

BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL, MUMBAI

April 23, 2024 1120 hours

**APPEAL NO. AT00600000011117 OF 2019**

**IN**

**COMPLAINT NO. CC00600000 56645**

**Kamal Kishore Uniyal**

Residing at B-204, Navjeevan, Sector-5,  
Antop Hill, Mumbai 400 037.

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... Appellant

~ versus ~

**Accord Builders**

Ground floor, Omkar E square,  
Off eastern express Highway, Sion.  
Chunabhatti signal, Sion East,  
Mumbai-400 022.

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... Respondent

*Mr. Avinash Pawar a/w. Ms. Namrata Solanki, Advocate for Appellant.  
Ms. Namrata Powalkar, Advocate for Respondent.*

**CORAM : SHRI SHRIRAM R. JAGTAP, MEMBER (J) &**

**DR. K. SHIVAJI, MEMBER (A)**

**DATE : 23<sup>rd</sup> APRIL 2024**

**(THROUGH VIDEO CONFERENCE)**

**JUDGEMENT**

**[PER : DR. K. SHIVAJI, MEMBER (A)]**

Present appeal has been filed under The Maharashtra Real Estate (Regulation and Development) Act, 2016 (in short "the Act") against the order dated 26<sup>th</sup> November 2018 passed by learned Chairperson, Maharashtra Real Estate Regulatory Authority, (MahaRERA) in Complaint No. CC 006 0000000 56645, whereby, Respondent was directed *inter alia* to demand payments only as per

the agreement for sale after passing on GST input tax credit to appellant and issue receipts for the paid amounts showing that the said amount has been paid to the government authorities and offer possession to appellant within 15 days. Accordingly, appellant was also advised to make requisite payments and take possession of the subject apartment.

2. The appellant is the flat purchaser and complainant before MahaRERA. Respondent is the developer, who is constructing real estate project known as "Meridia" located at Kurla, Mumbai (in short "the said project"). For convenience, appellant and respondent will be addressed hereinafter as allottee/ complainant and as promoter respectively.
3. Brief background giving rise to the present appeal is as under; -
  - a. **Complainant's case:** Allottee/ appellant purchased the flat no. B-405 in the promoter's said project. Agreement for sale was also executed and registered by parties on 10<sup>th</sup> August 2018. On account of delay in delivery of the subject flat within the agreed timelines even after the receipt of the occupation certificate of the said project as well as owing to demand for more payments beyond the terms and conditions of the said agreement without issuing receipts of the payments and the carpet area of the said apartment being less than what was promised at the time of booking, captioned Complaint came to be filed by appellant/ Allottee before MahaRERA, seeking various reliefs as mentioned in the said complaint *inter alia* for direction to promoter for delivery of possession of subject flat, compensations for promising false amount of the carpet area at the time of booking but actually providing lesser area of around 225 square feet, revocation of the registration of the said project for indulging in fraudulent practices and fraudulently changing the carpet area, while drafting



- the agreement for sale including for direction for registration of the co-operative society under the provisions of the Act.
- b. Promoters resisted the complaint by submitting before MahaRERA that carpet area of the said flat and payment demands such as GST etc., are being made only in terms of the said agreement for sale and promised to issue receipts for the amounts paid by the complainant.
  - c. Upon hearing the parties, learned Chairperson, MahaRERA passed the impugned order dated 26<sup>th</sup> November 2018 directing promoter *inter alia* to handover possession of the subject apartment to allottee within 15 days as elaborated here in above.
  - d. Aggrieved by this order of MahaRERA, the complainant has preferred the captioned appeal, seeking various reliefs including to quash and set aside the impugned order and to order for compensations for promising false amount of the carpet area at the time of booking and actually providing lesser area of about 225 square feet, for refund of the money accepted in the name of GST by promoter and to revoke the registration of the said project for indulging in fraudulent practices and for registration of the co-operative society.
4. Heard learned counsel for parties in *extenso*.
5. At the outset of his oral arguments, learned counsel for appellant complainant upon instructions submits that complainant is pressing relief only for the compensations against promoter for providing lesser carpet area than the area promised at the time of booking and abandoned the remaining reliefs sought earlier, while filing the captioned appeal by citing following grounds; -
- a. Impugned order has no correlation with the complaint as the reliefs provided therein have neither been sought nor comprehended in the complaint.



