

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

COMPLAINT NO: CC006000000001816

Bharat Mistry

... Complainant.

Versus

M/s. Realgem Buildtech Pvt. Ltd.
(DB Crown-Phase 2)

... Respondents.

MahaRERA Regn: P51900006367.

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

Appearance:

Complainants: In person.

Respondents: Adv. Abir P. i/b Wadia
Gandhi & Co.

Final Order.

10th April 2018.

The complainant has filed the complaint under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (RERA) by contending that the respondents did not hand over the possession of his booked flat No. 1803, Tower-C, Pavilion A, D.B. Crown project situated at Mahim Division, Mumbai. However, the complainant does not have the agreement for sale to show the agreed date of possession. Therefore, he has filed the application for amendment of the complaint to introduce the facts attracting the provisions of Section 11, 12 & 13 of RERA.

2. The respondents have opposed their application by contending that the proposed amendment is going to change the nature of the litigation.

The learned Advocate of the respondents has placed on record the judgement of the Supreme Court passed in State of Madhya Pradesh-v/s-Union of India (2011) 12 Supreme Court Cases 268. In this case the Supreme Court has held that leave to amend will be refused if it introduces the totally new and inconsistent case. He also submits that Rule 42 of Maharashtra Real Estate Regulatory Authority (General) Regulations 2017 provides that the Authority may, at any time on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceedings before it - and all necessary amendments rectifications shall be made for the purpose of determining the real question or issue arising in the proceedings. In view of the law pointed out by the learned Advocate for respondents, I find that the conversion of the complaint filed under Section 18 into Section 11, 12 & 13 of RERA will amount to the change in nature of the proceedings, therefore, it is desirable to dismiss the complaint and allow the complainant to file another complaint in a proper form. Hence the order.

ORDER

The complaint is dismissed.

The complainant is at liberty to file another complaint in proper form on the same cause of action.

Mumbai.

Date:10.04.2018.


10.4.18

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