

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

COMPLAINT NO. CC006000000023224

Aniket Tol ... Complainant.

Versus

Lodha Developers Thane Pvt.Ltd. ... Respondents.
(Lodha Amara Tower 32,33)

MahaRERA Regn: P51700001030.

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

Appearance:
Complainant: Adv. P. S. Gokhale.
Respondents: Adv. Sunilraja Nadar.

FINAL ORDER
03rd May 2018.

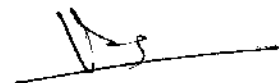
The complainant has filed this complaint to seek the refund of booking amount paid by him to the respondents while booking unit no. W-05 - 1905 of the respondents registered project Lodha Amara situated at Thane. He booked the flat when he was told by the respondents that he needed to pay 6% of the total cost and the rest amount would be arranged from Bank Loan as the project was sanctioned by Punjab National Bank and HDFC. He paid Rs. 5,23,630/- at the time of booking. He alleges that the respondents did not co-operate with him and therefore, the banks did not sanction the loan. He alleges that the respondents did not give the inspection of the draft agreement and the approvals and sanctions of the project for his reading. He asked the respondents to refund the money but



the respondents told him that his money would be forfeited. Therefore, he has filed the complaint complaining that the respondents are guilty of violating the provisions of Section 7, 12 & 13 of the Real Estate (Regulation and Development) Act, 2016 (RERA).

2. The respondents have filed their reply to contend that the complainant himself was responsible for non-execution of agreement for sale. He defaulted in making payments as agreed under the application form and therefore, they are entitled to forfeit the amount of the complainant. According to them, the complainant paid Rs. 1,08,000/- on 15.08.2017 as booking amount and thereafter on 03.10.2017, he paid Rs. 3,70,880/-. He did not deposit Rs. 30,000/- towards the registration fee and did not adhere to the payment schedule. Therefore, as per clause 3.5 of the application form they are entitled to forfeit the entire amount of the complainant if it is below the 10% or 10% of the total consideration.

3. Complainant insisted on interest and therefore amicable settlement failed though respondents were ready to refund his amount. At the time of recording the plea, I have heard the learned advocates of the parties at length. The learned advocate of the complainant submits that the respondents did not show the draft agreement and other approvals and sanctions of the project. The learned advocate of the respondents submits that the project is registered, the draft agreement for sale and all the approvals and sanctions obtained relating the project have already been uploaded on the website of the Authority, despite this, the respondents informed the complainant to take the inspection of the hard copies of the approvals and sanctions but the complainant did not take the inspection. I find that the draft of the agreement for sale and all other sanctions and approvals pertaining to the project can be seen by visiting the website of MahaRERA. Section 7 is not attracted in this circumstance.



4. For the registration of agreement for sale, 10% of the consideration amount is required to be paid as per section 13 of the Act. The application details do show that the consideration value of the flat booked by the complainant is Rs. 71,26,160/- whereas the complainant himself contends in his complaint that he paid only Rs. 5,23,630/- to the respondents which is below the 10% of the total consideration of the flat. Hence, under Section 13, he is not entitled to get the agreement for sale executed. Now he wants refund of his amount by withdrawing from the project and therefore, there is no question of proceeding ahead with this complaint under Section 13 of RERA also.

5. Section 12 of the Act is not attracted in this case because the contents of the complaint referred to above do not show that the respondents made either false or incorrect statement/s while inviting the complainant for booking the flat. Complaint is not maintainable under Section 12 of RERA.

6. The learned advocate of the complainant was heard on 02.04.2018 but he could not convince me. He took a longer date to show the specific provision applicable to this case with the promise that if the provision of the Act would not be attracted, the complainant will withdraw the complaint today. The learned advocate of the complainant Mr. Gokhale has sent the application for adjournment but in my view it is not necessary to adjourn the case again.

7. Hence to conclude, I hold that the contents of the complaint do not indicate the violation or contravention of any of the provisions of the RERA or Rules and Regulations framed thereunder. Therefore, complaint is not maintainable under section 31 of the Act. Hence, the following order.

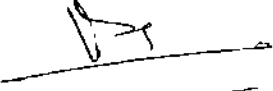


ORDER

The complaint is dismissed.

Mumbai.

Date: 03.05.2018.


3.5.18

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