

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

Complaint No. CC006000000192656

Rashmi Kamble

Vs

..Complainant

M/s Lucina Land Development Limited

..Respondent

MahaRERA Project Registration No. P52000000475

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

Adv. Kiran Bhogle appeared for the complainant.

Adv. Vatsal Shah appeared for the respondent.

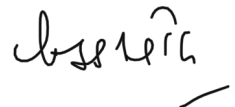
ORDER

(18th December, 2020)

(Through Video Conferencing)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to refund the entire amount paid by her along with interest and compensation under sections 12, 14 and 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') with respect of booking of flat in the respondent's registered project known as "Indiabulls Park-4" bearing MahaRERA registration No. P52000000475 at Panvel, Dist-Raigarh.

2. This complaint was heard on several occasions in presence of both the parties and same was heard finally on 02-12-2020 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 the said 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 respective submissions. After the hearing the arguments of both the parties, the complainant was allowed to file her rejoinder to the reply filed by the respondent. Accordingly, the complainant has filed her rejoinder on record of MahaRERA on 11-12-2020. The MahaRERA heard the arguments of both the parties and also perused the record.

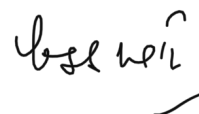
3. It is the case of the complainant that she has booked the said flat in the respondent's project for total consideration amount of Rs. 60,25,600/-. At the time of booking, she has paid an amount of Rs. 6,02,560 and thereafter she paid further amount in cheque. In all, till date she has paid an amount of Rs. 12,05,120/- which amounts to 20% of the total consideration of the flat. As per the booking summary sheet issued by the respondent she was allotted 2 BHK flat bearing no. 1307 on 13th floor in building no. 46 having super built up area admeasuring 1172 sq. ft. and further the respondent was also promised the date of completion of her flat as 31st December 2016. Thereafter, in the month of January 2016, the respondent issued a new allotment letter changing the flat number from 1172 to 1237 and the price from Rs. 60,25,600/- to Rs. 63,37,600/-. The complainant objected this said unilateral decision of the respondent but it was not responded by the respondent. Further she has not received any communication from the respondent. Thereafter, from the webpage information uploaded by the respondent she came to know that the respondent has revised the completion date of the said project as 30th July 2024. Hence she has decided to withdraw from the project and filed this complaint seeking refund along with interest and compensation for the mental agony caused to her since last more than 7 years. Hence, the complainants prayed to allow this complaint.



4. The respondent on the other hand has resisted the claim of the complainant by filing written reply on record of MahaRERA. The respondent has denied the claim of the complainant by stating that the present complaint is bogus, misconceived and contrary to the documents executed by the complainant. It has further stated that the complaint is filed by suppressing the material facts from record of MahaRERA and hence, same is liable to be dismissed. The respondent further stated that the complainant wants to walk out from the project with profit seeking interest along with compensation and same is not permissible under the provisions of RERA. It has further stated that the complainant invested the money in the year 2014-15 and voluntarily chose to stay in the project, and after receipt of the layout and construction approval has duly accepted the change in the area of the flat and also the consideration by signing the cost sheet on 09.01.2016. It has further state that there is no allotment letter / registered agreement for sale entered into with the complainant. Hence, the complaint for refund is not maintainable under the provisions of section 18 of the RERA. It has further stated that the complainant has not only failed to pay the outstanding dues but also has neglected to accept the allotment letter and also to register the agreement for sale. It has never agreed for any date of possession as 31st December 2016 as alleged by the complainant. Even the complainant has not produced any supportive documents regarding that. In addition to this, the respondent further stated that the booking of the said flat was done in the joint name of the complainant and her husband. However, the present complaint is filed by the complainant only. On this ground also, the complaint is liable to be dismissed. It has further stated that the complainant has approached it through broker - Indiabulls Distribution Pvt Ltd and at the time of booking the complainant was provided with all the necessary information pertaining to the said project. Considering the said information the complainant along with her husband made an application dated

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30.04.2013 for provisional reservation of 2 BHK flat and signed the said application form. At that time, the complainant agreed that there could be change in the building plan of the project / tower/ building / design / specification / location number / boundaries / carpet area / dimension etc. and the same shall be binding upon her as per various clauses of application for provisional reservation of the flat signed by the complainant. The said booking application was provisional and proposal of the complainant and acceptance of the same by making final allotment is at the sole discrimination of the respondent. Since the permission of the phase 2 of the said project was taking time and therefore keeping the interest of the allottees in mind, it has changed the plan. At that time, they offered the allottees the refund with 12% interest. However, at that time the complainant opted to stay in the project. Thereafter, it received the permission from the project on October-November 2015 and therefore the complainant was informed about the layout plan and amenities which had been changed and offered another flat no. 1608 with the revised plan / location and price. The complainant after seeing the plan negotiated and accepted the said cost sheet for flat no. 1608 on 09.01.2016. Till then the complainant never raised any grievance about area / change in plan/ change in flat no. etc. Now, the complainant has approached MahaRERA seeking refund by misusing the provisions of RERA which is not permissible. Further in the year 2017 the complainant sought cancellation of the said booking. The respondent vide communication dated 25.02.2017 informed that the application of cancellation of booking will be subject to applicable charges for cancellation. However, the complainant did not pursue this application. The respondent vide their various communications and repeated reminders called upon the complainant on 10.08.2017, 06.10.2017, 16.11.2017, 31.01.2018, 06.02.2018, 13.04.2018, 22.10.2018 and 25.10.2018 to come and execute the registered agreement for sale. However, the complainant did not come forward for executing the

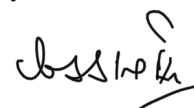


registered agreement for sale. These facts are suppressed by the complainant in his complaint and hence, the respondent prayed for dismissal of this complaint.

