

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

Virtual Hearing held through video conference as per
MahaRERA Circular No.: 27/2020

COMPLAINT NO: CC00600000100256

DEEPAK PANDE & ANR.

...Complainants

Vs

LARSEN & TOUBRO LIMITED

...Respondent/s

MahaRERA Project Registration No. P51800002230

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Complainant is absent
Advocate Subhashree Chatterjee for the Respondent

Order

August 17, 2021

1. The Complainants are home buyers and Allotees within the meaning of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016 and the Respondents are Promoters/Developers within the meaning of Section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016. The Respondents have registered their project "EMERALD ISLE - T8" under section 5 of the Real Estate (Regulation and Development) Act, 2016 ("said Act / RERA") bearing MAHARERA Registration No. P51800002230 (hereinafter referred to as the "said Project").
2. The Complainants seeks the following reliefs:
"Refund is demanded for the excess funds collected by L&T Realty for carpet area of 57.60 square feet at the rate of Rs.28,131.67 amounting to Rs 16,20,384 plus interest at RERA applicable rate from the date of first payment."
3. On 01.07.2021, the following roznama was passed by this Authority:

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"Complainant is absent, Respondent is present.

The Respondent submits that as per the last directions by this Authority a joint measurement has been conducted and it is now seen that the area is now 6 sq. ft. over and above what was mentioned in the agreement. The Respondent further submits that the joint measurement receipt has been filed as part of the Miscellaneous Application in which cost has been imposed upon them.

In view of the present situation that the Respondent seeks an exemplary cost be imposed on Complainant.

The Parties are at liberty to file their written submission by 09.07.2021 subsequent to which the matter shall be Reserved for Order."

4. The submissions of the Complainant are as follows:
 - a. A flat No. 302 in T-8 in said Project (hereinafter referred to as "**said apartment**") was purchased vide an agreement for sale dated 20.12.2017 (*after RERA*) (hereinafter referred to as "**said agreement**") admeasuring carpet area of 1403.19 sq. ft. for consideration of Rs.3,94,74,075/- . However, the apartment was booked vide an allotment letter dated 01.10.2014 (*before RERA*).
 - b. On 02.08.2017 a complaint was lodged in MahaRERA bearing No. CC006000000000044 by the Complainants against the Respondent seeking following relief "*compensation as per RERA regulations in the form of interest on the capital invested in the aforementioned project for the delayed possession starting from 1st October 2017 and a firm commitment on the date of possession under Chapter III Clause 18. 1".* This complaint was settled amicably between the Complainants & the Respondent, resulting in withdrawal of the complaint on 22.12.2017 whereby the Respondent agreed to pay Rs.1,66,667/- per month as compensation vide letter dated 20.12.2017, for the delay in handing over possession of the aforesaid flat till the time Occupation Certificate ("**OC**") was received.
 - c. The possession of the said apartment was finally handed over on 24.12.2019 on receipt of full payment by Respondent.
 - d. Subsequently the Complainants state that they made several requests for providing carpet area measurement certificate, however this contention was categorically denied by the Respondent vide their mail dated 03.07.2019.

- e. On receipt of refusal to provide measurement certificate, the Complainants engaged services of an independent Architect to carry out carpet area measurement in respect of said apartment. Upon receipt of the layout measurement from an independent Architect, a difference of 57.60 sq. ft. in the actual carpet area of the said apartment was found.
5. The submissions of the Respondent are as follows:
- a. The principle of 'resjudicata' applies to the present complaint and that a consent term filed in an earlier in complaint No. CC0060000000000044 bars the Complainants to file the present complaint on the same issues.
- b. As per the said agreement the carpet area of the said apartment is recorded as 127.79 sq. mtrs. which is equivalent to 1375 sq. ft. Further the allotment letter stated carpet area as 1403.19 sq. ft. which was calculated as per the formula under the Maharashtra Ownership of Flats Act 1963 (MOFA) and when the said agreement was executed the said carpet was recalculated as per the formula under the said RERA Act. But this variation / difference in carpet area is not actually a variation / difference, it is only on account of the formula / methodology of calculation because of which the variation / difference is seen.
- c. However, the variation in carpet is well within the more than or less than 3% variation allowed by the Parties as per the clause 3(i) on page 7 of the said agreement.
- d. Further, the Respondents conducted a joint measurement with regard the carpet area calculations of an apartment above the said apartment which is identical and the architects calculated the carpet area both as per MOFA and also as per RERA which demonstrated beyond doubts that the area of the apartment has not been reduced in any manner and that it was only the calculation methodology which had changed and thus the variation / difference was seen.
- e. The Respondent has filed a miscellaneous application recalling / modifying / amending the interim order dated 02.01.2020 passed by the erstwhile

Hon'ble Authority (Member-II) directing the Parties to get the joint measurement of the Complainant's apartment in presence of respective architects and the Respondent to bear the fees of the Architect which would not exceed Rs.10,000/-. The relief sought vide this application was that each Party to bear the cost of their own architect or alternatively to decide the issue of payment of architect's fees at the time of hearing the complaint finally.

