

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

COMPLAINT NO. CC006000000090022

Vimla Jagdish Shahani

..Complainant

Versus

Lodha Group

..Respondent

MahaRERA Regn. No.P51700014814

Coram:

Hon'ble Shri Madhav Kulkarni.
Adjudicating Officer, MahaRERA.

Appearance:

Complainant:In person

Respondent : Adv Mahendra P Sing

**O R D E R
(Dated 19.10.2020)**

1. The complainant an allottee who had booked a flat with the respondent / promoter seeks refund of amount with compensation.
2. As usual this is a cryptic online complaint without giving necessary details as to the no. of flat, name of the project, price that was agreed, and details of the agreement. All that is alleged is that complainant visited site at Upper Thane on 09.02.2019 and paid Rs.2.70 lakhs by credit card as booking amount for a 3 BHK flat in the project at upper Thane. Complainant committed to pay booking amount two of Rs.27.6 lakhs within one week. It was assured that complainant will be tied up with one

bank for the loan of 80% of the cost and that will take care of all payment up to possession of unit which would occur within 15 months time. Complainant was assured safety, liquidity of investment and good appreciation. Complainant was informed that registration will be planned after loan was sanctioned.

3. Thereafter, complainant was required to face many persons from respondent, from time to time to get her things done. Payment by cheque of Rs.27.60 lakhs was credited on 12.03.2019 i.e. after one month. Respondent put on record that bank loan sanction papers were lost by complainant and therefore took 23% of flat cost from her. From March to May they contacted only one bank but told that they had contacted three banks. Because of non-co-operation, and false information given by Resp., in a meeting held on 05.06.2019, it was decided to cancel the booking. If sufficient loan was not available, complainant could have shifted to 2BHK flat. Respondent is now deducting 10% of the total amount. Since complainant has paid Rs.30.30 lakhs, before six months, complainant expects Rs.35 lakhs from respondent.
4. The matter came up before Hon'ble Member on 15.10.2019. The matter came to be transferred to Adjudicating Officer, Mumbai as compensation u/s 12 was claimed. The matter came up before me on 13.01.2020. Respondent filed written explanation. It was submitted that matter was likely to be settled. Matter was adjourned to 12.02.2020. No settlement was arrived at. Arguments were heard on that day. As I am working at Mumbai and Pune Offices in alternative weeks and due to huge pendency in this office and due to lockdown conditions due to Corona Pandemic, this matter is being decided now.
5. The respondent has alleged that complaint is in respect flat no. 1102 on 11th floor, in A wing of Casa Tiara, 3 BHK of UTIP project, Thane. It is denied

that complainant was induced to book the flat. It is alleged that complainant paid Rs.2.70 lakhs on 09.02.2019 and Rs.26,35,028/- excluding GST on 22.02.2019. Respondent issued letter of allotment on 14.03.2019. Complainant made payments as per schedule. Complainant wanted loan amount to be sanctioned before execution of agreement for sale. Complainant sought assistance from respondent to avail the loan. It is denied that respondent had promised to arrange for the loan. It was complainant's sole responsibility to obtain loan. Complainant is not eligible for full loan amount due to lack of financial resources and as complainant is 69 years old person with pension. Loan of only Rs.10 lakhs could be sanctioned to her. Respondent never demanded more than 10% of the price. As per agreed terms, respondent is entitled to deduct 10% of the amount in the event of cancellation. Respondent had offered a unit to the complainant in other project in order to avoid loss to her. The complaint therefore, deserves to be dismissed.

6. Following points arise for my determination. I have noted my findings against them for the reasons stated below:

POINTS	FINDINGS
1 Is the complainant allottee and respondent promoter?	Affirmative
2 If yes, did the respondent induce the complainant to pay advances on the basis of false statement, thereby inflicting loss to the complainant?.	Negative
3 Is the complainant entitled to the reliefs claimed?	Negative
4 What Order?	As per Final Order.

REASONS

7. **Point Nos. 1 to 3** - The sum and substance of complaint's case is that

respondent promised that loan to the tune of 80% of the cost of the flat will be arranged and thereby induced the complainant to book a 3BHK flat in its project. The complainant therefore, paid Rs.2.70 lakhs on 09.02.2019 and paid Rs.27.60 lakhs within one week. Respondent claims that excluding GST, complainant paid Rs.24,35,028/- on 22.02.2019. Further Complainant made payment in excess of 10% of flat cost on her own accord. Respondent had never promised to arrange for bank loan up to 80% of the flat cost.

8. Copy of application form filled by complainant on 22.02.2019 is placed by respondent on record. Flat no. 1102 which was a 3BHK flat was to be sold for Rs.1,17,60,990/-. Date of possession was mentioned as 29.02.2020. Funding type is mentioned as bank. It appears that Pooja Jagdish Sahani, the daughter of the complainant was co-applicant. Schedule of payment is annexed to this form. Booking amount 1 and booking amount 2 was payable by 22.02.2019. As per note no. 3, if the applicant approached a bank for availing loan and there was delay in making payment, it will attract interest. The terms of allotment are placed on record. As per term no. 11.1 the applicant was solely responsible for the payment of total consideration made by the bank. There is no promise that the respondent undertook to arrange for bank loan.
9. There is mail dated 14.03.2019 from the respondent, informing that if complainant opted for bank loan, the documents needed will be pre-requisite. The details of applicant and co-applicant were required to be furnished to bank. Thereupon complainant sent mail on 15.03.2019 informing that she was interested in loan upto 75% of flat cost. In the mail dated 15.03.2019, respondent assured that assistance will be provided for

the loan requirements. Then there are letters from Resp. about overdue payments. There was further correspondence from the respondent urging to opt for an alternative flat and not to go for cancellation.

10. Complainant on her part, has placed on record, copy of email dated 05.06.2019. It was informed by her that in view of no loan tie-up, registration of agreement cannot proceed, because it was the respondent who was unable to tie up loan amount. In the mail dated 06.05.2019, it was informed that flat was booked under 80:20 scheme.
11. It appears that respondent had assured to help the complainant in seeking loan. However, any financier will advance loan only on confirming about regular re-payment. There is nothing on record to show that complainant had capacity of repaying loan instalments of the bank regularly. The respondent alleged that complainant who is a retired elderly person was not eligible to seek huge loan amount to the extent of 75 to 80% of the price of the flat. It was for the complainant to adduce evidence about her capacity and her earnings. In its absence, it has to be held that bank was justified in refusing the loan.
12. Complainant sought cancellation of booking and sought refund of entire amount paid by her. Respondent on the other hand is bent upon deducting the cancellation charges. This dispute, is beyond the jurisdiction of this forum. The complainant offered to cancel the booking and respondent has promised to refund her amount by deducting 10% amount.. Since Resp. has not repaid anything to complainant, she continues to be allottee. I therefore answer point no.1 in the affirmative The alleged inducement, for booking of flat by promise of arranging

loan,, is not substantiated. Consequently complainant is not entitled to any relief from this forum. She has to approach proper forum for redressal of her grievance I therefore, answer points no. 2 and 3 in the negative and proceed to pass following order :

ORDER

- 1) Complaint stand dismissed.
- 2) No Order as to costs.

Mumbai
Date : 19.10.2020

(Madhav Kulkarni)
Adjudicating Officer
MahaRERA