

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

Complaint No. CC00600000089648

Mr. Ashutosh Sah

..... Complainant

Versus

M/s. Proviso Builders & Developers
Project Registration No. P51700002042

..... Respondent

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

Adv. Rita Rajput appeared for the complainant.

Adv. Sanjuna Sudhakaran i/b Adv. Ritika Agarwal appeared for the respondent.

ORDER

(10th October, 2019)

1. The complainant / allottee has filed this complaint seeking directions from MahaRERA to the respondent to execute registered agreement for sale with the complainant as provided under Section-13 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA") in respect of booking of a flat No. 203, in Wing F-1 in the respondent's project known as "**Sai Proviso County**" bearing MahaRERA registration No. P51700002042 at Panvel, Dist Raigarh. The complainant further requested for compensation towards the rent for last 9 years.
2. This matter was finally heard today, when both the parties appeared through their respective advocates. During the hearings, the complainant has argued that he is an allottee in the respondent's project as defined under section-2 (d) of the RERA. He had booked the said flat on 15-08-2012 in the respondent's project for a total consideration amount of Rs. 30,26,150/-. Out

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of which, he has paid an amount of Rs. 6,05,230/- till now. In spite of taking more than 10% amount, the respondent has not executed registered agreement for sale with the complainant, though the complainant has made repeated requests for the same. Hence, the complainant has filed this complaint seeking relief as prayed for in this complaint.

3. The respondent filed its written submission on record and disputed the claim of the complainant on the ground of maintainability of the present complaint. The respondent has argued that there is no agreement entered into between the complainant and the respondent or any allotment letter has been issued by the respondent. Therefore, the present complaint is not maintainable.
4. The respondent argued that the complainant has not come before the MahaRERA with clean hand and he suppressed the material fact that he is a defaulter in making payment even after several intimations and reminders sent to him by the respondent. The complainant has paid only booking amount. Though the demand letters were sent to him on 13-04-2017 and 27-05-2017, the complainant never paid the said amount as demanded. Hence, the respondent cancelled the said booking and forfeited the token amount paid by the complainant.
5. The respondent further argued that the complainant has filled up the booking form and no flat was earmarked or cost was also not decided. Therefore, vide email dated 1-12-2016, the respondent had sent the breakup of cost of the said flat and the amount payable by the complainant along with a copy of draft agreement for sale. But, the complainant was not satisfied with flat No. 3A-104 and on 9-09-2018, demanded for a new flat with garden view to which the respondent showed him flat in Building No. 7A and 7B. It shows that

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even the flat was not finalized at the time of booking. The respondent has, therefore, requested for dismissal of this complaint. However, it has shown its willingness to refund the booking amount paid by the complainant within a period of 30 days from date of receipt of this order.

6. The MahaRERA has examined the rival submissions made by both the parties as well as record. In the present case, the complainant is seeking directions from MahaRERA under section-13 of the RERA Act, 2016 for execution of agreement for sale with respect to booking of a flat No.203, in Wing F-1 of the said project and admittedly, there is no allotment letter issued in favour of the complainant. The complainant has filled up the booking form and paid token amount towards the booking of the said flat. The booking was done in the year 2012, when the provisions of MOFA Act, was in force. As per the relevant provisions of MOFA, the promoter was not permitted to accept more than 20% without executing the agreement for sale with the allottee.
7. In the present case, the respondent has alleged that they have issued several demand letters to the complainant. However, the complainant has not made the payment, hence the said booking has been cancelled by the respondent and the booking amount was forfeited. The said contention of the respondent is not acceptable to MahaRERA, since the complainant has made payment of 20% towards the total cost of the said flat and the respondent ought to have executed the agreement for sale with the complainant before issuing the demand letters. Hence, the MahaRERA feels that the respondent has violated the provision of MOFA Act, prevailing at that time. Hence the cancellation of allotment of flat to the complainant by the respondent is illegal and bad in law. Hence the same stands cancelled.

8. In the light of these facts, the MahaRERA feels that since the respondent has accepted more than 10% amount from the complainant towards the cost of the said flat, the MahaRERA directs the respondent to execute the registered agreement for sale with the complainant as per the provision of section-13 of RERA.
9. With the above directions, the complaint stands disposed of.

Dr. Vijay Satbir Singh

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

