary to or inconsistent with the case of the Complainant. I say the Notice of Motion No. 2989 of 2019 in Suit No. 2749 of 2019 for interim stay is pending before the Hon'ble City Civil Court.
- j. With respect to Para 10 of the said Reply, I say that the Complaint No. 56167 in respect of the said flat was withdrawn as the project registration number of the project was mentioned incorrectly. Further, under section 79 of RERA, the appropriate authority to adjudicate the present case is RERA therefore; there is no violation of the liberty sought in the order dated 22 November, 2018.
- k. With respect to Para 11 of the said Reply, I say that no specific response requisite for the contents and statements herein. Further, I say that the



aforementioned order passed in the case of Mr. Rajat Vohra is challenged in the Appellate court and the same is pending.

l. With respect to Para 12 of the said Reply, I deny each and every submission made therein. I deny that the Complainant has fraudulently prayed for refund of the entire amount despite having paid only 20 % of the same and further deny that the Complainant has subrogated his right of such refund in favour of Respondent No. 2. I state that I have prayed only for the refund which is duly paid by me. I say that the Respondent have misinterpreted the true and correct meaning of the said clause. I put the Respondent to strict proof thereof.

m. With respect to Para 6 (a), (b), (c) of the said Reply, I repeat, reiterate and confirm whatever is stated in the Complaint and deny each and every allegation and submissions which are inconsistent with and contrary thereto. I say that the Complainant has established the case on merits and have substantially proved the contravention of the RERA provisions; therefore this Hon'ble Authority has the jurisdiction to entertain the present Complaint. I deny that the present complaint must be dismissed for want of jurisdiction and maintainability.



n. With respect to Para 6 (d), (e) of the said Reply, I repeat, reiterate and confirm whatever is stated in the Complaint and deny each and every allegation and submissions which are inconsistent with and contrary thereto and put the Respondent to strict proof thereof. I deny that there is no factual reduction in the carpet area of the said flat. I state that the Respondent is under the mandatory obligation to provide the carpet area as the approved plans by the MCGM and the provisions of MOFA/ RERA and the Complainant cannot

be bound to follow any other definition or calculation of the carpet area.

- o. With respect to Para 6 (f), (g) of the said Reply, I deny each and every allegation and submissions which are inconsistent with and contrary thereto and put the Respondent to strict proof thereof. I say that the Application Form was signed on the basis on the Booking summary sheet. It is pertinent to note that the Respondent stating that the Application Form supersedes all the previous representations shows that the Respondent deliberately and with mala fide intentions had made false statements to the Complainant prior to booking of the flat. I have received an email from the Respondent stating the increase in area in respect of the said flat dated 6th April, 2016. Hereto annexed and marked as **Annexure 'B'** is the copy of the aforesaid email. I further state that the Agreement of sale is not executed because of the default and fraud played by the Respondent and the Respondent cannot blame the Complainant for his wrong doings.
- p. With respect to Para 6 (h), (i) of the said Reply, I say that the Respondent have received 95% of the total consideration under the subvention scheme, the Respondent is paying the pre- Emi as the Respondent have failed to handover possession therefore, the Complainant cannot to be blamed. I once again repeat, reiterate and state that the I was always willing to execute the Agreement of sale but with the Carpet area promised by the Respondent but the Respondent never gave a true and correct clarification to the Complainant.
- q. With respect to Para 6 (j), (k), (l), (m), (n) of the said Reply, I repeat, reiterate and confirm whatever is stated in the Complaint and deny each and every allegation and submissions which are inconsistent with and

contrary thereto and put the Respondent to strict proof thereof.