- b. MahaRERA did not follow the principles of natural justice and has disposed of the said complaint on the first hearing itself even in the absence of the Advocate of Complainant and this has caused by miscommunication by the MahaRERA staff.
- c. MahaRERA disposed of the complaint without satisfying as to whether the GST is applicable or not for the said transaction and without specifically concluding that the demand for GST is illegal/ arbitrary or not and directed to pay as per the agreement without specifically clarifying nor quantifying it. As such, MahaRERA has not considered whether GST amounts are payable to the tax authorities by Promoter or not, even though Complainant's case is that GST is not payable in the instant case and therefore, the demand by Promoter for GST is illegal and arbitrary. Several other reliefs sought in the Complaint have not been considered and the impugned order remains silent including about the need for adjudication on the compensations for promising false extent of carpet area while booking the subject flat as well as the prayer for revocation of the registration of the said project.
- d. Further sought for compensations owing to the loss caused to complainant due to offer of lesser carpet area than that of 71.21 sq. mtr. which was orally promised, while booking the subject flat based on the followings; -
  - i. The first challan dated 18.07.2018, issued by the Promoter itself contains 71.21 sq. mtr. of carpet area of the subject flat.
  - ii. Even the draft agreement sent by the Promoter itself by its e-mail dated 19.07.2018 also promised for the same carpet area of the flat and even by other similar emails sent by the Promoter.
  - iii. Booking form filed by the Promoter in its reply in support of the area promised at the time of booking is fraudulent and it amounts to perjury because, promoter has taken Appellant's signatures on the



- blank/ semi-blank form, which is apparent on the face of the document itself. This document clearly shows two different handwritings and pens, which have been used while filling of this booking form.
- iv. It further shows that details of the carpet area and certain other vital details have been written thereon are by different pens.
  - v. The signature of the Appellant is taken on 12.11.2016 and then, after filling the form, Promoter/ its representative has signed thereon are backdated as that of 29.10.2016.
  - vi. Neither any copy of the said form was handed over to the complainant nor any acknowledgement was provided by Promoter in its reply and the booking form was never submitted before MahaRERA. As such, Allottee is made aware of the existence of the booking form for the first time.
  - vii. Moreover, the booking form has been superseded by the final draft agreement dated 19.07.2018.
  - viii. Promoter has taken Appellant's signatures on the allotment letter on 21.12.2018 after executing the agreement of sale on 10.08.2018, which is apparent on the face of the document. The said signature of the Appellant is dated 21.12.2018 after complaint was filed on 20.10.2018.
  - ix. The blank allotment letter sent by email dated 12.07.2018 is after sending draft agreement on 26.06.2018 by Promoter to Appellant and is only after making several requests. This proves that no allotment letter was issued till 12.07.2018 or even till the agreement for sale was executed on 12.10.2018. Additional reply filed by the Promoter containing challan details was sent to appellant on 04.08.2018 in support of the promised area. Therefore, the challan dated 18.07.2018 is fraudulent and frivolous.



x. Allotment letter dated 15.02.2018 of the flat no.405 issued to another allottee Mr. Amit Dua is also that of 759 sq. ft.

