

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

Complaint No. CC006000000110777

Mr. Mahesh Mohan Ranade & Mrs. Mitali M. Ranade Complainants
Versus

M/s. Raymond Ltd | Respondent
Project Registration No. P51700020256

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

Adv. Sunil Kewalramani appeared for the complainants.

Adv. Nidhi Singh appeared for the respondent.

ORDER

(13th March, 2020)

1. The complainants have filed this complaint seeking directions to respondents to refund the entire amount paid by him along with interest under the provisions of Real Estate Regulation and Development Act, 2006 (hereinafter referred to as "RERA") in respect of booking of a flat No.2304 in the respondents project known as "Ten at Habitat Raymond Realty I Tower "C" bearing MahaRERA registration No. P51700020256 at J.K.Gram, District Thane. The complainants also prayed for revocation of the MahaRERA registration certificate issued in favour of the respondent under section 7 of the RERA for unfair trade practice and also to pay penalty under the provisions of RERA.
2. This complaint was heard on several occasions and finally on 24.02.2020 when both the parties appeared and made their respective submissions. During the hearing both the parties have sought sufficient time to make their respective submissions in support of their claim and in compliance of principles of natural justice, adequate time was granted to both the parties to make their submissions.
3. It is the case of the complainants that they had booked a flat in the project in their prelaunch offer on 19.02.2019 for total consideration of

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amount of Rs.1,04,38,215/- and at the time of booking, a token amount of Rs.51,000/- was paid to them. Thereafter, the complainants have paid a sum of Rs.5,21,911/- on 12.05.2019. The Respondent has issued allotment letter dated 10.06.2019 for the said booking at the time of booking the respondent has informed that on cancellation of the said booking, the entire amount paid by him would be refunded. The complainants further stated that due to ill health of mother of complainant no.1, they desired to cancel the booking and requested the respondent to refund the entire amount. However, the respondent changed their tone and refused to refund the amount and stated that in case of cancellation, the entire amount paid by them will stand forfeited. This act on the part of respondent amounts to unfair trade practice under Section VII of MahaRERA and there is no provision under RERA to forfeit the amount. Even as per clause No.18 of the Model Agreement for Sale prescribed under RERA it provides that if the Agreement for Sale is not signed, the entire amount paid has to be refunded to the allottee without any interest. The complainants therefore pray to allow this complaint.

4. The respondent on the other hand has disputed the claim of the complainants and stated that the complaint is not maintainable as section-18 of the RERA provides refund of the amount to the allottee only when there is delay on the part of promoter to hand over the possession of the flat on the agreed date of possession and not otherwise. Hence the present complaint does not come within the purview of MahaRERA. The respondent further stated that they have registered the said project with MahaRERA in the year 2019. The allotment letter was issued to the complainants on certain terms and conditions mentioned in the application dated 12.05.2019. At the time of booking, the complainants have paid Rs.51,000/- towards token amount and Rs.5,21,911/- towards the cost of the said flat. As per clause Nos.3 and

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8 of the said allotment letter the respondent is entitled to forfeit the amount paid by the complainants in case of cancellation of allotment by the complainants. Further the respondent is entitled to forfeit the amount paid by the complainants in case of cancellation of allotment by the complainants. However, the respondents vide e-mail dated 10.06.2019 informed the complainants that an Agreement for Sale needs to be executed and called upon the complainants to execute the Agreement for Sale. The said e-mail was replied by the complainants on 29.07.2019 wherein the complainants informed that the cancellation of the said booking mentions refund of the entire amount. However, the cancellation was not for any fault of the respondent and hence it prayed for dismissal of the complaint.

5. The MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case, it appears that, the complainants are seeking refund of the amount paid by him to the respondent towards the purchase of the flat in the respondent's project. Admittedly, there is no agreement for sale executed between the parties, however allotment letter is issued by the respondent wherein no date of possession has been mentioned.
6. In this regard the MahaRERA is of the view that as per the provision of section-18(1) of the RERA , the promoter is liable to refund the amount to the allottee on demand, if the agreed date of possession mentioned in the agreement for sale has lapsed. However in the present case, there is no date of possession mentioned in the allotment letter nor there is any agreement for sale produced on record by the complainants to show that the agreed date of possession is already over. Hence the provision of section 18(1) of the RERA would not be made applicable for this case. Hence there is no violation of section-18 of the RERA as alleged by the

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complainants and hence the complainants cannot seek refund under section-18(1) of the RERA.

7. However, it is observed by the MahaRERA that the complainants have paid more than 10% of the total consideration of the said flat and the said booking has been done after commencement of the RERA. Hence the only relief that can be granted to the complainants is under section-13 of the RERA. Moreover it is also noticed by the MahaRERA that respondent has called upon the complainants for execution of agreement for sale vide e-mail dated 10-06-2019, which the complainants have refused to sign.
8. In this regard, the MahaRERA has observed that the provisions of clause-18 of the Model Agreement for Sale prescribed in RERA Act and Rules made thereunder which read as under :

“Clause No. 18- Binding Effect-

Forwarding this Agreement to the Allottee by the Promoter does not create a binding obligation on the part of the Promoter or the Allottee until, firstly, the Allottee signs and delivers this Agreement with all the schedules alongwith the payments due as stipulated in the Payment Plan within 30(thirty) days from the date of receipt by the Allottee and secondly, appears for registration of the same before the concerned Sub-Registrar as and when intimated by the Promoter. If the Allottee(s) fails to execute and deliver to the Promoter this Agreement within 30 (thirty) days from the date of its receipt by the Allottee and/or appear before the Sub-Registrar for its registration as and when intimated by the Promoter, then the Promoter shall serve a notice to the Allottee for rectifying the default, which if not rectified within 15 (fifteen) days from the date of its receipt by the Allottee, application of the Allottee shall be treated as cancelled and all sums deposited by the Allottee in connection therewith including the booking amount shall be returned to the Allottee without any interest or compensation whatsoever.”

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in the present case, the respondent has already called upon the complainants in the month of June 2019 to execute the agreement for sale which the complainants have refused to sign. Hence the MahaRERA feels that the respondent/promoter is liable to refund the entire amount to the complainants.

9. In view of the aforesaid legal position and in compliance of principles of natural justice i.e. ill-health of the mother of complainant No.1, the MahaRERA directs the respondent to refund the amount without any interest thereon within a period of 30 days from the date of receipt of this order.
10. With regard to the relief sought by the complainants for revocation of MahaRERA registration under section-7 of the RERA, the MahaRERA feels that the complainants have not proved any unfair trade practice done by the respondent and hence a mere denial of refund does not amount to unfair trade practice. Hence, the said request of the complainants stands rejected.
11. With the above observations, the complaint stands disposed of.

**MAHA
RERA**


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