- r. With respect to Para 6 (o), (p) of the said Reply, I say that all the email conversations were made by my brother on my behalf, therefore the annexed emails are not irrelevant. I deny that the contents of Annexure Q and P are not reliable and are of doubtful nature.
- s. With respect to Para 6 (q), (r) of the said Reply, I repeat, reiterate that the agreement of sale was not executed as there are disputes in the carpet area, further I deny each and every allegation which are contrary to the submissions made in the Complaint. I deny that the Architect Certificate of M/s. Samoon & Associates is unreliable as the same is on the basis of sanctioned building plans other than that of the subject flat. I say that the Respondent is ought to measure the carpet area as per the methodology adopted by the MCGM. The said Application cannot supersede the methodology of MCGM. I further deny that that there is absolutely no variation in the carpet area and that all allegations regarding carpet area
- t. With respect to Para 6 (s), (t), (u) of the said Reply, I repeat, reiterate and confirm whatever is stated in the Complaint and herein above and deny each and every allegation and submissions which are inconsistent with and contrary thereto and put the Respondent to strict proof thereof.
- u. With respect to Para 6 (v) of the said Reply, I deny that the possession date which was to be specified in the Agreement for Sale could not be finalized between the parties on account of the Complainant's own reluctance in execution of Agreement for Sale and further deny that there is no delay of any nature whatsoever in respect of handing over possession of the subject flat.

- v. With respect to Para 6 (w), (x) of the said Reply, I repeat, reiterate and confirm whatever is stated in the Complaint and herein above and deny each and every allegation and submissions which are inconsistent with and contrary thereto and put the Respondent to strict proof thereof.

- w. With respect to Para 6 (y) of the said Reply, I say that the Proposed date of possession was 2019 and the revised date of possession is 2022. I further state that the flat was booked in the year 2013 and the Respondent has admittedly failed to handover the flat even after completion of 6 years.

- x. With respect to Para 6 (z), (aa) of the said Reply, I repeat, reiterate and confirm whatever is stated in the Complaint and herein above and deny each and every allegation and submissions which are inconsistent with and contrary thereto and put the Respondent to strict proof thereof.

- y. With respect to Para 6 (bb) of the said Reply, I deny that the Complainant is not entitled to any of the reliefs either as prayed for in the said paragraphs under reply or even otherwise. I deny that the Complainant has in the complaint sought for reliefs that are contrary to his own undertakings and representations made in the Tripartite Agreement dated 23rd July 2013. I state that the Complainant is entitled for all the reliefs prayed in the Complaint.

- z. With respect to Para 6 (cc), (dd) of the said Reply, I repeat, reiterate and confirm whatever is stated in the Complaint and herein above and deny each and every allegation and submissions which are inconsistent with and contrary thereto.



aa. With respect to Para 13 of the said Reply, I deny that the present complaint may be dismissed with cost.

7. In view of the aforesaid, I respectfully say and submit that this Hon'ble Tribunal be pleased to grant relief/s as prayed with costs in the interest of justice.

Solemnly affirmed and declared at Mumbai)

Dated this 20th day of December, 2019)

Before -

Singh

Laxmi Singh

Advocate for Complainant

Ashish Vohra

BEFORE ME

RAM JI PANDEY
ADVOCATE & NOTARY
GOVT. OF INDIA
Kharodi Village, Mahwanl,
Maled (W), Mumbai-400 095.



Sr. No. 298/19
Date. 20/12/19



"ANNEXURE A"

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY, MUMBAI
COMPLAINT NO. CC006000000089765

Ashish Vohra Complainant
Vis.
Indiabulls Properties Pvt. Ltd. & Ors. Respondents

AFFIDAVIT IN REPLY ON BEHALF OF RESPONDENT

I, Anshul Singh, male, Indian inhabitant, being Authorised Signatory of the Respondent No. 1 having office address of 1501 Floor, Tower-1, Indiabulls Finance Centre, 612-613, Elphinstone Mill Compound, Senapati Bapat Marg, Elphinstone Road (W), Mumbai - 400 013, do hereby solemnly affirm and state as under:

1. I say that I am well versed with the facts and circumstances surrounding the present case based on records maintained by the Respondent. I deny each and every allegation, contention and insinuation made in the captioned complaint and nothing therein should be deemed to be admitted by the Respondent No. 1 for want of specific denial. I reserve leave to file further detailed Affidavit/Written Submission in the captioned matter, if and when necessary.
2. At the outset, I say that the entire case of the Complainant is that there has been a misrepresentation as regards carpet area or that the carpet area has reduced is absolutely baseless. I say that the Complainant is only trying to take advantage of the fact that the methodology for calculation of carpet area has undergone a change with the advent of the Real Estate (Regulation & Development) Act, 2016 ("RERA") and the rules made thereunder.
3. I submit that in terms of the Complainant's Application for Provisional reservation dated 29th May, 2015 ("said Application"), the approximate usable carpet area of the subject flat was 2149 square feet. I say that the said Application itself defines the carpet area applied for by the Complainant to "open and usable net work floor area within the said Apartment which is inclusive of areas of balcony, if any, excluding areas of columns and walls." I say that the



carpet area mentioned in the said Application is calculated as per the definition thereof in the application itself. I say that in terms of the Maharashtra Ownership of Flats Act, 1963 ("MOFA"), the useable carpet area of the subject flat comes up to 2149 square feet as per the application form, which in terms of the newly introduced definition of carpet area under the RERA comes to 148.35 square meters (equivalent to 1596.83 square feet). Apart from Carpet Area as per the Act, the Purchaser will also have exclusive right to use 56.98 square meters (equivalent to 612.33 square feet) of area within the Apartment which includes balcony, internal lift lobby, internal staircase and flower bed.

4. It is pertinent to note that the Respondent No. 1 had forwarded to the Complainant, a draft agreement for sale in respect of the subject flat, wherein, at the request of the Complainant, both the carpet area as computed under the MOFA and under RERA was forwarded to the Complainant. I submit that in spite, the carpet area of the subject flat remains unchanged and as such there has been no reduction, as is being alleged in the present complaint.
5. I say that the present complaint is not maintainable as the Complainant has not shown which one of the provisions of the RERA has been violated, as is the mandatory requirement under section 31 thereof. I say that merely mentioning that there has been a violation of section 12 of the RERA without showing how any false advertisement, notice, prospectus etc. has been used to collect monies from the Complainant, and such action has caused loss to the Complainant, will definitely not suffice the purpose of section 12. I say that in the present case, there has factually been no reduction in the carpet area of the subject flat and therefore no case of misrepresentation is made out. Annexed hereto and marked as **Exhibit A** is a copy of the project's architect verifying the carpet area of the subject flat.
6. At the further outset, I say that the respondent, to create prejudice, has annexed to his complaints, emails exchanged with another offeree in respect of another flat located in Tower A3. The Complainant's flat is in Tower A2. I say that the Complainant has



deliberately furnished on record. documents in respect of another flat to mislead this Hon'ble Authority

7. It is evident that the Complainant is adamant not to execute an agreement for sale, even though in the said Application the Complainant agreed to execute an agreement for sale within 21 days of being called upon to do so. Clause 14 of the said Application is self-explanatory in this regard.

8. Further, I say that the Complainant has purchased the subject flat under the subvention scheme. Under this scheme, the Complainant has paid a sum of Rs. 2,05,85,412, which represents 20% of the agreed consideration. I say that the remaining 75% has been disbursed by the Respondent No. 2 as by way of a housing loan. Pertinently, the pre-EMI interest on the Housing Loan disbursed by the Respondent No. 2 is borne by the Respondent No. 1 until possession has been handed over to the Complainant. The Complainant has, under the tri-partite agreement for the subvention loan dated 23rd July 2013, committed to execute an agreement for sale and deposit it with the Respondent No. 2 to secure the housing loan. I say that the Complainant's action of refusing to execute an agreement for sale has jeopardised the housing finance company who is today not having any security for the loan disbursed. In fact, the Respondent is every month, paying pre-emi interest to the Respondent No. 2 for such unsecured loan, despite the Complainant being under the obligation of securing the same.