6. From the above facts, the following issue is framed for consideration:
 - a. *Whether the complaint is barred by the principle of resjudicata?*
 - b. *Whether the Complainants are entitled to claim refund for difference / variation in area of the said apartment and interest thereon from date of payment of the excess amount?*

7. The Respondent has raised the issue of the principle of resjudicata stating that a matter that has been finally decided on its merits cannot be litigated again between the same Parties i.e no repeated issues between same Parties can be raised by way of filing complaints after complaints and merely rewording the reliefs. However, from the submissions of the Respondent herein it is clear that the earlier complaint No. CC006000000000044 was filed for the purpose of seeking interest for delayed possession (*refer @4(b) hereinabove*) and the Complainants in the present complaint is seeking refund of the difference in the carpet area of the said apartment with interest as applicable thereon. It is also pertinent to note that admittedly the Complainants have signed a letter dated 24.01.2019 whereby they confirmed and agreed to their absolute satisfaction and assured the Respondent that they shall not be claiming anything further through any other Court / forum. This letter certainly binds the Complainants from raising any further issues with regard the said apartment and this Authority expresses displeasure with regard to the Complainants turning away from their own words and commitments. However, as it may be so, the present complaint is filed with a different issue and hence the principle of resjudicate is not applicable and thus, the **issue No. a** is answered in **negative**.

8. ^{As taking the} Before ~~taking~~ up the facts of the case on hand, it is necessary to reproduce here the definition of carpet area under Section 2(k) of the said Act. It reads thus:

"carpet area" means net usable floor area of an apartment, excluding the area covered by the external walls, area under services, shafts, exclusive balcony or verandah area and exclusive open terrace area, but including the area covered by the internal partition walls of the Apartment."

When it comes to MOFA, under Section 3(m), Promoter was to disclose one of the particulars in the advertisement for sale of flats and clause (i) states the particulars to the extent of carpet area of the flat **including** the areas of balconies whereas under RERA, balconies have been **excluded** in the definition of carpet area.

It is clear from the facts of the complaint that on the date of booking of the said apartment MOFA was in effect and on the date of the said agreement RERA was holding the ground. Both the Acts defined carpet area differently.

Hence there is no actual change but simply a variation / difference in the methodology of calculation of carpet area as per MOFA and RERA from time to time.

9. In the present complaint, the allotment letter was dated 01.10.2015 was pre-RERA i.e. MOFA was applicable for calculating carpet area and after May 2017 RERA was applicable after which the said agreement was executed i.e. 20.12.2017. There is no ambiguity on this issue of variation in the carpet area and the answer to **issue No. b** hereinabove is in **negative** and thus question of refund and interest thereon does not arise.
10. Further, even otherwise, the discrepancy / variation / difference in terms of the carpet area of the said apartment is as per the said agreement which provides for a variation up to 3% on account of any design change and construction exigencies which the Complainant is aware of and the same has been agreed upon by them. Thus, at a later point to raise the issue with regard the same is not


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acceptable nor can be changed as the said agreement is binding upon both the Parties.

11. It is also pertinent to note here in the present case that the intent of the said Act is to regulate and promote the real estate sector in an efficient and transparent manner and to protect the interest of consumers in the real estate sector. Further, one must note that if the Promoter (Respondent herein) is duty bound to honour the agreement for sale in its true letter and spirit so also the Allotee (Complainant herein) is duty bound to adhere to the terms of the agreement for sale and either Party cannot ~~for~~^{or} shun their duties and responsibilities under the agreement for sale. It is also pertinent to note here that as much as a commitment of the Promoter is to be executed strictly in letter and spirit so also this Authority certainly expects that the commitments given by the Allotees must also be treated in the same manner and they must act responsibly. In the present complaint it is amply evident that the Complainants have chosen to raise unreasonable dispute in a very irresponsible manner. This has led to wasting the time of this Authority which could have been used fruitfully to provide relief to other litigants.

FINAL ORDER

Thus, the complaint in view of the observations hereinabove is **dismissed** and the miscellaneous application therein filed by the Respondent is disposed of. A cost of Rs.20,000/- be imposed on the Complainants to be deposited with RERA. The Parties herein are directed that they would pay their respective charges towards the architect's fees for the joint inspection conducted in the complaint.


(Ajoy Mehta)
Chairperson, MahaRERA