

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

**1. COMPLAINT NO: CC006000000057404**

Krish Vaswani  
Ravi Harikisan Vaswani

...

Complainants

Versus

Realgem Buildtech Private Limited  
MahaRERA Regn. No. P51900003268

...

Respondent (1)

Nabil Yusuf Patel  
Rajiv Agarwal  
Jagat Anil Killawala  
Nasir Mahmud Rafique  
Bhishma Realty Ltd  
Kingmaker Developers Pvt Ltd

...

Respondent (2)

...

Respondent (3)

...

Respondent (4)

...

Respondent (5)

...

Respondent (6)

...

Respondent (7)

**2. COMPLAINT NO: CC006000000078640**

Kingmaker Developers Pvt Ltd  
MahaRERA Regn. No. P51900003268

...

Complainant

Versus

Krish and Ravi Vaswani

...

Respondents

**3. COMPLAINT NO: CC006000000057395**

Mohit Vaswani

...

Complainant

Versus

Realgem Buildtech Private Limited  
MahaRERA Regn. No. P51900003268

...

Respondent (1)

Nabil Yusuf Patel  
Rajiv Agarwal  
Jagat Anil Killawala

...

Respondent (2)

...

Respondent (3)

...

Respondent (4)



Nasir Mahmud Rafique	...	Respondent (5)
Bhishma Realty Ltd	...	Respondent (6)
Kingmaker Developers Pvt Ltd	...	Respondent (7)

**4. COMPLAINT NO: CC006000000078641**

Kingmaker Developers Pvt Ltd	...	Complainant
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MahaRERA Regn. No. P51900003268

Versus

Mohit and Janak Vaswani	...	Respondents
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**5. COMPLAINT NO: CC006000000057394**

Varun Waswani	...	Complainant
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Versus

Realgem Buildtech Private Limited	...	Respondent (1)
MahaRERA Regn. No. P51900003268		

Nabil Yusuf Patel	...	Respondent (2)
Rajiv Agarwal	...	Respondent (3)
Jagat Anil Killawala	...	Respondent (4)
Nasir Mahmud Rafique	...	Respondent (5)
Bhishma Realty Ltd	...	Respondent (6)
Kingmaker Developers Pvt Ltd	...	Respondent (7)

**6. COMPLAINT NO: CC006000000078638**

Kingmaker Developers Pvt Ltd	...	Complainant
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MahaRERA Regn. No. P51900003268

Versus

Varun and Gehena Vaswani	...	Respondents
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**Corum:** Shri. Gautam Chatterjee, Chairperson, MahaRERA

**Appearance: -**

i) Mr. Harshad Bhadbhade, Adv. a/w Mr. Anwar Landge, Adv.; Ms. Sonam Singh, Adv. and Mr. Sidhharth Pimpale, Adv.; represented: -



Complainants in complaint nos. 1, 3 and 5.  
Respondents in complaint nos. 2, 4 and 6.

ii) Mr. Abir Patel, Adv. (i/b. Wadia Ghandy & Co.) a/w Ms. Gayatri Tikale, Authorised representative; represented: -

Complainants in complaint nos. 2, 4 and 6.  
Respondents in complaint nos. 1, 3 and 5.

### Order

December 23, 2019

1. The below Order deals with cross complaints filed by the parties. For the sake of brevity, the Promoters and related parties are referred to as the Respondents and the Allottees have been referred to as the Complainants.
2. The Complainants have booked apartments in the Respondent's project 'DB Crown - Phase 1' situated at Prabhadevi, Mumbai through Application Forms. The Complainants have alleged that at the time of booking the Respondent had confirmed that possession of the said apartment will be handed over by June 30, 2019 with a grace period of 12 months whereas in the draft agreement for sale the Respondent has now stated the date of possession as December 31, 2021. They have also stated that even after having paid considerable amount towards the consideration price, the Respondent has failed to execute and register the agreement for sale and are demanding additional amounts towards the increased carpet area of the said apartment even though no such change has taken place.
3. Therefore, the Complainants prayed that the Respondents be directed to:
  - i. directed to give the possession of the apartments on the promised date of possession as per Allotment Letter i.e. by June 30, 2020
  - ii. to mention the role of Respondent no. 7 in the Agreements for sale,
  - iii. to amend the possession date, payment schedule and total consideration price in the draft agreement for sale as promised and register and execute agreements for sale as per Section 13 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the *said Act*).



- iv. to provide all the annexures as mentioned in draft agreement for sale before registering the agreements,
- v. to provide the amended plan if there is any change and be held liable under Section 14 of the said Act

Further they prayed that the Respondents be held liable for levying GST @12% which is bad in law and illegal and consider the same with respect to anti profiteering and the Complainants should also be compensated for the legal expenses to the tune of Rs.1,00,000/- which they have incurred in filing the complaint and any other and further order in the interest of justice.

4. Respondent (7) has filed cross complaints stating the Complainants have failed to come forward to execute and register the agreements for sale. Further, they have stated that all the Complainants are family members and are a part of a large investor group, who had also made bookings in the project and also filed identical complaints. Further, they have stated that until the date of filing of the present complaints, none of the Complainants had raised a single protest or dispute of any kind whatsoever and voluntarily made payments until June 22, 2017 towards their apartment. They have also stated that the Complainants are misusing the mandatory and restrictive requirements of section 13 of the said Act to avoid making further payments and have now belatedly come up with a whole host of grievances, that have never existed nor communicated to the Respondents until the filing of the aforesaid complaints. Further, they stated that in any case, the complaints are infructuous and premature since, without prejudice, the date of possession of the apartments is June 30, 2020 in terms of application form dated July 1, 2015. Therefore, they stated that since the due date of handing over possession has not yet reached, any complaint made with respect to any alleged delay of possession or any related issues needs to be dismissed by this Hon'ble Authority. They further stated that under section 19 (6) of the said Act, the Complainants are under an obligation to make payments agreed between the parties. In the present case, evidently, the Complainants have no intention of making the agreed payments and are evidently trying to avoid making payments. Therefore, they stated that the Complainants are liable to pay interest at such rate as may be prescribed for any such delay, under section 19 (7) of the said Act.



5. The Learned Counsel for Respondent (7) submitted that the Respondents are willing to execute and register the agreements for sale; and that Respondents have on previous occasions called upon the Complainants to execute and register the agreement for sale. He also submitted that the said Application Forms provided for the increase in the consideration amount in case of an increase in the carpet area of the said apartments.
6. Respondent (7) has made the following written submissions via an affidavit in reply in respect the present Complaints:
- i. *that the Complainant has, during the course of these proceedings, limited his case merely to the allegation that there has been no change in the carpet area of the subject flat and not pressed any of the other allegations/reliefs made/sought by him in the captioned complaint.*
  - ii. *I say that I am filing this affidavit for the purpose of dealing with the limited allegation of the Complainant regarding variation in carpet area without dealing with the complaint in extenso. In any event, for sake of brevity, I deny each and every allegation, contention and insinuation made by the Complainant in the present complaint, in toto.*
  - iii. *that so far as the subject flat is concerned, the same was provisionally applied for by the Complainants by and under an Application Forms dated 1st July 2015 (hereinafter referred to as the Application Forms), that at the relevant time, the parties were governed by the Maharashtra Ownership of Flats Act, 1963 ("MOFA").*
  - iv. *that the carpet area mentioned in the Application Forms was 1833 square feet as per MOFA. I say that after the introduction of the said Act, a new definition of carpet area was introduced under section 2(k). The carpet area of the subject flat, as was stated in the provisional application form, would translate to 1875.84 square feet as per the newly introduced definition of carpet area under section 2(k) of the said Act.*
  - v. *It is pertinent to note that the carpet area of the subject flats, as stated in the afore-stated application form, was subject to variation of up to 5% as envisaged under clause 6.4 (wrongly numbered as 6.3) of the application form. Clause 6.4 of the application form reads thus*



