

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,  
MUMBAI

Complaint No. CC006000000193205

Ms. Priyabarta kumar ..Complainant  
Vs

M/s. Lodha Group Upper Thane ..Respondent

MahaRERA Project Registration No. P51700006147

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

Complainant appeared in person

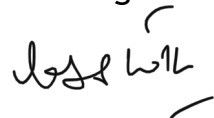
Adv. Nitin Waghmare for respondent

**ORDER**

(18<sup>th</sup> January, 2021)

(Through Video Conferencing)

1. The complainant has filed this complaint seeking directions from MahaRERA to direct the respondent to refund the booking amount paid by him under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA") with respect to booking of his flat in the respondent's project known as "Upper Thane Greenville" bearing MahaRERA Registration No. **P51700006147** at Thane.
2. The complaint was heard on 25.11.2020 and same is finally today as per the Standard Operating Procedure dated 12<sup>th</sup> June 2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of the hearing and they were also informed to file their written submissions, if any. Accordingly, both the parties appeared through their respective advocates and made their submissions. The MahaRERA heard the arguments of both the parties and also perused the record.
3. It is the case of the complainant that he has booked the said flat and paid an amount of Rs. 1,22,789/- at the time of said booking. At that



time the respondent informed him that if the complainant wanted to cancel his booking then the respondent would refund the said booking amount. Further the respondent has provided wrong information about the cost of the flat and the EMI process and even it had agreed to handover possession of the said flat to him in the month of August, 2020 but later on it has stated that the possession would be given by December 2020 and now it has stated as January 2021. There is no data mentioned in the application form given to him. Hence he lost faith in it and hence sought cancellation of the said booking by taking refund under the provision of RERA. However, the respondent failed and neglected to pay the same and hence the present complaint is filed.

4. The respondent on the other hand refuted the claim of the complainant and stated in his reply that the complaint is misconceived and frivolous and ought to be dismissed with costs. It has further stated that the complainant has paid only Rs. 1,22,789/- which is not even 5% of the total consideration amount. Further it has neither assured sanction of bank loan nor refund of the booking amount as alleged by the complainant, since it is nowhere under any contractual obligation to get his loan sanctioned. Further at the time of booking of the said flat, the complainant agreed that he had read and understood all the terms and conditions of the application form. The complainant has raised the issue at a later stage when he realised that he is not eligible for the loan. Hence, the complainant vide emails dated 15.2.2020, 17.2.2020 and 22.2.2020 expressed his inability to continue with the booking due to his personal reasons such as he was being transferred to Delhi and he already has an ongoing loan for another flat etc. The said emails have been uploaded by the complainant. Further the complainant also agreed that in case he proceeds for cancellation of the booking, the booking shall stand cancelled and 10% of the consideration value shall be forfeited as per

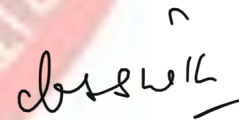
the terms and conditions of agreement for sale. The respondent will have to bear loss of time and money if the complainant defaults in time bound payments. In reply to the complaint, the respondent states that the allegations with regard to date of possession and refund is false and baseless. The complainant is cancelling the booking due to his personal problems and there is no fault of the respondent. In view of the facts stated above, it has prayed for dismissal of this complaint.

5. The MahaRERA has examined the arguments advanced by both the parties and also perused the available record. In the present case by filing this complaint the complainant is seeking refund of the booking amount paid by his for booking of a flat in the respondent's project. Admittedly the booking is done after commencement of RERA in the MahaRERA registered project and hence all provisions of the RERA including sections 12 , 13 and 18 are applicable in the present case. It is also admitted fact that the complainant has not paid 10% of the total consideration of the said flat. Hence no relief can be granted under section 13 of the RERA. Moreover, as per the provisions of RERA, the allottees are entitled to seek refund of the booking amount in case there is violation of section 12 of the RERA, which provides that is any misleading / false information is given in the advertisement by the promoter due to which the allottee suffered from loss. However, in the present case, it is not the case of the complainant that any of such criteria as provided under section 12 of the RERA has been violated by the respondent. Hence, the complainant is not entitled to seek any relief under section 12 of the RERA.

6. In addition to this, the complainant has contended that the respondent has agreed for date of possession as August, 2020, which was subsequently extended by the respondent. However, no cogent documentary proof has been submitted on record of MahaRERA by the

complainant to substantiate the said fact. Hence mere statement made by the complainant cannot be accepted for seeking relief under section 18 of the RERA. Hence in absence of any allotment letter / registered agreement for sale showing any agreed date of possession which is lapsed, the claim of the complainant towards the refund of the booking amount under section 18 has no substance.

7. In the present case, the MahaRERA further noticed that the respondent in its reply has clearly stated that the complainant has cancelled the said booking due to his personal reasons and accordingly he has sent emails to the respondent stating the said facts. The said fact has not been denied by the complainant.
8. In view of the above facts, the MahaRERA is of the view that in absence of any allotment letter / registered agreement for sale entered into between the complainant and the respondent, both the parties are governed under the terms and conditions mentioned in the booking application form.
9. Considering these facts, the MahaRERA does not find any merits in the complaint. Consequently, the complaint stands dismissed.



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