

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

COMPLAINT NO. CC006000000000671

ADITYA ARVINDKUMAR MESHARAM

..Complainant

Verses

HORIZON PROJECTS PVT LTD

..Respondent

MahaRERA Regn. No. P51700000528

Coram:

Hon'ble Shri Madhav Kulkarni.
Adjudicating Officer, MahaRERA.

Appearance:

Complainant: In Person
Respondent : Adv. Abir Patel

**ORDER
(Dated 4th December, 2019)**

1. The complainant/allottee who had booked a flat with the respondent/promoter, seeks withdrawal from the project and refund of amount paid to the respondent together with interest @24% p.a. as respondent failed to deliver possession as per agreement.
2. Complainant has alleged that he booked flat no. B2/1202 in the project of the respondent Mycity at Diva Manpada Road, Dombivali, Dist. Thane. The consideration was agreed at Rs.48,20,040/-. Complainant paid Rs.1,00,000/- to the respondent on 05.10.2014. Complainant ^{in all} paid further Rs.8,44,106/- on 17.11.2014. Thus, complainant ^{in all} paid Rs.9,44,106/-. Complainant applied for loan but loan could not be sanctioned. TMC has sanctioned plan only for Ground + 2 floors and respondent has

booked flat on 12th floor for the complainant. On 11.01.2016, complainant cancelled booking and demanded refund of money paid. Complainant issued notice dated 18.04.2016. Respondent gave false reply alleging that amount that was paid will be forfeited. Complainant filed consumer complaint but withdrew it and thereafter filed this complaint.

3. Complaint came up before Hon'ble Member on 04.02.2019 and came to be transferred to Adjudicating Officer. The complaint came up before me on 24.05.2019. The matter was adjourned for plea and written explanation by the respondent to 24.06.2019. Plea of the respondent was recorded on 24.06.2019. Respondent filed written explanation on 16.07.2019. Matter was adjourned to 22.08.2019. As I am working at Mumbai and Pune Offices in alternative weeks, and due to huge pendency in this office, this matter is being decided now.
4. Respondent alleged that no possession date was agreed between the parties. Complainant paid booking amount under the terms of the application for booking. By e-mail dated 31.10.2015, complainant informed that due to financial problem, he was not able to pay stamp duty and registration charges and could not proceed for execution of agreement. Vide e-mail dated 11.01.2016, complainant has cancelled the booking. Entire amount paid therefore, stands forfeited. There is no relation between the complainant and the respondent as allottee and promoter. Respondent has replied the notice issued by the complainant. No provision under Real Estate (Regulation and Development), Act has been contravened by respondent. Complaint therefore, deserves to be dismissed.
5. Following points arise for my determination. I have noted my findings against them for the reasons stated below:

POINTS	FINDINGS
1 Has the respondent failed to deliver possession of the flat to the complainant as per agreement, without there being circumstances beyond his control?	Negative
2 Is the complainant entitled to the reliefs claimed?	Negative
3 What Order?	As per final Order.

REASONS

6. **Point Nos. 1 & 2** - It appears that no registered agreement was executed in favour of the complainant. The complainant claims to have booked flat No. B2/1202 on the 12th floor by issuing cheque for Rs.1,00,000/- dated 05.10.2014. Thereafter, cheque for Rs.8,44,106/- was issued on 17.11.2014. There is booking form dated 08.10.2014 in respect of flat no. B2-1202. As per clause no. 2 developer's refusal of the flat will result in liability to the extent of refund of the amount without interest. As per clause 5, if the allottee cancels the booking, developer shall not refund the amount paid.
7. It is the contention of the complainant that there was sanction for construction of only Ground + 2 floors. Why the complainant booked the flat on 12th floor is not understood. It appears that no detailed agreement was arrived at between the parties. The price that was agreed at is not mentioned in the booking form. Date for delivery of possession is not mentioned. It appears that for one reason or other, complainant was unable to raise finance for purchase of flat. Complainant therefore, on his own cancelled the booking.
8. There is reminder-cum-intimation of cancellation issued by respondent. It is mentioned that agreement value was Rs.48,20,040/-. Amount due was Rs.13,97,812/-. Amount

received was Rs.9,15,808/-. Respondent claims to have cancelled the booking of the complainant. Vide notice dated 18.04,2016, complainant has cancelled the booking.

9. As stated earlier, no date for delivery of possession was agreed between parties. Complainant and respondent are blaming each other for cancellation of the booking. Respondent claims that in view of the cancellation, amount paid by the complainant stands forfeited. Here we are concerned whether respondent has failed to deliver possession of the flat to the complainant as per agreement, without there being circumstances beyond his control. Since complainant and respondent are claiming that cancellation occurred due to the fault of other side, on one or the other account, in my opinion the present complaint is not tenable. Complainant is required to approach proper forum for redressal of his grievances. I therefore, answer point nos. 1 and 2 in negative and proceed to pass following order:

ORDER

1. The complaint stands dismissed.
2. No Order as to costs.

Mumbai

Date : 04.12.2019

MF signed on 19.12.2019
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA