

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

**Complaint No. CC006000000089912**

Dr. Pravinchandra Sonone

.... Complainant

**Versus**

Mr. Amar Chheda

.... Respondent

Project Registration No. P51900002127

**Coram: Dr. Vijay Satbir Singh, Hon'ble Member – 1/MahaRERA**

Adv. Avinash Pawar appeared for the complainant.

Adv. Narsh Chheda appeared for the respondent.

**ORDER**

(2<sup>nd</sup> January, 2020)

1. The complainant has filed this complaint seeking directions from the MahaRERA to the respondents to allot 2 flats having 600 sq. ft. carpet area each as per the development agreement executed between the complainant and the respondent and to pay compensation for the lesser area provided to him as per current market rate in the respondent's project known as "**Mont Kiara**" bearing MahaRERA registration No. P51900002127.
2. This complaint was heard on several occasions and the same was heard finally on 06/12/2019, when the parties appeared through their respective advocates and made their respective submissions.
3. It is the case of the complainant that the respondent has not provided the area of the flat as agreed and there is around shortage of 72 sq. ft. carpet area in each flat. The complainant stated that, he is the tenant-cum-owner under said project as original member and entered into development agreement with the respondent on 15/10/2013. The complainant further stated that, the respondent has violated the provisions of Section-13 and without obtaining his consent he has

*hshf*

changed the plan and thereby violated the provisions of Section-13. The respondent provided around 72 sq. ft. lesser carpet area. Therefore, the complainant has filed this complaint.

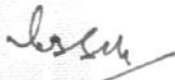
4. The respondent filed his submissions and stated that the complainant is an original member of the society which was taken for re-development and as per the development agreement entered into between the complainant and the respondent. According to the said agreement dated 15/10/2013, the respondent was liable to handover 2 flats having 600 sq. ft. carpet area. Originally, the complainant was occupying premises of 515 sq. ft. bearing No. 5 on 2<sup>nd</sup> floor of the said old building. Subsequently, the respondent became the owner of the entire property and thereafter, the respondent obtained permissions from the concerned competent authority.
5. On 16/07/ 2016, the complainant executed irrevocable consent in favour of the respondent and agreed allotment of tenement having carpet area 111.48 sq. mtr. (around 1200 sq. ft. ). Thereafter on 19/07/2016, the complainant entered into MoU and accepted the allotment of a flat having agreed area of the flat 1200 sq. ft. as permanent alternate accommodation. However, on request of the complainant, it was agreed that, instead of one flat having 1200 sq. ft., two flats would be allotted to the complainant admeasuring 600 sq. ft. carpet area each along with two car parkings. As per the approved plan dated 12/07/2017, the flat admeasuring 601.16 sq. ft. equivalent to 55.85 sq. mtr. for each flat was constructed by the respondent.
6. However, after commencement of RERA, the carpet area to be mentioned on the website of MahaRERA as per the definition of the RERA. Therefore, though the actual construction and delivery of the flat of the project was as per the DCR 1991, the respondent constrained to mention carpet area as per the provisions of RERA. The respondent

has completed the construction of the said building and the complainant was taken inspection of the same and on being satisfied, the necessary No Objection Certificate dated 31/05/2019 is executed in favour of the respondent by giving them No Objection to obtain occupancy certificate in respect of the said building. Therefore, the complainant cannot make grievance with regard to the allotment of the said flat. Hence, the respondent requested for dismissal of this complaint.

7. The MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case, the complainant is seeking specific performance of the development agreement executed between the complainant and the respondent on 15/10/2013 whereby the respondent was agreed to handover possession of the flat admeasuring 1200 sq. ft. as agreed area in the redevelopment building. The complainant herein is originally a tenant cum owner of the said property. As per the terms and conditions of the said development agreement, it was agreed by the complainant that allotment of flat having admeasuring 1200 sq. ft. and accordingly, the respondent has constructed the flat No. 301 and 302 on the 3<sup>rd</sup> floor in the said building.
8. The complainant had disputed about the area of the flat and stated that, the respondent has provided lesser area in the said flat which is contrary to the development agreement and therefore, sought compensation for the lesser area. In this regard, MahaRERA observed that, No Objection Affidavit dated 31/05/2019 signed by the complainant which is duly notarized. In para 1 of the said affidavit/ NOC, the complainant has clearly stated that, he has accepted / inspected the premise of a flat No. 301 and 302 admeasuring about 111.48 sq. mtrs. (1200 sq. ft. carpet) in lieu of the old flat. In para 2 of the affidavit, he has also stated that, he has found the same completed in all respects and he is fully satisfied with the carpet area. The said affidavit/NOC is

annexed at Annexure- D to the written submissions of the respondent. It shows that, after signing the said affidavit/NOC the complainant has made this grievance which is not permissible in law.

9. In the present case, the respondent has already offered possession of the said flat to the complainant and till date the complainant has not taken the possession of the same. Therefore, he cannot make any grievance without taking possession of the said flat. Further, there is no provision in the RERA to grant reliefs as sought by the complainant. Therefore, the request of the complainant cannot be considered at this stage. Since possession has been offered to the complainant, the complainant may take possession of the said flats and joint measurement of the said flats can be done by both the parties. In case of any difference in area, both the parties would be at liberty to settle it amicably.

  
(Dr. Vijay Satbir Singh)  
**Member – 1/MahaRERA**