- vi. *"The Applicant(s) is aware that the dimension, shape and size of the Apartment will be in accordance with the building plans that will be finally sanctioned by the MCGM and/or other statutory body, which may be +/- 5% in the carpet area, as presently proposed on account of statutory bodies approval and/or any modifications to Location/Floor /Wing /Specifications/Facilities/Amenities or as necessary to the Apartment/Building/Wing/Car Parking Area/ Layout and /or Project being carried out, any time prior to and/or upon the grant of Occupation Certificate by the Competent Authority. The Applicant(s) will be duly intimated in writing by the Company or the Developer of such changes and of the difference in the price of the Premises to be paid by him or adjusted by the Company /Developer as the case may be. The Applicant(s) hereby gives his/her irrevocable consent to all of the above. In the event the floors of the wing in which the Apartment is situated are reduced or increased then the installments attributable to such reduced/increased floors shall be distributed proportionately in all the balance installments payable above post intimation of such reduction."*
- vii. *Therefore, on perusal of clause 6.4 of the aforesaid provisional form, it becomes clear that in the event that the carpet area of the subject flat increased by up to 5%, the Respondent would be entitled to charge the Complainant for the increased area, and conversely if the carpet area reduced up to 5%, in such event, the Respondent would refund proportionate monies to the Complainant. I state that the Complainant therefore agreed to pay additional consideration if there was an increase in the carpet area.*
- viii. *Owing to construction exigencies and methodology (which is fairly established in the real estate market), the column width in a real estate project reduces as you go higher such that the width of columns of flats in the higher floors is lesser than flats in the lower floors. This is because the columns in the higher floors need to have lesser load bearing capacity. At the time of execution of the afore-stated application form, the exact column width of the subject flat was not known as construction was at an initial stage and in determining the carpet area thereof, the standard column width was considered. Similarly, the thickness of the internal walls within the subject flat has reduced leading to increment of 4.8 square feet carpet area. It is because of construction exigencies inter alia of this nature, that a provision was made in the*



*application form for payment of excess consideration on account of increase in carpet area.*

- ix. Accordingly, on account of reduction in column width and thickness of internal walls of the subject flat, the carpet area of the subject flats has increased by 31.3 square feet.*
- x. The fact of reduction in column width resulting in increment of carpet area in the subject flat is evident when the column width in the layout plan annexed to the application form dated 1st July, 2015 is compared to the column width in the building construction plans of 2016, both of which are annexed hereto and marked as Exhibits A and B, respectively.*
- xi. I further submit that the carpet area of the subject flats was also increased due to replacement of the brick-wall with a glass wall curtain. I say that in the year 2015, the Respondents envisaged construction of building facade with brick walls. Owing to construction exigencies, the Respondents are now putting up glass wall curtains, thereby leading to an increase in the carpet area by 30.7 square feet as the area covered by the brick walls are now vacant thereby increasing the carpet area of the subject flat. A diagram demonstrating the increment in carpet area owing to induction of glass wall curtain is annexed hereto and marked as Exhibit C.*
- xii. I submit that as a result of column width reduction, change in internal wall thickness and introduction of glass wall curtain, the carpet area of the subject flats has increased by approximately 60.6 square feet as per the definition of carpet area under the said Act. This translates to 62 square feet as per the MOFA. This increase in carpet area owing to construction exigencies, aggregates to a minor 3.4% increase if calculated on carpet area under MOFA which is a 3.2% increase in carpet area as per the said Act, which is well within the 5% limit envisaged under clause 6.4 (wrongly numbered as 6.3) of the provisional application form.*
- xiii. Further, and without prejudice, I submit that even the model form agreement notified under the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 makes a provision for variation of carpet area up to 3%. Clause 1(g) of the model form reads thus:*



*"The Promoter shall confirm the final carpet area that has been allotted to the Allottee after the construction of the Building is complete and the occupancy certificate is granted by the competent authority, by furnishing details of the changes, if any, in the carpet area, subject to a variation cap of three percent. The total price payable for the carpet area shall be recalculated upon confirmation by the Promoter. If there is any reduction in the carpet area within the defined limit then Promoter shall refund the excess money paid by Allottee within forty-five days with annual interest at the rate specified in the Rules, from the date when such an excess amount was paid by the Allottee. If there is any increase in the carpet area allotted to Allottee, the Promoter shall demand additional amount from the Allottee as per the next milestone of the Payment Plan. All these monetary adjustments shall be made at the same rate per square meter as agreed in Clause 1(a) of this Agreement."*

