

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

Complaint No. CC006000000196096

Mr. Kapil Haresh Doshi Complainant

Versus

M/s. Macrotech Developers Limited Respondent

Project Registration No. **P51700006147**

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

Ld. Adv. Alpesh Deshmukh appeared for the complainant.

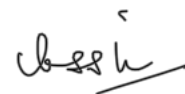
Ld. Adv. Nitin Waghmare appeared for the respondent.

ORDER

(19th April, 2021)

(Through Video Conferencing)

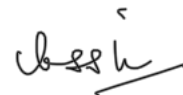
1. The complainant has filed this complaint seeking directions to the respondent to refund the entire amount paid by him under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') with respect to the booking of flat bearing no.E-1802 in the respondent's registered project known as "**Upper Thane Greenville**" bearing MahaRERA registration No. **P51700006147** situated at Thane.
2. This complaint was heard on 06-04-2021 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 said hearing through their



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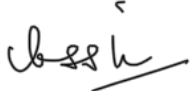
advocates and made their submissions. After hearing the arguments of both the parties, the respondent was directed to file its reply on record of MahaRERA within a period of one week and the case was concluded. However, the respondent has not filed any reply on record of MahaRERA till date. Hence the MahaRERA relied upon the arguments advanced by both the parties and also perused the record.

3. It is the case of the complainant that on 02/12/2020, he booked the said flat along with one car parking for a total consideration of Rs. 51,60,000/-. At the time of booking he has paid an amount of Rs.1,40,000/-. The respondent has acknowledged the said payment. Thereafter, he visited the site of the said project and at that time, he realized that his father is suffering from heart disease and other ailments and it requires urgent medical treatments which may also lead to financial crisis therefore on account of the said reason, he sought cancellation of the said booking through email dated 03/12/2020 sent to the respondent and sought refund of the entire booking amount of Rs. 1,40,000/- paid by him. However, the respondent refused to refund the same and hence he sent a legal notice dated 19/12/2020 through his advocate and called upon the respondent to terminate and cancel the booking and refund the booking amount. However, the respondent did not respond to the same. Hence the present complaint is filed seeking reliefs as sought for in this complaint.



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4. The respondent has not filed its reply on record of MahaRERA within the stipulated time as per the directions of MahaRERA. However, during the course of hearing, the learned advocate for the respondent stated that the cancellation has been done due to personal difficulty of the complainant and not due to the default of the respondent under any provisions of the RERA. Hence the amount paid by the complainant has been forfeited as per the terms and conditions of the booking application form signed by the complainant.
5. The MahaRERA has examined the arguments advanced by both the parties as well as record. In the present case, by filing this complaint, the complainant is seeking refund of the earnest amount paid by him for booking of the flat in the respondent's project. Admittedly, the said booking was done after commencement of RERA on 02-12-2020. The complainant has booked the said flat for a total consideration amount of Rs. 51,60,000/- and admittedly, he has paid an amount of Rs. 1,40,000/- towards the booking amount. However, the complainant has cancelled the said booking due to his medical emergency.
6. With regard to the contention raised by the respondent about the forfeiture of the entire booking amount as per the terms and conditions of the booking application form, the complainant has stated that the same is one sided and is not binding upon him. Hence the complainant sought refund of entire booking amount.

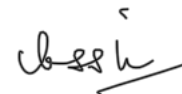


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7. In the present case, the MahaRERA has observed that the complainant is seeking refund of the booking amount under the provisions of RERA. In this regard, the MahaRERA is of the view that after commencement of RERA, the allottee is entitled to seek refund of the money including the booking amount in case of violation of sections 12 and 18 of the RERA.
8. In the present case, admittedly there is no allotment letter issued in favour of the complainant nor any registered agreement for sale executed between the parties showing any agreed date of possession which has lapsed. Hence, the claim of the complainant cannot be considered under section 18 of the RERA.
9. Even if the claim of the complaint is to be considered under the provision of section 12 of the RERA, the complainant has not submitted any cogent documentary proof on record of MahaRERA to show that the respondent has ever given him any misleading information by way of any false advertisement due to which he has suffered from any loss. Hence, in absence of any documentary evidence, the claim of the complainant under section 12 of the RERA cannot be considered by the MahaRERA.
10. In view of these facts, the MahaRERA is of the view that no reliefs as sought for by the complainant can be considered by the MahaRERA. Hence, the MahaRERA is of the view that in absence of any agreement for sale or allotment letter, both the parties are governed under the provisions of booking application form.

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11. However, the MahaRERA is also of the view that the forfeiture of entire booking amount by the respondent is not in keeping with the provisions of the RERA, which is enacted as a welfare legislation primarily to safeguard the interests of allottees. Hence the respondent cannot be allowed to act contrary to the spirit of the provisions of the RERA as observed by the Hon'ble Appellate Tribunal in its order dated 29-06-2020 passed in Appeal No.AT006000000021466 (Mrs. Rekha Navani V/s M/s. Omkar Ventures Pvt Ltd).
12. In view of these facts, MahaRERA directs the respondent to refund the amount paid by the complainant after forfeiting 10% out of Rs. 1,40,000/- towards administrative charges within a period of one month.
13. With these directions, the complaint stands disposed of.
14. The certified copy of the order will be digitally signed by concerned Legal Assistant of MahaRERA and it is permitted to send the same to both the parties by e-mail.



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