

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

COMPLAINT NO: CC006000000100546

Robinson Varghese ... Complainant

Versus

Lucina Land Development Limited  
MahaRERA Regn. No. P52000000475 ... Respondent

**Corum:** Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainant was represented by Mr. Sanjay Chaturvedi, Adv. a/w Adv. Pooja Gaikwad.  
Respondent was represented by Mr. Abir Patel, Adv. (i/b. Wadia Ghandy & Co.).

**Order**

March 02, 2020

1. The Complainant has stated that he has booked an apartment bearing No. 33 C - 3006 in the Respondent's project 'Indiabulls Park 4' situated at Panvel, Raigad via Application Form and was promised possession by December, 2015. Further, he has stated that as the construction was stopped and the project got delayed, the Respondent gave three options to the Complainant as follows: (i) Cancel the booking and take refund with 12% simple interest (ii) Shift to Phase 1 (iii) Stay invested with the project and the Complainant chose to continue in the project as the Respondent stated that he will commence the stalled project by December 31, 2015 as they are working on all the approvals and clearance certificates. Further, he has stated that the Respondent had also promised that if the construction of the project does not commence by December 31, 2015, the complainant will be provided with an option to exit with similar terms of option 1 i.e refund with 12% interest. Later Respondent sent a revised cost sheet and offered a different apartment to the Complainant bearing no COSMOS 3A- 3204 which had an increased carpet area and consideration price. Further, he has stated that since the Respondent failed to provide any updates about



the possession date, he cancelled the said booking in August, 2019 but the Respondent is yet to refund the amount paid. Therefore, the Complainant has prayed that the Respondent be directed to refund the amounts paid along with interest and compensation.

2. The learned counsel for the Respondent contesting and denying the allegation made by the Complainant explained that the construction work of the project could not be completed because of reasons which were beyond the Respondent's control. Specifically, he submitted that a stop work notice was issued which was in force till April, 2019. Further, he submitted that the Respondent had in 2015 given three options to the Complainant pertaining to refund of amount etc., however, the Complainant chose to continue in the said project and that a notice by the Contractor was issued to the Complainant before December, 2015 that the work on the project site has commenced. Therefore, he submitted that the option to exit from the said project as offered by the Respondent ceased to exist. He also submitted that the Respondent is willing to execute and register the agreement for sale and that the Respondent will handover possession as per the timeline stated in the Respondent's registration webpage.
3. During the course of the hearing, it was explained to the Complainant's counsel that no order for refund with interest as per section 18 of the said Act can be passed since the no agreement for sale has been executed and registered between the parties.
4. Section 18 (1) of the Real Estate (Regulation and Development) Act 2016 reads as:

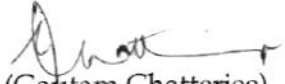
*" if the promoter fails to complete or is unable to give possession of an apartment, plot or building, – (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;*

*he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act; Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. "*



Accordingly, since no agreement for sale has been executed and registered between the parties, provisions of section 18 of the said Act does not apply to the present case.

5. In view of the above facts, if the Complainant intends to continue in the said project, the parties are directed to execute and register the agreement for sale within 30 days from the date of this Order.
6. In case, the Complainant is still firm on his decision to cancel his bookings and his intention to withdraw from the said project, then refund, if any, shall be guided by the terms and conditions of the Application Form.
7. Consequently, the matter is hereby disposed of.

  
(Gautam Chatterjee)  
Chairperson, MahaRERA