9. It is also necessary to mention that the Respondent No. 2 has issued notice dated 5th July, 2019 to the Complainant, calling upon him to deposit the agreement for sale, which was to be deposited by the Complainant as per his Commitment in the tripartite agreement dated 23rd July 2013 in order to secure the housing loan granted to him in respect of the subject flat. The Complainant challenged the same by filing Suit (SI) No. 8490 of 2019 and prayed that the Respondent No. 2 be restrained from acting in furtherance of the aforesaid notice. By order dated 7th August, 2019, ad-interim stay on the notice dated 5th July, 2019 was rejected. A copy of the notice dated 5th July, 2019 is annexed hereto and marked as **Exhibit B** and



a copy of Order dated 7th August, 2019 is annexed hereto and marked as **Exhibit C**

10. It is pertinent to note that the Complainant had earlier filed Complaint No. 56167 in respect of the subject flat. I say that by Application dated 19th November, 2018 the Complainant had withdrawn the complaint with liberty to approach an appropriate forum. I say that despite seeking liberty from this Authority to approach an appropriate forum, the Complainant has again filed this complaint before this Authority. I say that the Complainant was allowed to withdraw the earlier Complaint No. 56167 only with the liberty to approach an appropriate forum not being this Authority. Yet, the Complainant has filed this complaint in violation of the liberty sought in the earlier order dated 22nd November, 2018, a copy whereof is annexed hereto and marked as **Exhibit D**.
11. Further, I say that along with earlier complaint of the Complainant i.e. 56167, one Mr. Rajat Vohra had also filed a complaint identical to the one filed by the Complainant. The issue involved therein was also that they were promised possession in December 2017 and that carpet area had been revised. The complaint of Rajat Vohra was disposed off with directions that the Respondent (who happens to Respondent No.1 in this case) to execute Agreement for Sale by giving clarification as regards carpet area. A copy of the order dated 20th March, 2019 whereby the complaint of Rajat Vohra was disposed off is annexed hereto and marked as **Exhibit E**.
12. It is also pertinent to note that though the Complainant has prayed for the entire amount of the subject flat viz. Rs. 2,23,63,838/- to be paid to him, the Complainant has under clause 13 of the Tripartite Agreement dated 23rd July 2017, subrogated his right to receive any amount payable by the Respondent to the Complainant in the event of cancellation in favour of Respondent No.2. I therefore say that the Complainant has fraudulently prayed for refund of the entire amount despite having paid only 20 % of the same and despite the fact that under clause 13, he has subrogated his right of such refund in favour of Respondent No.2.



6) Without prejudice to the above, I shall deal with the captioned Complaint, paragraph-wise as under:

- (a) With reference to the paragraph (a) and (b) of the Complaint, I deny anything stated therein as is contrary to the case set up by the Respondent herein.
- (b) With reference to paragraph (c) of the Complaint, I say that this Hon'ble Authority will only have jurisdiction to entertain complaint when there has been a violation of the provisions of RERA and the rules made thereunder. On perusal of the complaint and the submissions made herein, it becomes clear that there is neither a violation of section 12 or section 18 or for that matter any of the provisions of the RERA. In the circumstances, I say that the present complaint must be dismissed for want of jurisdiction and maintainability.
- (c) With reference to paragraph (d) of the Complaint, I say that by merely stating that a complaint is filed under section 12, 18 and 19 of the RERA does not mean that there has been a violation thereof. I say that on perusal of the complaint, it becomes clear that Complainant has made no case or even allegation as regards purported violation of sections 18 and 19 of the RERA. So far as section 12 is concerned, it has already been explained hereinabove that there has been no misrepresentation of carpet area nor there has been any misrepresentation as regards possession date and therefore even section 12 is not violated in the present case.
- (d) With reference to paragraph (e) (1) and (2) of the Complaint, I say that the Complainant has only made an application for provisional reservation of the subject flat i.e. said Application, is by no means constitutes an allotment. I say that the useable carpet area specified in the said Application is as per the definition of carpet area stated therein, which translates to 2149 square feet of useable carpet area as per the application form, which in terms of the newly introduced definition of carpet area under the said Act comes to 148.35



square meters (equivalent to 1596.87 square feet) as per the sanctioned plans. Apart from Carpet Area as per the Act, the Purchaser will also have exclusive right to use 56.98 square meters (equivalent to 613.33 square feet) of area within the subject flat which includes balcony, internal lift lobby, internal staircase and flower bed. I say that factually there is no reduction in carpet area whatsoever.

