

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

COMPLAINT NO: CC006000000000117

Ashwin Shetty  
Sonal Ashwin Shetty ... Complainants.

**Versus**

Ultra Space Developers Private Limited  
Bhagwat Sharma  
Placid Naronha  
( Insignia) ... Respondents.

MahaRERA Regn: P51800002313

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

**Appearance:**

Complainant: M/s. Solicis Lex.  
Respondents: Mr. Bharat Jain i/b M/s.  
Hariyani & Co.

**Final Order.**

12<sup>th</sup> April 2018

The complainants booked flat no. 801 admeasuring 2600 sq.ft. situated on 8<sup>th</sup> floor in respondents' project 'Insignia' situated at village Kolkalyan, Taluka Andheri, Santacruz (East), Mumbai for Rs. 4,13,09,400/- with four car parking. They paid Rs. 11,00,000/- at the time of signing booking form on 23.06.2010 and thereafter paid Rs. 30,05,448/- on 26.07.2010. Thus, they paid Rs. 41,05,448/- and thereafter the respondents issued allotment letter on 12.08.2010. The respondents did not execute the agreement for sale, though, they were requested several times.



The respondents did not have commencement certificate for 8<sup>th</sup> floor till 06.08.2016. They sent a letter dated 14.02.2017 to the complainants informing them that they obtained approved plans and commencement certificate till 13<sup>th</sup> floor of the building. However, they unilaterally changed the size of the flat from 2600 sq.ft. to 2760 sq.ft. and asked the complainants to pay increased price. The respondents asked the complainants to pay Rs. 2,50,51,968/- within 30 days from 15.02.2017. Thereafter by their reminder letter dated 15.03.2017, they asked the complainants to pay the aforesaid amount with interest at the rate of 21 % per annum. Thereafter, legal notices were exchanged between the parties. The grievance of the complainants is that the respondents delayed the project by seven years. They changed the plans unilaterally without their consent and also breached the terms of the allotment letter by demanding the balance consideration as per agreement which they never executed. Therefore, the complainants have been claiming compensation for change in plans without their consent, execution of agreement for sale and refund of their amount. However, they have not pressed the ground that the respondents have contravened Section 7 by indulging in unfair trade practice by promptly terminating their allotment by allotment letter dated 12.08.2010.

2. The respondents have filed their reply wherein they have denied all the allegations levelled against them by the complainants. In short, they contend that complainants are not sure whether they want to continue in the project and want possession of the flat or they want to quit and they want refund of their amount. They have taken inconsistent stands. They further contended that the complainants have paid only around 9.42% of the total consideration and therefore, there is no question of executing the agreement for sale. In the absence of the agreement for sale there is no concluded contract between the parties. The flat is almost ready and more than 85% consideration is due from the complainants. Therefore, they request to dismiss the complaint.

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

POINTS	FINDINGS
1. Whether the respondents changed the sanctioned plan without previous written consent of at-least 2/3 <sup>rd</sup> of allottees including the complainants and thereby contravened Section 14 of RERA?	Affirmative.
2. Whether the respondents failed to execute the agreement for sale and register it in complainants' name even after receiving more than 10% of total consideration of the flat as required by section 13 of RERA?	Negative.
3. Whether the respondents have agreed to hand over the possession of the flat on 23 <sup>rd</sup> June 2012?	Negative.
4. If yes, whether the respondents failed to give the possession of the flat agreed date?	Negative.
5. Whether the respondents indulged in unfair practice by terminating allotment by their letter dated 12.08.2010?	Not pressed.

#### REASONS

##### Point no.1.

4. The complainants allege that the respondents have changed the sanctioned plan. For this purpose, they have relied upon the original plan marked Exh. 3 and the revised plan Exh. 14 of their compilation. The allotment letter marked Exh. 5 of the said compilation shows that the area of flat no. 801-F-Wing is 2600 sq.ft. Demand note produced at Exh. 10 of the compilation clearly shows that its area is 2760 sq.ft. After taking into consideration these documents, I find that the plan has been changed and the area of the flat has increased. Not only that, the price of the flat has also

increased. This fact has also been admitted by the respondents by their notice reply dated 21<sup>st</sup> June 2017. The respondents have not produced any evidence to show that they took the previous consent of the allottees including the complainants for changing the plan. Hence, I hold that the respondents have changed the sanctioned plan without previous written consent of the allottees and thereby contravened Section 14 of the Act.

5. Section 61 of RERA provides that if any promoter contravenes any other provisions of the Act, other than that provided under Section 3 or Section 4 or rules and regulations made thereunder, he shall be liable to penalty which may extend upto 5% of the estimated cost of the real estate project as determined by the Authority. Complainants submit that they are interested in getting refund of their amount instead of penalising the promoter. Section 71 of the Act makes the provision for appointing adjudicating officer for adjudging compensation under Sections 12, 14, 18 & 19. Therefore, I find that the compensation can be given if Section 14 is contravened. Section 72 empowers the adjudicating officer to consider the factors mentioned in the Section for adjudging the compensation or interest. After taking into consideration all these provisions of the Act, there remains no doubt in my mind that I can pass the order directing the respondents to refund the amount of the complainants with interest by way of compensation at the rate prescribed under the Rules namely 2% above the SBI's highest marginal cost of lending rate which is currently 8.05% from the date of receipt of the amount especially when the complainants want to withdraw from the project.

**Point no.2.**

6. The complainants themselves have mentioned in their complaint that at the time of signing the booking form they paid to respondents Rs. 11,00,000/- on 23<sup>rd</sup> June 2010 and thereafter they paid Rs. 30,05,448/- by their cheque dated 26.07.2010. Thus, they paid Rs. 41,05,448/- against the total consideration of Rs. 4,13,09,400/-. This payment is 9.93% of the total

  
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consideration. Section 13 of RERA prohibits the promoter from accepting more than 10% of the cost of apartment without first entering into written agreement for sale and register it. Since the payment is below 10% of the total value of the flat, Section 13 of RERA is not attracted. Hence, the complainants have failed to make out this ground.

**Point Nos. 3 & 4:**

7. The complainants have been seeking the refund of their amount with interest under Section 18 (1) (a) of the Act. It provides that if the promoter fails to hand over possession of an apartment, plot or building in accordance with the terms of the agreement for sale, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, to return the amount received by him with interest at such rate as may be prescribed including compensation. Complainants do not have agreement for sale. Allotment letter cannot be treated as agreement of sale as held by the three Judge Bench of Hon'ble Supreme Court in Hansa V. Gandhi-v/s-Deep Shankar Roy, AIR 2013(SC)2873. Moreover, the complainants have failed to prove that the respondents agreed to deliver the possession of the flat on 23<sup>rd</sup> June 2012. Hence, the complainants are not entitled to get any relief under Section 18 (1)(a) of RERA.

**Point No. 5:**

8. The complainants have not pressed this point.

**Relief:**

9. In view of my findings recorded regarding the contravention of Section 14 of the Act, in the facts and circumstances of the case I think it fit that the order of refunding the complainants' amount with interest will serve the ends of justice and therefore, I refrain myself from imposing penalty under Section 61 of the Act on the respondents.





Hence, I proceed to pass the following order.

### ORDER

Respondents shall pay the complainants Rs. 11,00,000/- and Rs. 30,05,448/- with simple interest at the rate of 10.05% per annum from 23.06.2010 and 26.07.2010 respectively till they are refunded.

Respondents shall pay the complainants Rs. 20,000/- towards the cost of complaint.

The charge of the aforesaid amount shall be on the flat booked by the complainants till the satisfaction of their claim.

Mumbai.

Date: 12.04.2018.



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