

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI

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

CORAM: Ravindra Deshpande, Member II, MahaRERA

COMPLAINT NO. : CC006000000374972

MOHD ASHRAFALI MOHAMMAD YUSUF SHAH ...COMPLAINANT

Vs

1.MOONSHINE REALTORS PVT. LTD

2.IIFL HOME FINANCE LIMITED ...RESPONDENTS

MahaRERA Project registration No. P51700008927

(Date of hearing 20.05.2025)

(Date of Interim Order 16.07.2025)

Adv. Shakila Mulla for Complainant

Adv. Adiba Khan for Respondent No. 1

None for Respondent No. 2

1. The Complainant has filed the present application to amend the complaint copy. The brief facts of the amendment application filed by the Complainant are as follows:

2. It is the contention of the Complainant that the Complainant always intended to seek the possession of the flat No. 404 B wing on the 4th floor, in the project "Saniya Heights along with interest for possession in delay, however, due to inadvertence the relief as per the prayer clauses was wrongly sought as refund of the flat consideration with interest instead of possession of the flat with interest.

3. It is the contentions of the Complainant that subsequent to the filing of Complaint, the Complainant has made further payments towards subvention interest which was the liability of the Respondent No.1. Furthermore, there were certain errors in calculation of total payment made in the original complaint. Accordingly, the Complainant has preferred the Present Application seeking the Amendment of prayer clause 5 (i) of the complaint and Exhibit D to the complaint.

4. The Complainant has mentioned the schedule in the amendment application and according to the schedule the Complainant wish to carry out the amendment in the complaint.

5. The Respondent has filed the reply to the amendment application and opposed the same. The contents of the reply of the Respondent are as follows:

6. It is the contention of the Respondent that the present application is nothing but the gross abuse of due process of law against the Respondent herein.

7. It is the contention of the Respondent that the reasons given for seeking relief of amendment sought to change the prayer clause and exhibit-D towards calculation of the total payment, is afterthought and with intent to defraud the Respondent by taking shelter of law against the Respondent as the Complainant have taken refund of most of the consideration as paid under the said agreement for sale dated 08.02.2017. Therefore, the application filed seeking amendment in the prayer clause as suitable to the whims and fancies of the Complainant is not permissible under the law.

8. It is the contention of the Respondent that the Complainant has not approached this Authority with clean hands and therefore, the above application is liable to be and should be rejected.

9. It is the contention of the Respondent that the Complainant has accepted the money towards the refund of the consideration paid under the agreement for sale and on other hand is seeking relief of possession alongwith interest.

10. Further, the Respondent states that if the amendment is allowed, then there will be an outstanding balance of Rs. 54,24,447/- to be paid as consideration under the agreement for sale dated 08.02.2027.

11. The Respondent states that as the Complainant has received the refund of Rs. 15,50,000/- and now amending the prayer is malicious and deserves to be rejected.

12. The Complainant has filed the rejoinder to the reply of the Respondent, and it is the contention of the Complainant that the Respondent has failed to provide any specific rebuttal or explanation for the facts and claims raised in the said Amendment Application. It is a settled principle of law that a blanket denial without specifics lacks evidentiary value.

13. It is stated that the Order VI Rule 17 states that "The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

14. It is stated that in the present scenario the said Amendment Application was filed before the trial of the said Complaint therefore, the contentions of the Respondent No.1 that the said Amendment Application is against the principle of law is a bogus and false statement and ought to be dismissed.

15. The Hon'ble Supreme Court of India has rightly held in the matter of "**Rajesh Kumar Agarwal Vs. K.K Modi & Ors.**" that the purpose and object of Order VI Rule 17 is to allow either party to alter or amend his pleadings is wide and can be exercised at any stage of the proceedings in the interest of justice on the basis of guidelines laid down by various High Courts and this Court. Hereto annexed and marked as "Exhibit A" is the copy of Supreme Court Order.

16. It is denied that the Complainant has approached this Hon'ble Court with unclean hands and has withheld material facts. It is further denied that the Complainant is liable to pay the outstanding amount of Rs.39,24,447/- towards the total consideration of the said flat as the Complainant had already paid Rs. 81,54,798.13/- to the Respondent the proofs of which are attached to the complaint. The Complainant reiterate whatever is stated in the Rejoinder filed by the Complainant with respect to the false accusations made by the Respondent that the Complainant have accepted refund from the Respondent.

17. It is further absolutely denied that Complainant with an intention to defraud the Respondent No.1 tried to claim the refunded amount of Rs. 15,50,000/- which was validly returned to the person and the Respondent No.1 is put to strict proof thereof. Complainant has not received any such amount from the Respondent.

18. I have gone through the original complaint. It is seen that the Complainants in the original complaint claimed that the respondent may be directed to refund the amount paid by the Complainants, along with interest for delayed possession. Now the Complainants, through this amendment application, wants to amend the prayer that the Complainants seeking additional relief and seeking interest for every month delay on the additional amount paid by the Complainants to the Respondent as per MahaRERA provisions.

19. Considering the nature of the amendment, in my considered opinion, due to the proposed amendment, the nature of the complaint is not going to be changed. Moreover, the Respondent has the opportunity to file the additional reply before this Authority. Hence, in order to adjudicate the matter effectively and to avoid multiplication of the litigations, it is just and necessary to allow the Complainants to amend the complaint and to allow the Complainants to make consequential amendments to the body of the complaint. Hence, in my opinion amendment application deserves to be allowed. Hence, I pass the following order

ORDER

1. The amendment application is allowed.
2. The Complainants are permitted to amend the complaint within four corners of the schedule - A attached to the amendment application.
3. The Complainants are directed to upload the amended complaint copy on the MahaRERA website within 15 days.

**RAVINDRA
PADMAKARAO
DESHPANDE**

Digitally signed by
RAVINDRA PADMAKARAO
DESHPANDE
Date: 2025.07.16 14:44:15
+05'30'

(Ravindra Deshpande)
Member-II, MahaRERA

Date: 16.07.2025