- (e) With reference to paragraph (c) (3) of the Complaint, I am not aware and therefore deny the contents of the said paragraph under reply in toto.
- (f) With reference to paragraph (c) (4) of the Complaint, I say that the terms of the said Application dated 29th May, 2013 supersedes all previous brochures, marketing material, representation and other documents including the document being referred to in the said paragraph under reply. It is pertinent to note that booking summary sheet being referred to in the said paragraph under reply is neither stamped nor the same has been signed by any party.
- (g) With reference to paragraph (c) (5) of the Complaint, I say that no representations of any nature whatsoever were made to the Complainant prior to the submission of the said Application. In fact, the Application itself says that the Complainant has submitted the same without being influence of any representations, material etc. It is pertinent to note that the Complainant had agreed to execute an Agreement for Sale for the said subject flat under clause 14 of the said Application within 21 days of being called upon to do so. Complainant has evidently failed and therefore breached clause 14 of the said Application.
- (h) With reference to paragraph (c) (6) and (7) of the Complaint, I say that Complainant has provisionally reserved the flat under the subvention scheme where he has only paid a sum of Rs. 2,05,86,412 being 20% of the agreed consideration. I say that the remaining 75 % has been financed by Respondent No.2 for which pre-EMI interest is being borne by the



Respondent No 1 I say that 5% of the consideration is to be paid by the Complainant at the time of possession. I say that the sum of Rs.16,29,50,000/- was only the consideration price and was subject to payment of statutory amounts and other charges. Hence, the question of payment of more than 20% does not arise.

(i) With reference to paragraph (e) (8) of the Complaint, I say that despite being called upon time and again, the Complainant has refused to sign the Agreement for Sale by making frivolous excuses despite undertaking to sign the same under the said Application. Complainant has violated both section 13 of the RERA and section 4 of the MOEA.

(j) With reference to paragraph (e) (9) of the Complaint, I say that there has been no representation verbal or otherwise to the Complainant that project will be completed before 2017. Further, the email dated 15th March, 2016 being referred to in the said paragraph under reply pertains to Tower A-3 and not the subject flat or the Tower wherein the same is located i.e. A-2. I say that Complainant is deliberately relying upon irrelevant documents to mislead this Court.

(k) With reference to paragraph (e) (10) of the Complaint, I say that under the Tripartite Agreement whereby the housing loan subvention scheme was consummated between the Complainant and Respondent Nos.1 and 2, the Complainant was under the obligation to execute Agreement for Sale and deposit the same with Respondent No.2 to secure the housing loan for the subject flat. Evidently, Complainant has refused to sign the Agreement for Sale and has breached the terms of the Tripartite Agreement and the application for reservation.

(l) With reference to paragraph (e) (11) of the Complaint, I say that the allegations and contentions made in the said paragraph under reply are misleading and ought to be rejected. I crave leave to refer to and rely upon Tripartite Agreement dated 23rd July 2019 for the true and correct



interpretation and meaning of its contents and deny the Complainant's interpretation to it.