**6.** Per Contra, learned counsel for promoter submits that; -

- a. Flat no. 405 in Tower/ Wing B in the project "Meridia", which is referred by complainant is not registered under the Act and therefore, this will not come under the jurisdiction of RERA because of non-registration.
- b. The Appeal has become infructuous because Appellant Allottee has already taken possession of the subject flat on 21.12.2018 by making payment of the balance amounts after satisfying himself in all aspects of the flat. The very act of Appellant of taking possession in consonance with the impugned order demonstrates that Appellant has accepted the impugned order. Even then, the captioned Appeal has been filed thereafter, with malafide intent as an attempt to snatch some favourable order. Therefore, the Appeal is liable to be dismissed at the threshold itself.
- c. The dispute with respect to the alleged carpet area deficit is false because the Promoter has allotted the subject flat of the same carpet area as stipulated in Clause no. 3.2 of the agreement for sale, amounting to 50.29 sq. mtr. and additional area allotted in the form of Duct and Service slab is of 0.31 sq. mtr. as stated in clause 27 of the agreement, aggregating to 544.66 sq. ft. of carpet area.
- d. Carpet area mentioned in the application/ booking form, allotment letter and agreement for sale is same as that of 50.29 sq. mtr. and additional area of 0.31 sq. mtr. aggregating to 544.66 sq. ft.
- e. Possession letter dated 19.12.2018 clearly stipulates that Appellant allottee has accepted possession after duly satisfying and confirming that building has been constructed in accordance with the sanctioned plans as per the agreement for sale and has received possession of



the flat after being fully satisfied about it being in good condition in all aspects *inter alia* also about the extent/measurement of the carpet area. As such, complainant has not made any single allegation regarding alleged deficit carpet area, while taking possession. Therefore, the allegation made subsequently in this regard is baseless, false and frivolous made with a malafide intention.

- f. Therefore, the captioned Appeal is infructuous and liable to be dismissed with costs.
7. After considering the pleadings and submissions advanced by the respective parties, material on record, short point that arises for our determination is whether Appellant allottee is entitled for compensations on account of alleged deficit in the carpet area as sought in the Appeal under the law, to this, our finding is in the negative for the reasons to follow: -

### **REASONS**

8. It is not in dispute that complainant has booked the subject flat in the promoter's said project and has also executed/ registered the agreement for sale on 10.08.2018, wherein clause no.3.2 clearly reveals that the carpet area of the subject flat is 50.29 sq. mtrs. It is also not in dispute that Appellant allottee has taken possession of the subject flat without any protest by confirming the possession offered by promoter, vide its allottee's own signature dated 21.12.2018 as on page 151 of the record.
9. However, Appellant Complainant is claiming compensation for the alleged deficit in the carpet area by citing primarily two documents issued by the Promoter namely (a) challan dated 18.07.2018, which shows the carpet area as that of 71.21 sq. mtr. (767 sq. ft.) and (b) the clause 3.2 of the draft agreement sent by Promoter on 19.07.2018 to Complainant, shows that the carpet area is of 71.21. sq. mtrs..



**10.** However, the claim made by the Appellant for compensation for the loss owing to the purported carpet area deficit is legally not sustainable on account of the followings; -

a. Clause no. 3.2 of the agreement for sale duly executed and registered among the parties clearly reveals that the carpet area promised by the Promoter is that of 50.29 sq. mtrs.

b. Moreover, Clause nos.63 and 64 of the said agreement for sale dated 10.08.2018, which are duly accepted, executed and registered by the parties further clearly stipulates as hereunder; -

*"63. Entire Agreement :- This Agreement, along with its schedules, constitutes the entire Agreement between the Parties with respect to the subject matter hereof and supersedes any and all understandings, any other agreements, allotment letter, correspondences, arrangements whether written or oral, if any, between the Parties in regard to the said Flat(s)/ Apartment(s).*

*64. Right to Amend: - The agreement may only be amended through written consent of the Parties."*

c. The agreement of sale is duly executed without any comments/ protest by Complainant and in view of the stipulations mentioned in Clause no.63 and 64 therein, the agreement for sale will supersede all the previous documents. The said two documents based on which Appellant is making claims for compensation on account of the alleged deficit in carpet area are mainly based on the challan dated 18.07.2018 and on the draft agreement for sale dated 19.07.2018. These documents are clearly that of the prior date of the execution/ registration of the said agreement for sale. Therefore, the captioned sale transaction will be governed by the terms and conditions of the duly executed/ registered agreement for sale and not based on the

