

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

Complaint No. CC00600000079120

Mr. Nandkumar Pisat

.... Complainant

Versus

M/s. Dharmesh Construction Pvt. Ltd.

.... Respondent

Project Registration No. **P51800004402**

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

Adv. Kiran Mane appeared for the complainant along with complainant.

Adv. Ronak Mehta appeared for the respondent.

ORDER

(21st January, 2020)

1. The complainant has filed this complaint seeking directions from the MahaRERA to the respondent to refund the 100% amount paid by the him, along with interest and compensation under the provisions of Section-18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA") relating to the booking of a flat bearing No. 2003, on 20th floor, admeasuring 701 sq. ft. in the respondent's project known as "**Acme Avenue**" bearing MahaRERA registration No. P51800004402 situated at Kandivali (West), Mumbai.
2. This complaint was referred to the Ld. Adjudicating Officer, MahaRERA on 19/07/2019 since the complainant has sought refund along with interest and compensation. However, Ld. Adjudicating Officer again referred this matter to MahaRERA for further decision. Accordingly, this complaint was finally heard on 09/01/2020, when both the parties appeared and made their submissions.



3. It is the case of the complainant that he had booked the said flat in the respondent's project for a total consideration amount of Rs. 1,36,52,600/-. The respondent issued the allotment letter dated 27/05/2014. In the said allotment letter, the respondent agreed to complete the project on or before 31/12/2017. In the letter, it was also stated that, the complainant should make 19% down payment within a period of 15 days from the date of issuance and balance amount as per the payment schedule. Thereafter, the complainant has made payment of Rs. 35,05,646/ till date which is acknowledged by the respondent. According to the said allotment letter, in the event of delay/cancellation, then the booking amount will be refunded immediately. Though, the respondent had agreed to execute the agreement for sale with him on payment of 19% amount, the respondent failed to execute the same and hence, it is liable to refund the amount paid by him. Hence, vide email dated 18-02-2017, he has requested the respondent to refund the amount. However, till date the respondent has refunded an amount of Rs. 2,00,000/- to him. Hence, the present complaint has been filed seeking refund of balance entire amount.

4. The respondent, on the other hand, though appeared for hearing did not file any reply on record. However, during the hearing. It stated that the complainant had cancelled the said booking in the month of February, 2017 and hence, he was not an allottee in this project as on date and hence, he can not file any complaint under section-31 of the RERA. Further, he had booked the said flat in the year 2014 and paid around Rs. 33 Lakh and as he had cancelled the said booking, partial amount is refunded to the complainant and still the money is lying with them. Hence, the respondent showed its willingness to execute the registered agreement for sale with him.

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5. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, the complainant is seeking refund of the entire amount paid by him to the respondent towards the booking of the said flat and admittedly, the said booking is done under the provisions of MOFA. There is an allotment letter dated 27-05-2014 issued by the respondent for the said booking, which shows that the said flat was booked for a total consideration amount of Rs. 1,36,52,600/-. Out of this, the complainant had paid an amount of Rs. 33,79,018/- which comes to 25% of the total cost. The complainant, due to delay in execution of the project, has cancelled the said booking as per clause No. 9 of the said allotment letter and sought refund of the amount. Accordingly, the respondent has refunded an amount of Rs. 2,00,000/- to the complainant and still the balance amount is remained with respondent. The complainant has, therefore, approached MahaRERA seeking refund of the balance amount along with compensation.
6. In this regard, the MahaRERA is of the view that the allottee is entitled to seek refund under the provisions of section-18 of the RERA, if the promoter failed to handover possession of a flat on the agreed date of possession mentioned in the agreement for sale or as the case may be. In the present case, admittedly, there is no agreement for sale entered into between the complainant and the respondent and even in the allotment letter issued for the said booking, no date of possession is mentioned. Therefore, the provisions of section-18 of the RERA would not apply in the instant case.
7. The MahaRERA has observed that, though the complainant has cancelled the said booking in the year 2017, the said cancellation has not attained finality as the full amount is not yet refunded to the complainant. Hence, the MahaRERA can only grant relief under section-13 of the RERA as more than 10% amount has been paid to the respondent.

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8. In view of these facts, the MahaRERA directs the respondent to execute the agreement for sale with the complainant with respect to 3 shops within a period of 30 days from the date of this order. If the respondent fails to do so within the stipulated period, the entire balance money paid by the complainant be refunded to the complainant without any interest.
9. The claim of compensation sought by the complainant can not be entertained since there is no violation of section-18 of the RERA.
10. With these directions, the complaint stands disposed of.



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

महा-रेरा