

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

COMPLAINT NO: CC006000000023003

Mahaveerprasad Chavda

...

Complainant

Versus

Kesar Realty Pvt. Ltd.

...

Respondents

MahaRERA Regn.No. P52000010572

Corum:

Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant was himself present along with Mr. Nithianandan Balagopalan, Adv. (Nithia & Co)

Respondents represented themselves along with Mr. Parag M. Tilak, Adv.

**Order - Rectified**

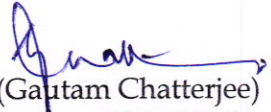
17th April 2018

1. The Complainant has stated that he purchased an apartment No. 1601, 16<sup>th</sup> Floor, in Building No. 6 named 'Moana' in the Project 'Kesar Exotica' situated at Sector 10, Kharghar, Navi Mumbai from the above mentioned Respondent. The Complainant alleged that, while booking the apartment, the Respondent had shown him the typical floor plan - brochure in which floor 2<sup>nd</sup> - 17<sup>th</sup> were mentioned. However, the Respondent, though, had approval up to 14<sup>th</sup> floor only, sold the said flat which did not have the requisite statutory permission from the Competent Planning Authority to construct the upper 3 floors i.e. 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>. The Complainant further claimed that due to illegal construction of the 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup> floors and also due to violation of height restriction, the Airport Authority of India and the Planning Authority - CIDCO have issued notices to the Respondent for demolition of illegal construction, if the floors are not regularized by November, 2018. The Complainant has approached this Authority with the following prayers:

- a) to direct the Respondent to refund the entire sum paid to the Respondent together with interest and compensation under Section 18 of the Real Estate (Regulation and Development) Act 2016, as he wants to withdraw from the Project.



- b) to direct the Respondent to disclose 'full and true' facts of pending litigations in the Project
  - c) to direct the Respondent to form the Cooperative Housing Society of allottees
2. During the hearing, the advocate for the Respondent argued that, as per the request made by the Complainant, they have allotted apartment No. 502 in the Building No. 5 named 'MESI' and executed registered agreement on 12<sup>th</sup> May 2017 in the same Project instead of apartment No. 1601, and accordingly the Complainant has already taken the possession of apartment No. 502. Therefore, he stated, the question of withdrawing from the project does not arise. In regard to the alleged illegal construction of 15<sup>th</sup>, 16<sup>th</sup> and 17<sup>th</sup> floor of Building No. 6, he stated that one of the other apartment purchasers has filed a writ petition against the grant of OC and other consequential reliefs. Further, the Respondent submitted that they have filed their reply in the said petition and clarified that the alleged illegal construction is not an illegal construction and that the same is within the permissible plot area as well as the FSI available, but in respect of the same, approval of AAI is pending.
3. Regarding formation of Housing Society, the Advocate of the Respondent mentioned that they have already initiated the process of formation of Housing Society. However, they are not getting the necessary cooperation from the allottees.
4. In view of the above facts, since the Complainant has already taken possession of his apartment, the provisions of section 18 of the said Act are not applicable. The Respondent is, hereby, directed to complete the procedure for formation of society within 30 days from the date of this order. The Respondent is further directed to disclose, on their webpage, all pending litigations and orders issued by Competent Authorities like Airports Authority, CIDCO etc., within 15 days from the date of this Order.
5. Consequently, the matter is hereby disposed of.

  
(Gautam Chatterjee)  
Chairperson, MahaRERA