

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

COMPLAINT NO: CC006000000078501

Harmeet Kaur Arora

... Complainant.

Versus

Damodar Suruchi Developer
("UK IRIDIUM")

... Respondents.

MahaRERA Regn: P51800007275.

Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

Appearance:

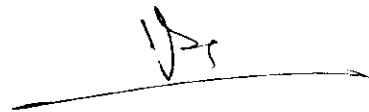
Complainant: Adv. A.Y. Mujawar.

Respondents: Adv. Abir Patel.

Final Order

3rd June 2019.

The complainant contends that she booked flat no.1003 measuring 570 sq.ft. situated on 10th floor of D-wing of the respondents' UK Conclave Project for Rs. 57,00,000/- and paid them Rs. 14,69,033/-. Thereafter the complainant received a letter from the respondents informing her that their UK Conclave project has been revised with new project UK Iridium and allotted her Unit No. 901 having carpet area of 386 sq.ft. situated on 9th floor, D-2 Wing for Rs. 65,99,060/-. The respondents did not provide the information of the project required by her. Therefore, the complainant decided to cancel the booking. The respondents accepted the complainant's request for cancellation of booking on 04.09.2018 but avoided to return the complainant's amount with interest and compensation. Therefore, the complainant has filed this complaint.



2. Plea of the respondents has been recorded under Section 7 of RERA by explaining them the complainant's allegation that even after accepting the cancellation of booking by their letter dated 15th March 2019 and accepting their liability to refund the complainant's entire amount without deduction, they failed to refund the amount and thus indulged in unfair practice under Section 7 of RERA. The other grounds have not been pressed by the complainant.

3. The respondents have pleaded not guilty. They have filed their reply to contend that the form and minutes of allotment expressly provide that the respondents are entitled to deduct Rs. 2,50,000/- in the event of complainant's terminating the booking. Therefore, they contend that they are entitled to deduct Rs. 2,50,000/- from the complainant's amount as agreed by the parties. They admit that they have to revise the project as per requirement of SRA's 3K cluster development scheme. The respondents further contend that they accepted complainant's request subject to the deduction of Rs. 2,50,000/- and hence, they request to dismiss the complaint.

4. Following point arises for determination and my finding recorded thereon is as under:

POINT	FINDING
Whether the respondents have indulged in unfair practice by not refunding complainant's entire sum paid against the flat without any deduction after agreeing to refund it?	Affirmative.

REASONS

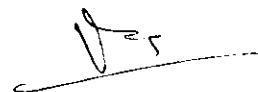
5. There is no denial of the fact that the complainant initially booked flat no. 1003 measuring 570 sq.ft. for Rs. 57,00,000/- in respondents' UK Conclave project. The respondents thereafter revised the project and



offered Unit No. 901 of UK Iridium building measuring 386 sq.ft. for Rs. 65,99,060/-. It is also not in dispute that the respondents accepted the complainant's prayer for cancellation of booking of the flat. However, they claim that they are entitled to deduct Rs. 2,50,000/- from the complainant's amount.

6. The respondents have relied upon the form and minutes for booking of flat at Conclave. There is foot note contending that "token of Rs. 2,50,000/- will be forfeited upon cancellation of this booking before sale agreement." Therefore, the respondents contend that they are entitled to deduct Rs. 2,50,000/- from the amount paid by the complainant. The emails exchanged by the parties are placed on record but the relevant email is that of 15th March 2019 sent by the respondents wherein they have clearly mentioned that they agreed to refund complainant's entire sum paid to them against her flat without any deduction. So on this basis, now it is necessary to look at the cases on which the respondents rely upon. The learned advocate of the respondents submits that the terms and the nature of the contract cannot be varied or altered. It is not permissible for the Court to make new contract, howsoever reasonable, which the parties have not made it themselves. For this purpose, he relies upon Rajasthan State Industrial Development and Investment Corporation-v/s-Diamond Gem Development Corporation Ltd. (2013) 5 Supreme Court Cases 470 and on K.G. Construction -v/s- Municipal Corporation for Greater Bombay MANU/MH/0348/1999.

7. In the case of Rajasthan State Industrial Development and Investment Corporation itself, the Supreme Court has also dealt with the issue of waiver and estoppel. It observes that the parties cannot be permitted to "blow hot-blow cold", "fast and loose" or approbate and reprobate". Where one knowingly accepts the benefits of a contract, or



conveyance, of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and good conscience."

8. After considering the law explained by the Hon'ble Supreme Court and the facts referred to above, it becomes clear that at the time of booking of flat no. 1003 the respondents put the condition that they would deduct Rs. 2,50,000/- in the case of cancellation of allotment. The respondents themselves have cancelled the booking of flat no. 1003 and offered the allotment of 901 of new project by the allotment letter dated 20.10.2016 which has not been signed by the complainant. Therefore, the respondents cannot rely upon the booking form/minutes of allotment of Unit No. 1003 of the abandoned project UK Conclave. This is one aspect of the matter. The another issue is that the respondents themselves by their mail dated 15.03.2019 have agreed to refund the entire sum paid by the complainant without any deduction. It is placed on record. Hence I find that now the respondents are estopped from claiming the deduction of the amount.

9. The respondents have not refunded the amount as agreed and therefore, this amounts to unfair practice within Section 7 of RERA.

10. The respondents have revised their project and the area of the flat is also reduced but the price increased. These are the circumstances which led the complainant to cancel the booking. The respondents have used the complainant's money. Therefore, they are bound to refund her entire amount with interest prescribed under the RERA which is 2% above the SBI's highest MCLR. It is currently 8.75% per annum. In addition, the complainant is also entitled to get Rs. 20,000/- towards the cost of the



complaint. Since the interest is compensatory in nature, no separate compensation is being awarded. In the result, the order.

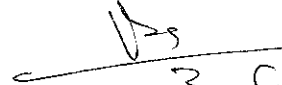
ORDER

The respondents shall refund Rs. 14,69,033/- to the complainant with interest at the rate of 10.75% per annum from the date of its receipt till the refund.

The respondents shall pay the complainant Rs. 20,000/- towards the cost of the complaint.

The charge of the complainant's amount shall be on Unit No. D-901 of UK Iridium situated at Taluka Borivali, Village Borivali, Kandivali East, Mumbai-400101 till the satisfaction of the complainant's claim.

Mumbai.
Date: 03.06.2019.


3-6-19

(B. D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.