- (u) With reference to paragraph (e) (12) of the Complaint, I say that in terms of clause 3 of the said Application, Complainant is under the obligation to make all statutory payments in respect of the subject flat. I say that such statutory amounts are deposited with the Government Treasury and not paid to the Respondent No.1.
- (v) With reference to paragraph (e) (13) of the Complaint, so far as clause 33 of the said Application is concerned, I say that the Respondent No.1 has on several occasions between 29th May, 2013 and 29th March, 2015 called upon the Complainant to execute and register an Agreement for Sale but the Complainant has failed to do so. I say that admittedly Complainant was sent draft Agreement for Sale for execution thereof but the Complainant did not sign the same for reasons best known to and cannot take the benefit of clause 33 of the said Application when it is he himself who has breached the said Application Form by refusing to sign the Agreement for Sale.
- (w) With reference to paragraph (e) (14) of the Complaint, I say that email being referred to in the said paragraph under reply pertains to another flat belonging to another allottee and has no connection with the subject flat.
- (x) With reference to paragraph (e) (15) and (16) of the Complaint, I say that again the emails annexed as Annexure "G" to the captioned complaint are in respect of another flat and another real estate project which has no concern with the present Complainant. I say that the chart being relied upon by the Complainant in the said paragraph under reply is admittedly unsigned and unstamped nor is it on the letterhead of the Respondent No.1. In the circumstances, I say that this document cannot be relied upon by this Hon'ble Authority for any purposes whatsoever owing to the doubtful nature of its authenticity. I therefore deny the contents as also the



existence of the chart annexed at Annexure "P" to the captioned complaint as also all allegations contained in the said paragraph under reply.

(7) With reference to paragraph (e) (17) of the Complaint, I say that the revised draft being sent to the Complainant was pursuant to the Complainant's own request to specify both the carpet area calculation as per MDA and carpet area calculation as per REKA. I reiterate that there has been no reduction whatsoever in the carpet area of the subject flat and therefore the allegations contained in the said paragraph under reply as also email dated 13th November, 2018 referred to therein are denied in toto.

(7) With reference to paragraph (e) (18) of the Complaint, I say that the Architect Certificate of M.s. Saifoon & Associates is unreliable as the same is on the basis of sanctioned building plans other than that of the subject flat. In any event, I say that the methodology adopted by the MCGM for calculation of carpet area is completely different from the definition of carpet area stated in the said Application. I reiterate that there is absolutely no variation in the carpet area and that all allegations regarding carpet area, made in the said paragraph under reply and even in the captioned complaint are denied and must be rejected outrightly.

(8) With reference to paragraph (f) (a) of the Complaint, I say that the useable carpet area stated in the said Application is as per the definition of carpet area stated in the said Application which was duly read, understood and agreed by the Complainant at the time of provisionally reserving the subject flat. I say that this very same carpet area translates to 2149 sq. ft. under MDA and 148.35 square meters (equivalent to 1596.83 square feet) under the RERA. Apart from Carpet Area as per the Act, the Complainant will also have exclusive right to use 56.98 square meters (equivalent to 613.33 square feet) of area within the subject Flat which includes balcony, internal lift lobby, internal staircase and flower bed. I therefore state that by relying upon BMC plans and



Architect's Report which do not pertain to the subject flat. Complainant's case regarding misrepresentation of carpet area is unsustainable and in any event factually incorrect and denied in toto.

- (i) With reference to paragraph (i) (b) of the Complaint, I say that as on date the Respondent has obtained Commencement Certificate upto 51 floors. In any event, I say that requirement for selling a flat in a project is a sanctioned plan and IOD as Commencement Certificate are always issued in phases in the city of Mumbai.
- (ii) With reference to paragraph (i) (c) of the Complaint, I say that the Complainant has been called upon by the Respondent to execute and register an Agreement for Sale on several occasions from the year 2013. Therefore, does not lie in the mouth of the Complainant to allege violation of section 13 of the RERA by the Respondent when it is he who has failed to execute and register an Agreement for Sale for the subject flat despite being called upon to do so. In light of the above, I deny the allegations contained in the said paragraph under reply in toto.
- (iii) With reference to paragraph (i) (d) of the Complaint, I crave leave to refer to and rely upon the judgement of M/s. Fortune Infrastructure and App. Vs Trevor Olima and Ors. for the true and correct interpretation and meaning of its contents and deny the Complainant's interpretation thereof in toto. I deny that the Respondent No 1 has failed to hand over possession within reasonable period and say that the possession date which was to be specified in the Agreement for Sale could not be finalised between the parties on account of the Complainant's own reluctance in execution of Agreement for Sale. I therefore submit that there is no delay whatsoever of any nature whatsoever in respect of handing over possession of the subject flat.
- (iv) With reference to paragraph (i) (e) of the Complaint, I say that it is the Complainant who has breached the Tripartite