- xiv. *Therefore, without prejudice, I submit that even the said Act and the rules made thereunder recognise that carpet area of a flat can vary up to 3% and in the event of an increase up to 3% the promoter/developer is entitled to charge the allottee increased consideration and in the event of a decrease, the promoter is to refund the excess amounts paid, with interest.*
- xv. *It is pertinent to note that since the slab for the subject flat, which is effectively the entire floor plate of the flat, has already been cast, the Respondent is in a position to account for increase in area owing to construction exigencies at this stage and incorporate it in the agreement for sale at this stage itself, since the agreement for sale has not been executed by the Complainant till date. The Complainant is free to measure the subject flat.*
- xvi. *It is submitted that in the event that the Complainants had executed the agreements for sale prior to the casting of the slab for the subject flat, the carpet area stated in the agreement for sale would have been that what is stated in the application form i.e. 1833 square feet and the agreement would have included a clause similar to clause 6.4 (wrongly numbered as 6.3) of the afore-stated Application Form, entitling the Respondent to charge extra for any increment in carpet area up to 5% or refund monies in case of reduction. However, as on date, since the slab for the subject flat is already cast, the Respondent is already in a position to account for the variation in carpet area and mention the same in the agreement for sale itself.*



- xvii. *I state and submit that as per the application forms dated 1st July, 2015, the carpet area of the subject flat admeasures 1833 square feet in terms of the MOFA which translates to 1875.84 square feet carpet area in terms of the said Act. I say that this was subject to 5% variation, owing to construction exigencies, in terms of clause 6.4 (wrongly numbered as 6.3) of the application form. As on date, having accounted for the construction exigencies in terms of clause 6.4 (wrongly numbered as 6.3), the carpet area of the subject flats as per MOFA is 1895 square feet, which translates to 1936.44 square feet (equivalent to 179.89 square meters) in terms of the said Act. Annexed hereto and marked as Exhibit D is the architect's certificate stating the present carpet area of the subject flat, which is what has been declared to this Authority at the time of registration of the project as well.*
- xviii. *It is submitted that the Respondent is both contractually and legally entitled to charge for increase in carpet area in the circumstances mentioned above.*
- xix. *Pertinently, several without prejudice discussions have taken place between the parties during the pendency of this complaints. Various emails have been addressed by (or on behalf of) the Complainant to the Respondents. It may be noted that all communication and exchange of documents was without prejudice and subject to outcome of these proceedings. In any event, I say that all queries and information, time and again sought by (or on behalf of) the Complainant, have been answered by the Respondents.*
- xx. *In light of what has been stated hereinabove, I say that it is in the spirit of section 13 of the said Act and in the interest of the Complainants, that the be immediately directed to execute an agreement for sale in respect of the subject flat stating carpet area of 1936.44 square feet as per said act along with revised consideration, and have the same registered at the earliest and make all payments that the Complainant is due and liable to make to the Respondent.*
7. If the said Application Forms, as executed between the parties, provided for the change in the carpet area leading to a proportionate change in consideration amount, and the said change in carpet area is confirmed by the Architect's Certificate as uploaded at the time of registration of the said project, then the parties shall be bound



by the terms and conditions of the said Application Forms. Further, if the foot print of the apartment hasn't changed then the Respondent cannot demand any additional amounts towards the consideration of the said apartment.

8. In view of the above facts:

- i. the parties are directed to execute and register the agreement for sale as per the provisions of section 13 of the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations made thereunder within 30 days from the date of this Order;
- ii. Respondents to provide relevant annexures along with sale agreements;
- iii. Respondents shall pass on applicable GST input credit tax to Complainants;
- iv. the date of handing over possession shall not exceed the revised proposed date of completion stated by the Respondent in their registration webpage;
- v. neither party is eligible for any interest payment;
- vi. No costs awarded to either party.

9. Consequently, the matters are hereby disposed of.



Gautam Chatterjee

(Chairperson, MahaRERA)