

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

Complaint No. CC006000000079182

Mr. Dev Navin Nisar

.... Complainant

Versus

M/s. Vijay Suraksha Realty LLP

..... Respondent

Along with

Complaint No. CC006000000079190

Mr. Dev Navin Nisar

.... Complainant

Versus

M/s. Vijay Suraksha Realty LLP

..... Respondent

Along with

Complaint No. CC006000000079191

Mr. Dev Navin Nisar

.... Complainant

Versus

M/s. Vijay Suraksha Realty LLP

..... Respondent

Project Registration No. P51700005653

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

Adv. Jairam Chandanani appeared for the complainant.

Adv. M J Bhatt appeared for the respondent.

ORDER

(10th January, 2020)

1. The complainant has filed these three separate complaints seeking directions from MahaRERA to cancel the termination notice issued on 19/04/2019 by the respondent and further direct the respondent to execute the agreement for sale with the complainant under Section-13 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA") in respect of booking of 3 shops bearing No. 31, 32 and 38 in the respondent's project at **Orovia Phase-1** at Ghodbunder Road, Thane.
2. This complaint was heard on several occasions and the same was heard finally on 18/12/2019, when both the parties appeared and argued the matter. During the hearing held on 27-08-2019, after hearing the arguments of both the parties, an interim order was granted and the respondent was directed not to create

any third party interest with respect to the said three shops. However, during the hearings both the parties sought time from MahaRERA for oral as well as written arguments and accordingly, adequate time has been granted to both the parties to make their submissions in support of their claims.

3. It is the case of the complainant, that in the month of December 2017, the complainant had booked 3 shops, bearing No. 31, 32 and 38 in the respondent's project for a total amount of Rs. 50,31,600/- for shop No. 31, Rs. 56,15,150/- for shop No. 32 and Rs. 55,59,300/- for shop No. 3. The respondent has issued allotment letters dated 28-12-2017 for the said booking. At the time of the said booking, it was agreed that initially he will have to pay only Rs. 1,00,000/- for each shop as booking amount and it was further agreed that the respondent shall intimate him when further payment culminating to 10% of total consideration needs to be paid, for execution of agreement for sale. Further, as per clause No. 9 of the said allotment letters, in case of default on the part of the complainant in making payment, the respondent was liable to give 15 days written notice to the complainant to ratify default and only after his failure to ratify the same, the respondent could cancel the booking of the said shops and terminate the said allotment letters.
4. The complainant is residing at Dubai and hence he gave his power of attorney to his mother and brother to pursue with the said booking with the respondent. Thereafter, the complainant himself and also through his mother, on several occasions, enquired with the respondent about further payments and execution and registration of agreements in respect of the three shops. However, he was given to understand that the respondent has applied for revised commencement certificate and registration process and therefore, the booking is kept on hold till the revised commencement certificate is obtained. Therefore, he addressed an email dated 12-08-2018 to the respondent requesting the details of further payment and also informed his willingness to make such payment. However, the respondent did not reply the said emails. Later, on 10-04-2019, he received an email from the respondent informing GST

options made available to it by the appropriate authority and he was requested to release dues with GST. But, no particulars of amount payable was given to the complainant.

5. In the meantime, the complainant learnt about unauthorised use of accounts by scamsters to channelize money laundering transactions and since he was residing at Dubai, he doesn't credit any money to his SBI account and therefore, to avoid any such unauthorized credit to his account, vide letter dated 10-04-2019, he requested his bankers to impose "Freeze Credit" facility on his aforesaid account.
6. Thereafter, in compliance to the letter dated 10-04-2019 issued by the respondent, he through RTGS made payment of Rs. 5,63,539, Rs. 6,28,897/- and Rs. 6,22,642/- towards the consideration amount of shop No. 31,32 and 38 respectively on 20-04-2019, which is 10% of the total cost of the each shop and informed the respondent about the said payment and requested for execution of agreement for sale with respondent to the said shops. However, the respondent after receipt of the said payment addressed three back dated letters dated 19-04-2019 to the respondent, thereby falsely alleging that the complainant has communicated that he is not in position to pay and does not want to continue the bookings and by the said letters, the respondent fraudulently, and dishonestly terminated the bookings of the 3 shops without giving notice as per clause 9 of the said allotment letters.
7. The complainant replied upon the courier reports to show that the said letters are sent backdated after receipt of the payment from the complainant. Further, though he does not intend to withdraw from the project and is willing to perform his obligation in respect of said shop and is ready to pay the amount due, the respondent fraudulently cancelled booking of the said shops and unauthorisedly terminated the said allotment letters and high handedly deposited cheques in complainant's account, though his account was frozen vide letter dated 10-04-2019. The complainant, therefore, prayed MahaRERA to

set aside the said illegal termination of booking of 3 shops being illegal and bad in law.

