

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

**COMPLAINT NO.CC006000000078198**

1Mr. Jimit B. Mehta  
2Mr. Bipinchandra S. Mehta

..Complainants

Versus

Lohitka Properties LLP

..Respondent

MahaRERA Regn. No.P51800014539

**Coram:**

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

Appearance:

**Complainants:** Adv Sunil Kevalramani

**Respondents :** Adv Pragati Malle

**ORDER  
(Date 02.09.2020)**

1. Two complainants / allottees who had booked a flat with the respondent / promoter seek withdrawal from the project and refund of the amount with compensation.
2. The complainants have alleged that they booked flat no. 2501 in the project of the respondent Sierra Sheth Montana at Mulund Mumbai on 6.12.2017. The consideration agreed was Rs.4.12 Cr. Complainants have paid Rs.11.00 lakhs as booking amount. While booking was done, respondent promised possession before 31.12.2022. In January, 2018, complainants checked project details on MahaRERA website. It was found that date of completion was given was 31.12.2023. When the complainants approached office of the respondent, it was informed that there was delay in statutory approvals. Therefore, possession date was further extended to 31.12.2024. The complainants cannot wait for

possession beyond 31.12.2022. The respondent was informed to cancel the booking. On 31.12.2018 respondent sent termination letter and informed that the amount paid was forfeited. Therefore, complainants filed this complaint.

3. The complaint came up before Hon'ble Member on 29.04.2019, 10.05.2019, 17.06.2019. The matter came to be transferred to Adjudicating Officer. The matter came up before me on 23.08.2019. Respondent filed written explanation on 24.09.2019. Respondent sought adjournment due to absence of senior advocate which was granted on costs of Rs.5,000/-. Thereafter, arguments were heard on 11.10.2019. However, arguments for respondent were heard on 13.11.2019. As I am working at Mumbai and Pune Offices in alternative weeks and due to huge pendency in this office and due to lockdown due to Corona Pandemic, this matter is being decided now.
4. Respondent has alleged that the complaint is false. Complainants approached, and booked the flat in the project at Mulund in Mumbai by obtaining information through broker. Details were provided to complainants on 06.12.2017 and they booked flat no. 2501 by paying Rs.11 lakhs. Booking form clearly stipulates that said amount is non-refundable. In the event of withdrawal, minimum of 5% of sale price or 7% in case flat is booked through broker, will be cancellation charges. All these terms and conditions were made clear. Complainants were required to pay initial 10% of consideration value on or before 06.01.18. Demand was made by letter dated 20.04.2018. Letters were also sent on 04.05.2018 and 06.06.2018. Mails were sent on 15.10.2018 and 21.11.2018 and 17.12.2018. Complainants were required to pay Rs.86,41,928/-, but did not pay it. The 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 | Are the complainants allottees and respondent promoter?   | Affirmative  |
| 2 | If yes, has the respondent given false date of possession to complainants causing loss to them? | Negative     |
| 3 | Are the complainants entitled to the reliefs claimed?   | Negative     |
| 4 | What Order?   | As per Order |

## REASONS

6. **Point Nos. 1 to 3** - It may be noted that complainants have not placed on record the booking form. Only the termination letter issued by the respondent on 31.12.2018 is placed on record. It is the respondent who has placed the booking form on record. It is dated 06.12.2017. Flat no. 2501 and price of Rs.4.12 Cr. are mentioned in it. No date for possession is mentioned in it. Anyway, it is clear that complainants are allottees and respondent is promoter. I therefore, answer point no. 1 in the affirmative.
7. It is the specific contention of the complainants that when the flat was booked, it was informed by the respondent that possession will be delivered by 31.12.2022. In January, 2018, complainants checked MahaRERA website and found that possession date was 31.12.2023. Now it is further extended to 31.12.2024. The complainants therefore, alleged that the respondent made false statement and complainants cannot be made to wait for possession beyond 31.12.2022. There is absolutely no evidence to show that respondent had promised to deliver possession by 31.12.2022. The complainants were duty bound to go through MahaRERA website before booking the flat on 06.12.2017. Therefore, complainants have failed to prove that respondent made

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false statement in any brochure or prospectus due to which they made payment and are suffering loss.

8. The grievance of the complainants is that by letter dated 31.12.2018, respondent terminated the booking but informed that the amount paid stood forfeited as per terms agreed. Respondent on his part relies on judgement of the Apex Court in Satish Batra Vs. Sudhir Rawal Civil Appeal 7588 of 2012 decided on 18.12.2012 to submit that Seller is entitled to forfeit earnest money where the sale falls through due to fault of the purchaser. It must be noted that complainants have approached this forum for relief u/s 12 of the RERA i.e. suffering loss by making payment on the basis of false statement in the brochure etc. What is alleged is that initially possession date informed was 31.12.2022. Only on going through MahaRERA website, complainants found that the date of possession was 31.12.2023. It appears that complainants have stopped making further payments, However, they have miserably failed to prove that they made payment on the basis of false statement in brochure etc. Whether complainants are entitled for refund of earnest money is a question beyond the jurisdiction of this forum. I therefore, answer point no. 2 and 3 in the negative and proceed to pass following Order:

**ORDER**

- 1) Complaint stands dismissed.
- 2) No Order as to costs.

Mumbai

Date : 02.09.2020

*MP Signed on 11.9.2020*  
**(Madhav Kulkarni)  
Adjudicating Officer  
MahaRERA**