

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

**COMPLAINT NO: CC00600000057215**

Banmali Tandan

... Complainant.

**Versus**

Larsen & Toubro  
(Emerald Isle - T4, T5, T6)

... Respondents.

MahaRERA Regn: P51800003307.

**Coram:** Shri B.D. Kapadnis,  
Hon'ble Member & Adjudicating Officer.

**Appearance:**

Complainant: In person.

Respondent: Adv. Vatsal Parikh.

**FINAL ORDER**

**30<sup>th</sup> April 2019.**

The relevant facts are; complainant filed a complaint no. CC006/230 on 24.08.2017 contending therein that he booked apartment no. T-04-305 in respondents 'Emerald Isle' project Saki Vihar, Powai, Mumbai and they agreed to hand over its possession by August 2016 with grace period of six-months. The respondents did not give the possession of the flat even after crossing the agreed date of possession and therefore, the complainant claimed termination of the contract and refund of the principal amount, amount of service tax, interest and compensation etc.

2. Parties arrived at the settlement out of MahaRERA office. Mr. Tandan received principal amount of Rs. 1,90,69,797/- and Rs. 94,938/- as interest on pre-payment of advance payments and Rs. 61,112/- as adjustment amount/ compensation which is subsequently classified as payment of interest. He put these facts on record by letter dated 12<sup>th</sup> October 2017 and reiterated them in the letter received on 23<sup>rd</sup> October



2017. He informed that on receipt of the aforesaid monies, he did not have further interest or claim in property namely the apartment in T-04-305. In view of this, the Authority passed an order on 24<sup>th</sup> October 2017 to the effect that 'the complainant's claim has been fully satisfied. He does not have any interest in flat booked by him. Therefore, the complaint has been disposed off as withdrawn'.

3. Thereafter both the parties appeared before me because Mr. Tandan complained of non-refund of service tax/MVAT. Mr. Tandon submitted that the amount of service tax/MVAT were not refunded though the respondents agreed to refund them. Respondents submitted that they already moved service tax and MVAT Authority for refund. Therefore, they were hopeful of getting the return. On this backdrop the respondents had been directed to pursue the matter and seek the refund of service tax and MVAT for paying it back to Mr. Tandan. This order had been passed with the consent of both the parties and would not act as the precedent.

4. The complainant has filed this complaint on the backdrop of the previous complaint. His grievance is that the respondents have not refunded service tax of Rs. 7,76,638/- and MVAT of Rs. 1,94,75/-. It is his grievance that the respondents have not handled the matter diligently. He submits that Rs. 1,92,678/- were paid towards the TDS and they have not been refunded by the respondents. According to him, the TDS amount is to be refunded and thereafter its reimbursement is to be sought from the concerned Government Department.

5. The complainant contends that the respondents sent him letter on 03.10.2018 asking him to pay Rs. 44,118/- towards TDS payment and also threatened him by writing that the TDS amount will continue to reflect as unpaid amount on his record.

6. The complainant further contends that though the booking of the flat had been cancelled by order dated 24.10.2017, the respondents raised illegal bill to claim maintenance charges for the period from 01.11.2018 to



03.12.2018 by their letter dated 01.12.2018. He further alleges that the said flat has been used as sample flat by the respondents for their commercial purpose. It is shown in his name though the booking thereof is cancelled.

7. He submits that the respondents have not paid the interest due on pre-payments of advance payment in July and August 2015. He also complains of non-payment of interest on principal amount between 14.07.2015 until disbursement of the claim. He also contends that the title of the respondents to the project land was defective as the respondents violated ULC Act. Therefore, he seeks the compensation under Section 71 & 72 of RERA by contending that the respondents have violated Section 4(2)(1)(D), 19(1), 18 (2) of RERA.

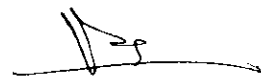
8. After perusing the order passed in CC006/230 it becomes clear that the complainant got the amount of principal, interest on pre-payment of advance payments, adjusted amount/compensation/interest and reported that he had no interest in the booked flat. Therefore, his complaint had been disposed off as withdrawn on full satisfaction of his claim. Once the complainant had reported the satisfaction of his claim and withdrew the complaint, he is precluded from instituting any fresh complaint in respect of the same subject matter or such part of the claim. I rely upon the principle laid down by order 23 Rule 1 (4) of the Code of Civil Procedure for holding this. Hence, I hold that the complainant's claim raised in this complaint regarding the non-payment of interest on pre-payment of advance payments in July and August 2015 as well as non-payment of interest on principal amount between 14.07.2015 until the date of disbursement of the claims cannot be considered. Similarly, his claim for compensation on account of defective title of project land cannot be considered as his claim had been satisfied in the previous complaint.

9. I find from the order dated 28<sup>th</sup> June 2018, that the respondents took the liability of refunding of service tax/MVAT amount to Mr. Tandan and it is fact that the said amount have not been refunded. Mr. Tandan relies

upon some orders passed by the Appellate Tribunal holding that the promoter has to refund the tax amount/MVAT first and then to seek reimbursement from the concerned department of the Government. So the plea for non-compliance of the order of this Authority can be recorded for contravening Section 63 of RERA.

