

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000141078

Pradeep L Rochlani ... Complainant

Versus

Real Gem Buildtech Private Limited & Others ... Respondents

MahaRERA Regn. No:
P51900006367

Coram: Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant himself present and represented by Veena Saldanha Adv. i/b K.K. Ramani & Associates.

Respondent represented by Mr. Abir Patel, Adv. i/b Wadia Ghandy & Co. along with Ms. Jainey Gangal, Adv authorised representative of Respondent and Ms Gayatri Tikale, Adv.

Order

November 2, 2020

1. The Complainant has stated in his Complaint that Vide Allotment letter dated 6th February 2013 between the Applicants and the Respondents no. 1 & 2, the Respondents agreed to sell a residential Flat bearing no.2801 (later changed to 2807), admeasuring 1256 sq. ft of carpet area (later changed to 1334.74 sq. ft of carpet area) in Tower C of the building previously known as "DB Crown" (now known as "Rustomjee Crown"), The Applicants have paid till date a part consideration to the Respondents. The Respondents promised possession of the said flat by March 2017 and have failed to comply with this obligation. The proposed date of completion as given on MahaRERA website is now 31st December 2022. The Respondents also changed the area of the flat without prior consent of the Applicants, and the

Commencement Certificate for the said building is issued only up to the 15th floor while the Applicants flat is on the 28th floor. Due to the aforesaid reasons, the Applicants are seeking to withdraw from the project as per Section 18 of Real Estate (Regulation and Development) Act, 2016.

2. On the first date of hearing on December 9, 2019, the Complainant did not appear. The next hearing was done on March 12, 2020. Complainant stated that the draft agreement for sale sent by the Respondent was not as per the allotment letter and there was variation in the carpet area of the apartment. The Respondent argued that the booking application form allows for such variation. Further, the Respondent stated that they have terminated the allotment in August 2019; however, they would be willing to execute agreement without charging any interest as demands were not raised, provided Complainant agrees to execute agreement and pay interest on the delayed statutory amounts pending. The Respondent was asked to file his written submission. The Respondent has uploaded his affidavit in reply on July 1, 2020.
3. Final hearing was held through video conference as per MahaRERA Circular no: 27/2020 on October 1, 2020. Parties sought time for uploading their rejoinders which was allowed and the matter was reserved for order on November 02, 2020.
4. The Respondent, in his affidavit, while denying all the allegations and contentions made in the complaint and seeking dismissal of the complaint, has stated the following:
 - a) Respondent No. 3, Kingmaker Developers Pvt. Ltd. are development managers of the project, responsible for managing construction, sales and marketing of the project on behalf of Respondent No. 1 & 2 and they have not acquired any right, title or interest in the project. Respondent No 3, on behalf of Respondent No 1, has already terminated the booking of the subject flat by and under letter dated 1st August, 2019, before filing of the present complaint, which the Complainants have neither disclosed nor challenged. Therefore, the termination of the booking dated February 6, 2013 has attained finality and the refund of monies would be as per Clause 8.1 of the booking application form.
 - b) Draft agreement for sale was sent to the Complainant on April 10, 2019 but the Complainants failed to come forward to execute the agreement despite several reminders. Again on June 28, 2019 the Complainants were called upon to come forward to execute the agreement and make the due payments, failing which the booking would be terminated. Subsequent meeting and exchange of a multiple emails to failed to resolve the differences. Thereafter a final reminder was sent on July 22, 2019 to execute the agreement for sale before August 1, 2019 failing which the booking would be terminated. Hence, the booking was terminated on August 1, 2019.

- c) The increase in the carpet area of the apartment is in accordance with Clause 6.4 of the allotment letter which allows variation of up to 15% in the dimension of the apartment.
- d) The Complainants have claimed that they were orally promised possession in March, 2017 but such a claim is not backed by any documentary evidence. Even assuming that the agreed possession date was March 2017, it is not understood why the parties kept on discussing the terms of the agreement for sale till July 2019 and the Complainant decided to file complaint with MahaRERA in September 2019 after termination of their booking.
5. The Complainant has uploaded his rejoinder and reiterated the alleged violation made by the Respondents, as detailed in their complaint. They have concluded that they be allowed to withdraw from the project and directions be given to the Respondents to refund the amounts paid by them, along with interest and compensation as per the provisions of the Real Estate (Regulation and Development) Act, 2016 and Rules framed thereunder.
6. In view of the above, it is clear that prior to filing this complaint with MahaRERA on September 29, 2019 by the Complainant, the Respondents had terminated the booking of the complaint. The complaint should have been filed challenging the termination under Section 11(5) of the Act, if the Complainant was aggrieved by such termination and felt that such termination was not in accordance with their booking agreement. It is also clear from para 4(b) above, that the termination of the booking done by the Respondents on August 1, 2019 is neither unilateral nor without any sufficient cause. Therefore, the refund would be as per the terms and conditions of the booking application form and not in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016.
7. Consequently, the matter is hereby disposed of.

Gautam Chatterjee Digitally signed by Gautam Chatterjee
Date: 2020.11.02 14:13:03 +05'30'

(Gautam Chatterjee)
Chairperson, MahaRERA