

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

Complaint No. CC006000000193051

Mrs. Vijaya Sanjay Gaigawale Complainant

Versus

M/s. Lodha Group Respondent

Project Registration No. P51700016245

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

The complainant appeared in person.

Adv. Nitin Waghamare appeared for the respondent.

ORDER

(25th February, 2021)

1. The complainant has filed this complaint seeking directions to the respondent promoter to refund the entire amount paid by her under the provisions of section 12 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') with respect to the booking of flat bearing no. H-1802 in the respondent's registered project known as "Upper Thane Woodlands G, H, I" bearing MahaRERA registration No. P51700016245 situated at Thane.

2. This complaint was heard on 24-12-2020 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 hearing and made their submissions. However for further



clarification, this complaint is again heard today in presence of both the parties. The MahaRERA heard the arguments of both the parties and also perused the record.

3. It is the case of the complainant that she has booked the said flat on 27-01-2019 in the respondent's project for total consideration of Rs. 49,83,075/-. At the time of booking, she has paid an amount of Rs. 4,98,308/- as booking amount + Rs. 39,865/- GST + Rs. 30,000/- towards registration charges and in all she has paid an amount of Rs. 5,68,173/- to the respondent on 30-03-2019. She has further stated that she is going to retire in the year 2022 and hence at the time of said booking she requested the representatives of the respondent to confirm her eligibility of home loan prior to the said booking of the said flat. The representative of the respondent confirmed the same from its local home assistant. At the time of booking, the sale representative of the respondent gave only single page only to fill up the personal information and without providing any terms and conditions they have obtained her signature. She further stated that with verbal confirmation of loan eligibility, the representative of the respondent pressurised her to pay balance amount. However, since she could not get the home loan, she has cancelled the said booking vide email dated 6-05-2019 and sought refund from the respondent, which has not been paid to her as it has forfeited the said amount. Hence the present complaint is filed seeking reliefs as sought for in this complaint. She further stated that she has also filed an application before MahaRERA Conciliation and Dispute Resolution Forum and conciliation hearings were scheduled on 16th December 2019, 17th January 2020 and 7th March 2020. During the conciliation proceedings, both the parties decided to resolve their

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disputes amicably but failed to do so. However the respondent has failed and neglected to resolve the issue amicably. Hence, the present complaint.

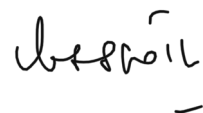
4. The respondent on the other hand has refuted the claim of the complainant stating that the present complaint is not maintainable under section 12 of the RERA since there is no misrepresentation done by it as alleged by the complainant. It has stated that the complainant has booked the said flat on 30-03-2019 for total consideration amount of Rs.49,83,065/- by signing the booking application form. Thereafter the demand letter was issued to the complainant for further payment on 30-04-2019. However, the complainant due to her own financial problem has cancelled the said booking through cancellation request dated 6-05-2019. Accordingly, it has cancelled the said booking as per the terms and condition of the booking application form and forfeited the entire amount paid by the complainant and issued the cancellation letter dated 23-11-2020 to the complainant. It has further stated that the said cancellation has been done due to financial problem as she was not in a position to pay the amount. It has further stated that it has never assured her to get any home loan sanctioned. Further, the said booking was done through digital mode through tablet. After reading the terms and conditions of the said booking application form, she has signed and done the said booking. When she got to know that her loan application is rejected, she started making such baseless allegations that it has assured to get home loan to her. It has further stated that the booking application form made it clear that she has to get her loan sanctioned from any bank. Hence now she cannot raise these issues and even a loan is squarely based on the financial credential of the complainant and the

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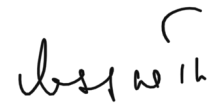
respondent is not liable for the same. Hence, it has prayed for dismissal of this complaint.

5. The MahaRERA has examined the arguments advanced by the complainant and also perused the record. By filing this complaint, the complainant is seeking refund of the amount paid by her towards the booking of the flat in the respondent's project. Admittedly, there is no allotment letter issued in favour of the complainant nor any agreement for sale been executed between both the parties showing any agreed date of possession which has lapsed. Hence, the MahaRERA feels that the complainant is not entitled to seek any relief towards the refund under the provisions of section 18 of the RERA.

6. 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 her any misleading information by way of any false advertisement due to which she has suffered from any loss. Moreover, the complainant has made only oral submission that the respondent at the time of said booking confirmed her eligibility to get the home loan; however the complainant has not submitted any cogent documentary evidence signed by the respondent to substantiate her claim. Hence, in absence of any documentary evidence, the claim of the complainant under section 12 of the RERA cannot be considered by the MahaRERA.



7. 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.
8. However, in the present case it is noticed by the MahaRERA that both the parties have agreed to settle the matter amicably during the hearing held before the MahaRERA Conciliation Forum. Hence, in compliance of principles of natural justice, both the parties are at liberty to settle the matter if they so desire.
9. With these observations, the complaint stands disposed of.
10. The certified copy of this order will be digitally signed by the concerned legal assistant of the MahaRERA. It is permitted to forward the parties a copy of this order by e-mail.



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