

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

Complaint No.CC006000000078792

M/s. Jivdani Realtors LLP

.... Complainants

Versus

M/s. Viva Winner Venture Realtors LLP

..... Respondents

Project Registration No. **P99000003245**

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

Adv. Ravindra Shetye appeared for the complainant.

Adv. Ashish Panchal appeared for the respondent.

ORDER

(6th February, 2020)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to refund the amount paid by it, alongwith interest @ 21% per annum, from the date of payment and compensation under Section-18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA") in respect to the booking of a residential flat adm. 33.02 sq.m. in the respondent's project known as '**Viva City**' bearing MahaRERA registration No. **P99000003245** situated at Palghar, Taluka Vasai.
2. This complaint was heard on 25-06-2019. After hearing the arguments of both the parties, this complaint was referred to the Ld. Adjudicating Officer, MahaRERA, Mumbai for adjudging the compensation under section-71 of the RERA, since the complainant was seeking refund with interest and compensation under section-18 of the RERA. However, the Ld. Adjudicating Officer, again transferred this complaint to MahaRERA for further decision. Hence, this complaint was heard finally on 24th January, 2020 when both the parties appeared and made their respective submissions.

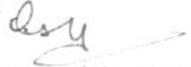
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3. It is the case of the complainant that, it has booked the said flat in the respondent's project for a total consideration amount of Rs. 26 Lakh. The respondent has issued allotment letter dated 20.1.2018 for the said booking and also assured the possession of the said flat. Though it has paid the entire consideration amount to the respondent for purchase of the said flat, the respondent has failed to execute the registered agreement for sale with it and delayed the possession. Hence, the complainant has lost the faith in the respondent and now seeking refund of the amount, along with interest and compensation under section-18 of the RERA.
4. The respondent, on the other hand, has disputed the claim of the complainant and stated that the complainant has made the payment, not for booking of the said flat. But, the same is given for development of the said building, which did not work out and hence, to secure the said payment made by it, the respondent has issued the said allotment letter dated 20-1-2018.
5. The respondent during the hearing has stated that it is ready and willing to execute the agreement for sale with the complainant within a period of two months for the flat mentioned in the allotment letter or any other flat having similar area, failing which they will refund the amount without any interest.
6. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, the complainant is seeking refund of the amount paid by them along with interest and compensation under section-18 of the RERA on the ground of delay. Admittedly, there is no date of possession mentioned in the allotment letter nor agreement for sale executed between them, showing any date of possession.
7. In this regard, the MahaRERA is of the view that the provision of section-18 of the RERA would come into effect, if the agreed date of possession mentioned in the agreement for sale or as the case may be is over, and the promoter fails to handover possession of the flat to the allottee. Likewise, in the present

case, in absence of any cogent documentary evidence on record of MahaRERA to show that the agreed date of possession has been lapsed, the MahaRERA feels that the provision of section-18 would not attract and the hence, the claim of the complainant for refund along with interest and compensation cannot be considered under section-18 of the RERA.

8. The MahaRERA has observed that the present booking has been done after RERA came into effect on 1-05-2017, i.e. in the year 2018 and admittedly, the complainant has paid more than 10% amount and hence, the respondent is liable to execute the registered agreement for sale with the complainant in accordance with the provisions of section-13 of the RERA.
9. In view of the aforesaid facts, the MahaRERA directs the respondent to execute the registered agreement for sale with the complainant within a period of two months with respect to the flat allotted to the complainant vide allotment letter dated 20-1-2011 or any other flat having similar area in the respondent's project within a period of two months, failing which it shall refund the entire amount to the complainant.
10. With the above directions, the complaint stands disposed of.

महा-रेरा


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