- said previous documents as being referred and relied upon by Appellant Complainant for seeking the relief of compensations.
- d. Moreover, while taking possession of the subject flat on 21.12.2018, based on the possession offer given by the Promoter, vide its possession letter dated 19.12.2018, Appellant Complainant has not raised any such protest/ disputes/remarks nor has made any claims/ grievance whatsoever, at the time of taking possession. It is pertinent to note that the Appellant has filed the captioned Complaint seeking *inter alia* compensations for the alleged carpet area deficit before MahaRERA on 20.10.2018, even after approximately of 1.5 - 2 months of the date of the complaint, while accepting the possession of the flat without any protest/ claim whatsoever in December 2018.
- e. Even the allotment letter dated 24.11.2016 shows the carpet area of the subject flat as of 50.29 sq. mtr. and Complainant has signed it on 21.12.2018 (after execution of said agreement of sale and after the receipt of the possession) without any dispute/ grievance nor any comments about the alleged carpet area deficit. In addition, the booking application form (page no. 58-61) is seen initialed on every page and is signed by Appellant Complainant dated 12.11.2016. This also reveals that the carpet area of the subject flat is 544.66 sq. ft.
- f. The Appellant Allottee has paid the stamp duty based on the approved floor plan, which was attached along with the agreement for sale. It is pertinent to note that the payment of the stamp duty is generally based on *inter alia* on the value/ ready reckoner rate of the subject flat. There is no dispute that the possession of the subject flat has been delivered as per the approved plan after the receipt of the Occupancy Certificate from the Competent Authority. Therefore, Appellant Allottee has not made out a case that the stamp duty was paid on the specific extent of the carpet area of the flat.



- g. Alleged grievance of the Complainant that the agreement for sale was signed without reading it, is also not convincing. It is more particularly in the background that the Appellant Allottee is an employee of the Government of India based in Delhi. Moreover, complainant was free to put his comment, while signing the agreement for sale at the time of registration or at the time of putting his signature on the booking application form. Perusal of the record reveals that allottee complainant has not put any comment nor any protest in writing. Even though the complaint was filed on 20<sup>th</sup> October 2018.
- h. The contention of the appellant that final draft will supercede over the booking application form will also not hold water, because there is a specific clause more particularly clause no. 63 in the final executed and registered agreement for sale which shows that it will supercede any and all understandings, any other agreements, allotment letter, correspondences, agreements whether written or oral, if any between the parties.
- i. Even the challan sent by Promoter vide its email dated 04.08.2018, as on page no.251 of the record also clearly shows that the carpet area of the subject flat is 50.29 sq. mtr. (541 sq. ft.). The receipt of this challan has not been denied by the Appellant Complainant.
- j. Therefore, the alleged grievance of the Complainant is prima facie devoid of substance, lack merits, appears to be an afterthought and therefore, is not convincing.
- 11.** In view of the foregoing discussions and findings herein above, we are of the considered view that none of the grounds raised by appellant in the captioned appeal are sustainable in the eyes of law and promoter has effectively controverted the grounds raised in the appeal by the appellant. Therefore, captioned appeal is devoid of merits, lacks substance and allottee is not entitled to the reliefs sought in the appeal.



Consequently, the appeal having no merit, liable to be dismissed. Accordingly, we answer the solitary point in the negative and proceed to pass the order as follows; -

**ORDER**

- (i) Captioned Appeal No. AT0060000000 11117 in Complaint No.CC006000000056645 stands dismissed.
- (ii) No order as to costs.
- (iii) In view of the provisions of Section 44(4) of the Act of 2016, a copy of the Judgment be sent to the parties and MahaRERA.



**(DR. K. SHIVAJI)**



**(SHRIRAM R. JAGTAP, J)**