

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

Complaint No. CC006000000100492

Mrs. Ambika Yuvraj Kololagi

Mr. Yuvraj Basavraj Kololagi

.... Complainants

Versus

M/s. Kapstone Construction Pvt. Ltd

.... Respondent

Project Registration No. P51700018621

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

Mr. Yuvraj Kololagi appeared for the complainants.

Mrs. Gayatri Tikale appeared for the respondent.

ORDER

(3rd March, 2020)

1. The complainants have filed this complaint seeking refund of the booking amount paid by them to the respondent under Section-18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA") with respect to the booking of their flat in the respondent's project known as "**Rustomjee Azziano Wing I.**" bearing MahaRERA registration No. P51700018621 at Thane (West).
2. This complaint is heard finally today, when both the parties appeared and made their submissions. The respondent has filed his written reply on record of MahaRERA.
3. It is the case of the complainants, that they have booked the said flat for a total consideration amount of Rs. 1,06,84,828/- in the year 2018 by signing booking application form on 02/12/2018. She had paid an amount of Rs. 2,00,000/- as booking amount. At the time of booking, the respondent agreed to allot fix parking. However, the respondent failed to fulfil its promise and allotted stack parking to the complainants, which is not acceptable to the complainants. Hence, they have cancelled the said

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booking and are seeking refund of the amount paid by her without any deduction.

4. The respondent, on the other hand, has resisted the claim of the complainants and argued that, the complainant has booked the said flat by signing booking/application form dated 02/12/2018. Subsequently, in the month of April, 2019, she cancelled the said booking for personal reasons, i.e. for arrangement of funds and not for car parking issue. Even she has not made any grievance for refund at the time of cancellation of the booking. After cancellation, they are not allottees and still they approach MahaRERA seeking full refund. The complaint is, therefore, not maintainable. The respondent further stated that as per the terms and conditions since the complainant has cancelled the booking, the entire booking amount paid by the complainant is forfeited. Even the complainant has not paid 10% amount, still in the month of May 2019 they called upon the complainant for execution of agreement for sale. However, they have refused to execute the same. The respondent therefore prayed for dismissal of this complaint.
5. The MahaRERA has examined the arguments advanced by both the parties as well as record. In the present case, prima facie, it appears that the complainant had booked the said flat on 2-12-2018, after the provision of RERA came into force. The complainant has contended that since the respondent has not mentioned car parking in the agreement for sale, they have cancelled the booking in the month of April, 2019 and the said contention has been denied by the respondent.
6. However, from the record, it appears that though the complainants have cancelled the said booking in the month of April, 2019 through email, the respondent, thereafter in the month of May, 2019, has sent the copy of draft agreement for sale to the complainants for execution. It shows that the respondent has treated the complainants as allottees of the project, but the complainants had refused to sign and execute the agreement for sale.

7. In this regard, the MahaRERA has observed the provisions of clause No. 18 of the Model Agreement for sale prescribed under the RERA and Rules made there under, which reads as under:

"18. Binding Effects-Forwarding this Agreement to the Allottee by the Promoter does not create a binding obligation on the part of the Promoter or the Allottee until, firstly, the Allottee signs and delivers this Agreement with all the schedules along with the payments due as stipulated in the Payment Plan within 30(thirty)days from the date of receipt by the Allottee and secondly, appears for registration of the same before the concerned Sub-Registrar as and when intimated by the Promoter. If the Allottee(s) fails to execute and deliver to the Promoter this Agreement within 30 (thirty) days from the date of its receipt by the Allottee and / or appear before the Sub-Registrar for its registration as and when intimated by the Promoter, then the Promoter shall serve a notice to the Allottee for rectifying the default, which if not rectified within 15(fifteen) days from the date of its receipt by the Allottee, application of the Allottee shall be treated as cancelled and all sums deposited by the Allottee in connection therewith including the booking amount shall be returned to the Allottee without any interest or compensation whatsoever".

8. In the light of the aforesaid clause mentioned in the model agreement for sale, in the present case, since the respondent has forwarded a draft agreement for sale to the complainant in the month of May, 2019, which the complainants have refused to sign, the respondent promoter is liable to refund the booking amount to the complainants.
9. In view of the aforesaid legal position and in compliance of principles of natural justice, the MahaRERA directs the respondent to refund the entire amount paid by the complainants without any interest.
10. With the above direction, the complaint stands disposed of.


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