Agreement dated 13th July 2013 by failing to execute an Agreement for Sale and deposit the same with the Respondent No.2 to secure his loan. The Respondent No.2 is today effectively holding a potential non-performing asset without even an enforceable security in its favour since the Complainant has very strategically avoided execution of Agreement for Sale which is to first the security for the housing loan. I say that all monies paid / disbursed in respect of the subject flat have been used in construction of Tower A-2 wherein the subject flat is located. Further, I deny everything else stated in the said paragraph under reply as is contrary to the case set up by the Respondent No.1 herein.

- (x) With reference to paragraph (f) (f) of the Complaint, I repeat and reiterate all that has been stated herein and deny anything stated in the said paragraph under reply as is contrary thereto and inconsistent therewith. I say that there is absolutely no unfair trade practice of any nature whatsoever followed by the Respondent No.1 who is separate and distinct entity from the Respondent No.2.
- (y) With reference to paragraph (f) (g) of the Complaint, I say that the completion year of 2022 stated on the website of this Authority is a final date of completion which is mandatorily required to be declared by every Promoter of every ongoing project at the time of registration of the project. I deny that there has been severe delay on part of Respondent No.1 as alleged or at all.
- (z) With reference to paragraph (f) (h) of the Complaint, I say that as on date the project has completed RCC Work and the finishing work is under progress. I say that Complainant ought to have executed an Agreement for Sale on the numerous occasions that he was called upon to do so as the possession date would have been specified in the Agreement for Sale. As on date, I say that as per the understanding between the parties, the possession date of the subject flat is the date of intimation of receipt of OC for the subject flat as is



mentioned in the Note to paragraph 3 (B) on internal page 7 of the said Application.

(99) With reference to paragraph (f) (i) of the Complaint, I say that the case of Manjitsingh Dhaliwal Vs JVPD Properties Pvt. Ltd. is not applicable to the present case at all. I crave leave to refer to and rely upon the aforesaid judgement for the true and correct interpretation and meaning of its contents and deny the Complainant's interpretation thereof in toto.

(bb) With reference to paragraph (g) and (h) of the Complaint, I say that in light of what is stated hereinabove, Complainant is not entitled to any of the reliefs either as prayed for in the said paragraphs under reply or even otherwise. I say that the Complainant has in the complaint sought for reliefs that are contrary to his own undertakings and representations made in the Tripartite Agreement dated 23rd July 2013.


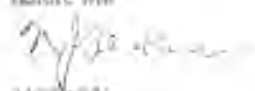
(cc) With reference to paragraph (j) and (k) of the Complaint, I am not aware and therefore do not admit the contents therein.

(dd) With reference to paragraph (k) of the Complaint, I crave leave to refer to and rely upon all the documents enclosed to the captioned complaint for true and correct interpretation and meaning of their content and deny the Complainant's version thereof in toto.

13 In light of what has been stated herein, I say that the captioned complaint may kindly be dismissed, with cost.

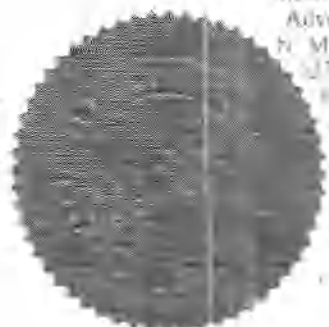


Substantly affirmed at Mumbai
This ~~13~~ 14th day of September 2019
2/2019

Before me, 
Before me, 

NOTARY
Greater Bombay
M/S. WADIA GRAMBS & CO
Advocate Solicitor & Notary
N. M. Wadia Building, 7th Floor,
127, Malabar Caste's Road,
Breach Candy, Mumbai - 400 022
Licence No. 976
Reg. No. 160


Advocate for Respondent No. 1
WADIA GRAMBS & CO



My commission expires
on 14th Nov 2022

14 NOV 2019
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