

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI

Complaint No. CC006000000193315

Mrs. Aarti Dandekar

..Complainant

Vs

M/s. Narang Reality

M/s. Courtyard Real Estate Pvt. Ltd.

..Respondent

MahaRERA Project Registration No. **P51700000714**

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

Adv. Makarand Raut appeared for the complainant

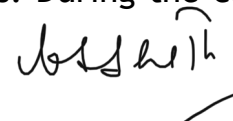
Mr. Vishal Agarwal appeared for the respondent

ORDER

(15th February, 2021)

(Through Video Conferencing)

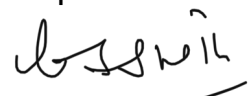
1. The complainant has filed this complaint seeking directions to the respondents to refund the entire amount along with interest in view of cancellation of the booking amount by mutual consent, under the provisions of section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of flat no. 201 and 211 adm. 706 sq.ft. in the respondent's registered project known as "Courtyard - Onyx" bearing MahaRERA registration No. **P51700000714** at Thane. The complainant has further sought directions for compensation mental agony, harassment, legal charges, etc., incurred by the complainant.
2. This complaint was heard finally 8-02-2021 as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions, if any. Accordingly both the parties appeared for the hearing and made their submissions. During the course



of hearing, it was noticed by the MahaRERA that the respondent has not uploaded its reply on record of MahaRERA. Hence, after hearing the oral submissions made by the respondent, it was directed to file its reply within a period of two days. However, the respondent has failed to upload its reply on record of MahaRERA till date. Hence the MahaRERA has perused the available record.

3. It is the case of the complainants that in the year 2019, she visited the site office of the respondents, where the respondents shared a rosy picture about the project and its amenities and accordingly she booked the said flat at a sum of Rs.1,37,58,095 and paid a sum of Rs.2,00,000/- to respondents vide debit card payment. The respondents represented that only limited flats were available for which already booking amounts are accepted by respondents from other prospective purchasers. Therefore, the respondents insisted that, if the complainant wanted to book the subject flat, the complainant must deposit part 2 consideration at earliest. Relying upon the said representation made by the respondents, she made further payment of a sum of Rs.8,00,000/- to respondents vide cheque No.000011 dated 14th October 2019 drawn on HDFC Bank. The complainant represented that she needed to borrow loan/ financial assistance for purchase of the subject flat and therefore, requested the respondent to furnish the title documents and project details to enable her to proceed further for purchase of the said flat. However, the respondents replied that for the purpose of furnishing copies of the title documents/ project details, at least more than 10% of the sale price of the subject flat needed to be deposited with the Respondents. Therefore, on 1st November 2019, she has paid a further sum of Rs.3,75,000/- to respondents vide cheque No.000012 dated 1st November 2019 drawn on HDFC Bank. Thus, by 1st November 2019, the complainant has paid more than 10% of the total consideration amount. Upon receipt of the aforesaid amount, the respondents called upon the complainant to visit their office after about two weeks to collect the

title documents and project details. The complainant stated that the subject project was being developed by “Courtyard Real Estate Pvt. Ltd.,” however, the aforesaid part consideration was received in the name of “Narang Realty”. The complainant also learnt that the project is a joint venture of “Narang Realty” and “Wadhwa Group”. The aforesaid anomaly was never disclosed to her at the time of said booking. Thereafter, she visited respondent’s office in the last week of November, 2019 and inquired about the said arrangement however, the respondents did not disclose any such particulars and kept on avoiding the said topic. The Respondents also did not disclose the reason of demanding consideration amount in the name of “Narang Realty” instead of “Courtyard Real Estate Pvt. Ltd.,”. The copies of the title documents and project details also not kept ready. The entire conduct of the respondents found suspicious and therefore, the complainant called upon the respondents to cancel the booking of the subject flat and also requested to refund the entire part consideration of a sum of Rs.13,75,000/- so far paid by her. The respondents had readily agreed to repay the entire consideration amount within one week. Thereafter, she received respondent’s demand letter/email dated 23rd November 2019 thereby calling upon the complainant to make the payment of balance consideration as they had procured occupation certificate of the building. The complainant again contacted the Respondent’s office and apprised them the aforesaid fact of cancelation of booking of the said flat. The Respondent’s sales representative tried to console her by mentioning that the demand letter has been issued in a format manner randomly to all flat purchaser and therefore, she requested to ignore the same. However, same mistake was repeated by the respondents on 29th November 2019, when the complainant received a format (blank) agreement for perusal. When the complainant apprised to the respondents the aforesaid fact, the Respondents once again apologized and requested to ignore the said communication. Having realized the aforesaid, mistake, the respondents on 30th November, 2019 refunded a sum of Rs.5,75,000/- vide online transfer into complainant’s bank