5. The complainant on the other hand had refuted the submissions made by the respondent by filing rejoinder on record of MahaRERA on 11.12.2020. She has stated that since November 2015 till February 2020 for last five years there is no progress beyond plinth done on site. Therefore she is not ready and willing to wait for her flat till revised completion date is clarified by the respondent. She further stated that she is ready to join her husband as party to this complaint. The complainant therefore prayed to allow her complaint.

6. The MahaRERA has examined the arguments advanced by both the parties and also perused the record. In this case, the complainant as an allottee of this project has approached MahaRERA seeking refund of the principal amount paid by her to the respondent towards the booking of the flat in the respondent's project along with interest / compensation mainly for violation of sections 12, 14 and 18 of the RERA. The complainant's entire case is based on the alleged misrepresentation made by the respondent at the time of booking of the said flat due to which she is seeking relief under section 12 of the RERA. The complainant further sought relief of compensation under section 14 for change of plans by the respondent without her consent and refund along with interest and compensation under section 18 of the RERA.

7. With regard to the claim of the complainant under section 18 of the RERA for refund along with interest, the MahaRERA has perused the provision of section 18 of the RERA which reads as under:



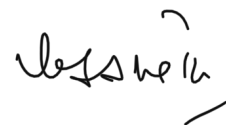
1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottee, 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.”

8. The aforesaid provision of section 18 stipulates that if the promoter fails to complete the project or is unable to handover possession of the flat to the allottee on the agreed date of possession mentioned in the agreement for sale, the promoter, on demand in case the allottee wishes to withdraw from the project to refund the entire amount along with interest as prescribed under RERA along with compensation. However, in the instant case, admittedly there is no agreement for sale entered into between the parties nor any date of possession mentioned in the allotment letter issued by the respondent on 9-01-2016. Hence the MahaRERA is of the view that there is no violation of section 18 of the RERA by the respondent. Hence the claim of the complainant under section 18 of the RERA stands rejected.

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9. With regard to the claim of the complainant under sections 12 and 14 of the RERA, the MahaRERA has observed that the entire case of the complainant is based on misleading information about the date of possession given by the respondent at the time of booking and the respondent has changed the flat number/tower/area of the flat and even raised the consideration amount and thereby the respondent has violated the provisions of 12 and 14 of the RERA. However on perusal of the complaint prima facie, it appears that the complainant has alleged that the respondent has agreed to handover possession of the said flat to her on or before 31-12-2016. However, nothing has been submitted on record of MahaRERA by the complainant to show that the respondent had ever agreed for date of possession as 31-12-2016. Hence, the contention of the complainant about violation of section 12 does not arise. Hence the MahaRERA feels that there seems to be no substance in the claim raised by the complainant for violation of section 12 of the RERA for which the complainant is entitled to seek compensation.

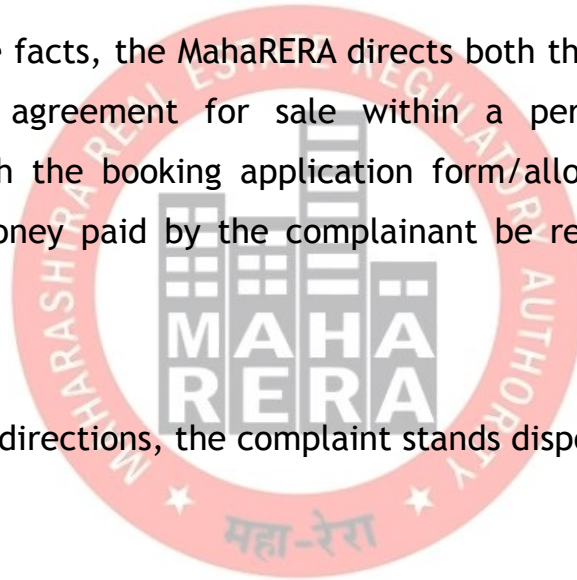
10. With regard to the claim of the complainant towards the compensation for violation of section 14 of the RERA, the MahaRERA is of the view that admittedly the booking of the said flat was done by the complainant before the RERA came into force, under the provision of MOFA. Even the respondent has got revised layout plan / building plan sanctioned from the competent authority in the month of October, - November, 2015 and accordingly, the revised allotment letter dated 9-01-2016 was issued to the complainant. Since all such modification in plans got done prior to commencement of RERA, the MahaRERA is of the view that the provision of section 14 of the RERA would not be made applicable retrospectively in this case to grant compensation to the complainant.

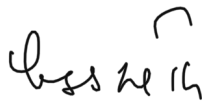


11. In the present case, the MahaRERA has observed that admittedly, the draft agreement for sale was sent to the complainant and on several occasions, she has been called upon to execute the registered agreement for sale by the respondent. However, the complainant refused to sign the same alleging that the respondent has extended the date of possession. Till date the complainant has already paid more than 10% amount towards the cost of the said flat, therefore the only relief which the complainant is entitled to seek from MahaRERA is under section 13 of the RERA.

12. In view of these facts, the MahaRERA directs both the parties to execute the registered agreement for sale within a period of 30 days in accordance with the booking application form/allotment letter failing which, the money paid by the complainant be refunded without any interest.

13. With the above directions, the complaint stands disposed of.




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