8. The respondent, on the other hand, has disputed the claim of the complainant and stated that, the entire claim of the complainant is based on allotment letters and beyond on that, the complainant is not seeking any rights. The respondent further stated that he has given the allotment letters on conditional basis and if payment is not done as per the schedule mentioned in the annexure-4 of the said allotment letters, the respondent would cancel the said allotment letters as timely payment was essence of that allotment letters. Admittedly, there is no agreements for sale and it is just an allotment letters. At the time of booking on 28/12/2017, the complainant has paid 1,00,000/- instead of 5,00,000/-. Therefore, the complainant is a defaulter and breached terms and conditions of the allotment letters dated 28/12/2017 and the respondent has validly terminated the said allotment letters.
9. The respondent, however, stated that, the complainant is not an allottee as the allotment letters were cancelled. Further, the allotment letters were just a proposal to the complainant by the respondent on certain terms and conditions subject to payment schedule mentioned at annexure 4. Since the complainant has failed to make payment as per annexure, it has terminated the same. The respondent, therefore, prayed for dismissal of this complaint. Further, the respondent relied upon various provisions of the Indian Contract Act, 1872 and judgement of Hon'ble Supreme Court of India in Hansa Gandhi Case, wherein the Hon'ble Supreme Court has held that, the complainant allottee cannot claim any rights without fulfilling terms and conditions of the allotment letter.
10. The complainant in his rejoinder has stated that, no time limit was prescribed for payment of outstanding dues. The respondent was required to issue notice before the said cancellation which has not been done in the present case. Hence, there cannot be any default on the part of complainant in making payment as

per the annexure 4. Further, the respondent cannot revoke the allotment as the same is accepted by the complainant.

11. The MahaRERA has examined the argument advanced by both the parties as well as the records. In the present case, the complainant by filing this complaint has challenged termination notice dated 19/04/2019 issued by the respondent stating that it is bad in law and prayed for relief under Section-13 of the RERA with respect to 3 shops booked in the respondent's project in accordance with the allotment letter dated 28/12/2017. The complainant has contended that, at the time of booking of the said shops, it was mutually agreed by both the parties that an amount of Rs. 1,00,000/- will be paid as a token amount and subsequently, he has paid amount on 10/04/2019 through RTGS towards the sale price of the said shop.
12. After receipt of the said payment, the respondent cancelled the said booking due to non-payment of balance consideration amount. The respondent has stated that, it was just a conditional allotment letters / proposals given to the complainant by the respondent for booking of a shop with subject to complainant to make fulfilment of terms and conditions of the said allotment letters. However, on perusal of allotment letters dated 28/12/2019, it appears that though the stage-wise payment has been mentioned in the allotment letters issued by the respondent, no time limit has been mentioned in the same as to when the said amount is to be paid. Therefore, the MahaRERA is of the view that the said amount was payable as and when the demand notice was raised by the respondent. However, in the present case, admittedly no demand for payment was raised by the respondent as per the allotment letters. Hence, the contention of the respondent that the booking was cancelled due to non payment of dues cannot be accepted.
13. Moreover, admittedly, there are allotment letters issued by the respondent for the said booking, in which there explicit clause No.9 which states that in case of any default by the complainant in making payment as per Annexure -IV, in that

event 15 days prior notice was required to be given to the complainant to make such payment and in case of any default by the complainant, the respondent was entitled to cancel the said booking. However, in this case, prima facie, it appears that no such notice as per clause No. 9 seems to have been issued by the respondent. Hence, the MahaRERA is of the view that the said termination of the allotment done by the respondent is not in accordance of the allotment letters issued by the respondent.

14. In view of these, the MahaRERA is of the view that the alleged cancellation done by the respondent through notice dated 19-04-2019 is illegal and bad in law and the same is liable to be set aside. Hence, further action taken by the respondent for refund of the amount to the complainant shall also stands set aside.

15. The complainant during the hearing has alleged that he has made payment of 10% towards the cost of the said shops. In this regard, the booking has been done after provisions of RERA came into force i.e. 1-05-2017. Therefore, as per the provision of section-13 of the RERA, the respondent is liable to execute the agreement for sale with the complainant.

16. In view of these facts, the MahaRERA directs the respondent to execute agreement for sale with the complainant with respect to 3 shops within a period of 30 days from the date of receipt of this order, failing which it would have to refund the money to the complainant.

17. With these directions, all the three complaints stand disposed of.



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