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

COMPLAINT NO: **CC006000000012491**

Naresh Kisan Patil
Raju Mahadeo Bana
Vasant Shankar Jadhav
Dr. Hemant Varade
Rahul Kadam
Ashish Gurav ... Complainants.

**Versus**

Kailash Chatrapati Patil
( Kailash Heights) ... Respondents.

MahaRERA Regn: **P51700006977**

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

**Appearance:**
Complainants: in person.
Respondents: through Mr. Samarudha K. Patil

**Final Order.**
6th April 2018.

The complainants have booked their flats in the respondents' registered project 'Kailash Heights' situated at Thane. They have complained that respondents have not formed the association or society or co-operative society of the allottees, though more than 50% flats have been booked. They have also contended that when they booked the flats only seven floors were to be

constructed in the building but now the respondents are constructing three plus two floors without obtaining their consent.

2. The respondents have filed their reply to contend that as per contents of Para-5, 19, 20 & 28 the buyers have agreed to subsequent development and construction of additional floors. Therefore, they cannot take any objection now. They have denied that booking of the flats exceeds the required number and therefore request to dismiss the complaint.

3. Following points arise for determination and findings thereon are as under:

| Points | Findings |
|---|---|
| 1. Whether the respondents failed to form a co.op. society of the allottees even after booking of majority of the flats as required by section 11(4)(e) of RERA? | Affirmative. |
| 2. Whether respondents have failed to take previous written consent of at least 2/3rd of the allottees for changing the sanctioned plans and specifications of the building including common areas? | Affirmative. |

**REASONS**

4. After visiting the official website of MahaRERA, it becomes clear that the Respondents have mentioned that the number of apartments are 39 and the number of booked apartments are 22. Therefore, more than 50% apartments have been booked and hence, as per Section 11(4)(e) of RERA, read with rule 9 (1) ((i) of Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of interest and disclosures on websites) Rules, 2017 the respondents are required to form the association of the allottees. Admittedly

the respondents have not formed any such association/co-operative society of the allottees. Therefore, it is necessary to direct them to do so.

5. There is no dispute between the parties that when the respondents launched the project, they were to construct only seven floors. The information uploaded by the respondents of their project shows that they are going to construct ten floors. It has been submitted by the complainants that the respondents proposed to add two more floors. It is their grievance that the consent of the allottees have not been taken and the respondents have been working for the eleventh floor from December 2017 but could not complete the same. This is delaying the project. The respondents have contended that the terms and conditions incorporated in the agreements for sale demonstrate that the allottees have given consent for such additions and alterations. Therefore, one has to look at Section 14 (2) of RERA. It provides that notwithstanding anything contained in the law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the Competent Authority, are disclosed or furnished to the person who agreed to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make-(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at- least 2/3rds of allottees, other than the promoter, who have agreed to take apartments in such building. Therefore, the terms of the agreement referred to by the respondents will not come to their help because section 14 (2) overrides the contract or agreement. Therefore, legal position is, irrespective of the terms and conditions of the agreement, the promoter has to obtain previous written consent of at-least 2/3rds of the allottees for making any alterations or additions in the sanctioned plan and specifications of the buildings or the

common areas. The respondents have not taken the consent of 2/3rd allottees for making the construction of the upper three floors. The real grievance of complainants appears that the respondents have been taking much time for constructing the eleventh floor. I am shocked to note that the respondents have not furnished any information on the official website of MahaRERA regarding the construction of 11th and 12th floor and they have not uploaded the sanctions thereof. In view of this situation, I find that it is necessary to issue direction to the respondents under Section 37 of RERA to stop the construction of 11th & 12th floor. They cannot construct the same without following the legal procedure. Hence the following order.

**ORDER**

1. The respondents are directed to form the co-operative society of the allottees of their project within the period of one month from this order.
2. The allottees shall co-operate with the respondents for formation of the society.
3. The respondents are hereby retrained from making construction of 11th & 12th floor without following the due process of law.
4. Respondents shall pay each allottee who has booked the flat in the project before the plan was revised, Rs. 25,000/- towards compensation.
5. Respondents shall pay the complaints Rs. 20,000/ towards the cost of the complaint.

6.4.18

Mumbai.
Date:06.04.2018.

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

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY**
**MUMBAI.**
**Complaint No. CC006000000012491**

Naresh Kisan Patil ---Complainants.

Raju Mahadeo Bana

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**Versus**

Kailas Chatrapati Patil
(Kailash Heights) ---Respondent.
**Project No.** P51700006977

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

**ORDER FOR RECOVERY UNDER SECTION 40(1) FOR NON-COMPLIANCE OF THE ORDER DATED 06.04.2018.**

The complainant contends that the Authority has passed the order on 06.04.2018 and has directed the respondent to form the co-operative society of the allottees within one month. The respondent is restrained from making construction of 11th & 12th floor without following the due process of law. The respondent has been directed to pay Rs. 25,000/- towards compensation to the allottees who have booked their flats in their project before the revision of the plan and also awarded Rs. 20,000/- towards the cost of the complaint. But the respondent has not complied with the order.

2. Mr. S. M. Patil, the son of the respondent has appeared to submit orally that the allottees have not been giving co-operation for formation of the society. They are not ready to sign the registration form. The complainants submit that they have some issues with the respondent regarding the Bye-laws and name of society. It has been suggested to the parties to settle this matter by holding talks because the allottees have also been directed by this Authority to co-operate with the respondent for formation of the society.

3. So far as the construction of 11th & 12th floor is concerned, the respondent has uploaded the sanctioned plan and therefore, the issue gets resolved.

4. The respondent has not paid Rs. 25,000/- compensation to each complainant and Rs. 20,000/- towards the cost of the complaint. Hence it is necessary to issue warrant under Section 40(1) for recovery of the said amount. Hence, the order.

**ORDER**

Issue recovery warrant against the respondent directing the Collector, Thane to recover the amount of compensation, cost and pay the same to complainants with a request to submit compliance report.

2. The proceeding stands closed completely.

5.6.18

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

Mumbai
Date: 05.06.2018.