account bearing transaction ref no. 000000000002799. Thus, a sum of Rs.8,00,000/- is still due and payable by the respondents to the complainant. The complainant has been following up with the respondent from November 2019 i.e. since last about six months to refund the aforesaid balance consideration amount. As the booking of the subject flat has already been cancelled with mutual consent of the parties, the respondents are liable to and duty bound to refund entire consideration amount at earliest. The Complainant has waited for considerable period of more than six months. However, in the wake of Covid- 19 (Corona Virus) pandemic situation, she was suffering huge financial losses and was in urgent need of money. Therefore, by and under advocate's letter dated 21st May 2020, she called upon the respondents to refund the balance consideration of a sum of Rs.8,00,000/- to her. However, the respondents have not responded it. Hence, she filed this complaint as complainant. In view of the facts and circumstances the complainant prays to this Hon'ble Authority to direct the respondents to refund to the Complainant a sum of Rs.8,00,000/- and direct the respondents to pay to the Complainant a sum of Rs.25,000/- towards and as and by way of compensation for mental agony, harassment, legal charges, etc., incurred by the Complainant.

4. The representative of the respondent appeared for the hearing held on 8-02-2021 and made his oral submissions on record of MahaRERA and stated that the complainant had booked the said flat by signing the booking application form and at that time it was informed to her that the said project is undertaken by the respondents in joint venture and M/s. Narang Realty is sister concerned of M/s. Courtyard Real Estate Pvt. Ltd. Hence there is no misrepresentation made to the complainant. Further the complainant has cancelled the said booking since she could not get her loan sanctioned. Hence, on request of the cancellation made by the complainant the said booking was cancelled by forfeiting 10% of the consideration amount as per the booking application form signed by

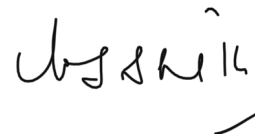
the complainant. However, during the course of hearing, the respondent agreed to refund the balance amount of Rs. 8,00,000/- to the complainant without any interest.

5. The complainant on the other hand has resisted the claim of the respondents on the ground that no such forfeiture clause has been explained or informed to her. Even, the forfeiture of the said amount allegedly done by the respondents is illegal act on their part, which is not permissible under RERA. Hence, she has prayed to allow this complaint and direct the respondents to refund the balance amount with interest.

6. The MahaRERA has examined the arguments advanced by both the parties and also perused the available record. In the present case, the complainant by filing this complaint is seeking refund of the balance consideration amount paid by her towards the booking of a flat in the respondents' present project mainly on the ground of misrepresentation made to her and thereby she is seeking relief under section 12 of the RERA.

7. The Respondent though appeared for the hearing has failed and neglected to file their reply on record of MahaRERA inspite of specific direction issued to them on 8-02-2021. Hence the MahaRERA has no other alternative but to proceed to decide this complaint without the reply of the respondent on merits and as per the submissions made by the respondents during the course of hearing.

8. In the present case , the complainant is seeking relief under section 12 of the RERA. In this regard, the MahaRERA has perused the provisions of section 12 of the RERA, which reads as under:



“12. Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.”.

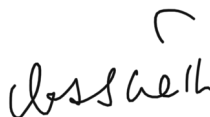
9. The aforesaid provision of section 12 provides that the allottee is entitled to seek refund of the entire amount along with interest and compensation if the allottee makes any deposit on the basis of the information contained in the notice / advertisement and he sustains any loss or damages due to such false information. However, in the present case, the complainant has alleged that the respondents have failed to clarify the issue that this project is being developed by the respondent no. 2. However, the payment receipts have been issued by the respondent no. 1 and subsequently, she was informed that the said project is undertaken in joint venture. On perusal of the webpage information uploaded by the respondent No. 2 while registering this project with MahaRERA, the name of the respondent No. 1 has not been shown or uploaded as co-promoter and still the respondent No. 1 has issued the payment receipt to the complainant acknowledging the said payment. The said issued should have been clarified by the respondents at the time of said booking. On bare perusal of Exhibit -4 of the

complaint, it appears that only after the complainant raised the said issue and sought clarification, the respondents seems to have subsequently, informed the complainant that the said project is joint venture project between the respondents. Hence, the MahaRERA feels that there is substance in the cancellation sought by the complainant.

10. In this case, the MahaRERA has also noticed that the cancellation request made by the complainant has been accepted by the respondents and part consideration amount has already been refunded to her. Since, the allotment has already been cancelled, the complainant can not be treated as an allottee in this project registered with MahaRERA. The complainant, therefore is not entitled to seek any relief under section 12 of the RERA by filing complaint under section 31 of the RERA. Hence, the relief sought by the complainant towards the refund along with interest can not be considered by the MahaRERA.

11. However, during the course of hearing the respondents have agreed to refund the balance amount of RS. 8,00,000/- to the complainant. Hence, in compliance of principles of natural justice, the MahaRERA directs the respondent No.2 to refund the said amount to the complainant within a period of one month without any interest.

1. With the above directions, the complaint stand disposed of.
2. The certified copy of this order will be digitally signed by the concerned legal assistant of the MahaRERA. It is permitted to forward the parties a copy of this order by e-mail.



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