

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

**COMPLAINT NO. CC006000000057782**

Abhishek Kothari

..Complainant

Verses

1. Kanakia Spaces Realty
2. Ace Housing and Construction Ltd
3. Rajat Patel
4. Dhruv Enterprises
5. Shree Gajraj Housing Nirman Ltd
6. Knight Frank

..Respondents

MahaRERA Regn. No. P51800000122

**Coram:**

Hon'ble Shri Madhav Kulkarni.  
Adjudicating Officer, MahaRERA.

**Appearance:**

Complainant: Adv. Avinash Pawar  
Respondent : Adv. Abir Patel

**ORDER  
(Dated 23.12.2019)**

1. The complainant/allottee who had booked a flat with the respondent/promoter, seeks withdrawal from the project and refund of his amount with interest @12% and compensation of Rs.20 lakhs as respondent made false statement in the advertisement and brochures and failed to discharge obligations and respondent failed to deliver possession as per agreement.
2. Complainant has alleged that he booked flat no. 503 in the A wing of tower in the project of the respondent Kanakia Paris at Kherwadi, Bandra. Advertisement promised ultimate luxury, unparallel view of Kalina University and Worli Sealink. Actual view is hidden. Despite multiple requests, flat was not shown to the complainant, till 99%

amount was paid. The bottom of the project is concealed by high walls. When complainant came to visit flat, he saw vast slum and Vakola Nallha. Complainant therefore, demanded cancellation of the booking and also informed the banker i.e. Aditya Birla Housing Finance about cancellation of deal. Respondent is illegally forfeiting 6% of the payment received, citing irrelevant clause which is in respect of default in payment by an allottee. Terrace garden of 40,000 sq. ft. as per brochure is not provided. Respondent is telling that refund will be paid only after selling the apartment to 3<sup>rd</sup> party. Respondent had agreed to refund GST but is delaying in cancellation of booking so that complainant does not get GST refund.

3. The complaint came up before Hon'ble Member on 26.02.2019 and came to be adjourned to 26.03.2019. It came to be transferred to Adjudicating Officer. Matter came up before me on 27.05.2019. Respondent nos. 2 to 6 failed to appear. Matter was adjourned to 25.06.2019. Plea of the respondent no. 1 was recorded on 25.06.2019. Respondent no.1 also filed written explanation. Matter was adjourned to 24.07.2019. It was further adjourned to 28.08.2019. Arguments for both the parties were heard on 28.08.2019. As I am working at Mumbai and Pune Offices in alternative weeks, and due to huge pendency in this office, this matter is being decided now.
4. Respondent No.1 has alleged that complainant has filed false complaint. Respondent has not violated any provision of RERA. Once agreement is executed, allottee cannot allege false representations which were made before the agreement, which is settled law. Respondent no. 1 has obtained OC on 24.08.2018. By letter dated 11.10.2018, respondent called upon the complainant to pay Rs.74,34,176/- which were due on possession and called upon complainant to take possession of subject flat, which complainant was bound u/s 19(6) of RERA. As per clause 5(G) and 5(H) of the agreement, if the complainant wants to withdraw from the project, he

is entitled to refund of amount subject to deduction. When complainant had approached respondent for booking of the flat, project was 90% completed. Complainant was informed that it was a slum rehabilitation scheme and OC was expected shortly. Complainant was given tour of the project by representative of the respondent Mr. Joy Bannerjee. Complainant paid 1% of the amount i.e. Rs.3,49,350/- and agreement was executed on 23.05.2018. Complainant is availing loan. Respondent no. 1 executed tri-partite agreement dated 30.05.2018 and respondent no. 1 agreed to pay pre-EMI interest until December, 2018. While registering project with MahaRERA, all the facilities and amenities were disclosed. Respondent no. 1 paid Rs.14,05,591/- towards pre-EMI interest on behalf of complainant. Suddenly, by an email dated 05.10.2018, complainant sought inspection of subject flat when final touch up were still being undertaken. However, site visit was allowed on 27.10.2018. Thereafter, email was received from wife of complainant on 31.10.2018. However, by an email dated 24.11.2018, complainant requested cancellation of booking. Complainant requested waiver of cancellation charges. Again on 03.01.2019, complainant by a letter made false allegations. Advertisement being referred is a video on youtube.com which was never used for making any representation. Project does not have parallel view of Kalina University and Worli Sealink. Complainant has paid only 1% of the total cost. On the other hand, respondent paid Rs.14,05,991/- for complainant. Complaint therefore, deserves to be dismissed.

5. Following points arise for my determination. I have noted my findings against them for the reasons stated below:

POINTS	FINDINGS
1 Has respondent made false and incorrect statements in his advertisement causing loss to the complainant?	Negative w A-O-

2 Is the complainant entitled to the reliefs claimed? Negative

3 What Order?

As per final Order.

### REASONS

6. **Point Nos. 1 & 2** - Complainant has placed on record photos of site, which are showing slum as well *nallaha*. Copy of email dated 05.12.2018 is also placed on record. It may be noted that complainant did not explain location of the project in the complaint for the reasons best known to the complainant. The alleged advertisement and brochure is not placed on record by the complainant. It appears that there was a video on youtube, wherein there is a mention of ultimate luxury and unparalleled view of Kalina University and Worli Sealink. Copy of agreement dated 23.05.2018 is placed on record. There is clear mention of slum rehabilitation scheme on the land. The building in which complainant booked flat was from free sale component, which was undertaken after completion of rehabilitation component. Flat no. 503 in A wing was agreed to be sold to the complainant for a consideration of Rs.3,49,35,040/-. The project is at Bandra (East) at Ambedkar Nagar, Kherwadi, Mumbai. The distance between the said flat and Kalina University and Worli Sealink is not given by the complainant for the reasons best known to him. Approximately, Bandra sealink may at a distance of 1 KM and Kalina University at 5KMs. Bandra is most developed suburb of Mumbai nearest to South Bombay and also developing as a commercial hub in the form of Bandra Kurla Complex. Many towering buildings are bound to come up in this area. Therefore, unparalleled view of the Bandra Sealink and Kalina University especially from 5<sup>th</sup> floor of the said building does not sound to reason. May be that it was an ambitious project considering the prime location. However, it was a slum development project and therefore, presence of slum nearby was but natural and complainant must have been well aware about it.

Likewise, unparallel view of Bandra Sealinka and Kalina University was not reasonably possible. Contention that complainant was misled on this account cannot be accepted.

7. The last point canvassed by respondent was that there is no such advertisement or promise made in the agreement. Therefore, what was promised in the advertisement does not become binding upon respondent. It is the contention of the respondent that when complainant booked flat on 23.05.2018, building was nearing completion. OC was received on 24.08.2018. On the other hand, it is the contention of the complainant that he could not have a view of his flat till 90% amount was paid. In fact it was a tri-partite agreement under which financier Aditya Birla Housing Finance advanced loan. The respondent claims to have paid pre-EMI interest. It is difficult to believe that complainant was not at all aware of location and surroundings. Question why promises were not incorporated in the agreement is not answered by the complainant. Therefore, contention of the complainant that that he suffered loss when it was discovered that there was slum nereby and there was no view of Kalina University or Bandra Sealink is not acceptable. Complainant is not entitled for any compensation. I therefore, answer point nos. 1 and 2 in negative and proceed to pass following order:

#### **ORDER**

1. Complaint stands dismissed.
2. No Order as to costs.

Mumbai

Date : 23.12.2019

*MB Signed on 24.12.2019*  
**(Madhav Kulkarni)**  
**Adjudicating Officer**  
**MahaRERA**