10. The complainant submits that the respondents asked him to pay Rs. 44,118/- towards TDS by their letter dated 31.10.2018 after cancellation of booking. The respondents have no right to claim the TDS from the complainant. Similarly, they do not have right to claim maintenance charges from the complainant after cancellation of booking. Hence these acts appear to be those of unfair practice. Hence, under Sections 63 and 7 of RERA, the plea is recorded.

11. The respondents have filed their reply after pleading not guilty wherein they contend that the complaint is not maintainable because the claim of the complainant has been fully and finally satisfied and thereafter the complainant withdrew the earlier case. According to them the complaint is not maintainable because the occupation certificate of Tower T4 has been received on 15.09.2017. The respondent contend that the service tax and VAT amounts are due and payable by relevant statutory authority as contended in clause 24 (a) of the allotment letter. They are simply facilitator/intermediator to get its refund and then to disburse them to the complainant. They have not enjoyed the said money and hence, they are not liable to pay interest on it. They further contend that on 21.11.2017 itself they have submitted the application for refund of MVAT and service tax in the office of the Commissioner, Goods & Service Tax. The Commissioner required copy of cancellation deed/letter duly signed by the complainant which was delayed by complainant himself. According to them the matter is still under the consideration of the Tax Commissioner. They further contend that the TDS amount have been included in the principal amount already refunded to the complainant




and except the service tax and MVAT amount the complainant cannot retract. They further contend that the TDS claim in October 2018 was claimed out of general practice and upon realising the error immediately on 02.11.2018 the respondents requested to complainant to ignore it by sending an email. They contend that the society of Tower-T2-T5 was formed on 29.07.2018 which maintains the record electronically and the society availed of the opportunity to access it to its members. The maintenance charges for the month of November 2018 and December 2018 were erroneously raised in complainant's name and the society rectified the records and collected them from the respondents. On cancellation of booking the booked flat is with the respondents and they have put it to resale. They have not used it for commercial purpose namely sample flat. Hence, the respondents request to dismiss the complaint.

12. Following points arise for determination and I record my findings thereunder.

**POINTS**

**FINDINGS**

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|---|--------------|
| 1. Whether the complaint is maintainable in view of full and final satisfaction of the complainant's claim recorded in CC006/230?   | Affirmative. |
| 2. Whether the complaint is maintainable after the OC dated 15.09.2017 is recieved?   | Affirmative. |
| 3. Whether the respondents have failed to comply with the order dated 28.06.2018 regarding refund of MVAT and service Tax wilfully? | Negative.    |

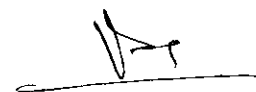


4. Whether the respondents continued to keep the flat in complainant's name even after cancellation of booking by order of the Authority dated 24.10.2017 wilfully and thereby indulged in unfair practice? Negative.
5. Whether the respondents claim maintenance charges from 01.11.2018 to 31.12.2018 and thereby indulged in unfair practice? Negative.
6. Whether the respondents indulged in unfair practice by claiming Rs. 44,118/- towards TDS by their letter dated 31.10.2018? Negative.

#### REASONS

##### Point No. 1:

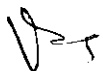
13. By the consent of both the parties this Authority has passed an order regarding refund of service tax and MVAT amount. While passing the interim order dated 09.04.2019 I already recorded as mentioned above that the earlier complaint has been disposed off as withdrawn on the complainant's acknowledgment of receipt of principal amount of Rs. 1,90,69,797/- and Rs. 94,938/- as interest on pre-payment of advance payments and Rs. 61,112/- as adjustment amount/ compensation which is subsequently classified as payment of interest. Therefore, the complainant's claim relating to these aspects cannot be re-agitated as per the principle laid down by Order 23 Rule 1(4) of CPC. I have passed the interim order dated 28<sup>th</sup> June 2018 with the consent of the parties that the respondents shall claim the refund of tax amount and shall pay it back to the complainant. The complainant reports non-compliance of this order. Hence, to this extent the complaint is maintainable.



**Point No. 2:**

14. The learned advocate of the respondents submits that occupancy certificate for Tower T8 has been received on 21 December 2018 and hence, this Authority loses its jurisdiction over the matter. It appears that the learned advocate is labouring under the impression that the Authority holds the jurisdiction till the registration of the project exists. For this purpose it is necessary to look at section 5 (3) of RERA which provides that the registration granted under the section shall be valid for a period declared by the promoter under sub-clause ( C ) of clause (1) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be. This provision therefore does not show that on the receipt of the occupancy certificate the registration of the project shall lapse. Even if it is taken for granted that it lapses on the completion of the project, the issue involved is; whether the Authority loses its jurisdiction on completion of the project or not. I answer the question in negative for following reasons:

- a) Section 7 of RERA provides for cancellation/revocation of the registration of the project. However, section 8 thereof casts obligation on the Authority to carry out remaining development work on lapse or revocation of registration of project.
- b) Section 14 (3) of RERA provides that in case of any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within five years from the date of handing over the possession, the promoter is duty bound to rectify such defects without further charge within 30 days. In the event of promoter's failure to rectify such defects within such time, the



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aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under the Act.

- c) Section 17 of RERA requires the promoter to execute a registered conveyance deed in favour of the allottee of the apartment and register the conveyance deed in favour of the society regarding undivided proportionate title in the common areas within three months from the issuance of the occupancy certificate. The promoter is duty bound to hand over documents, plans to society of the allottees within 30 days from obtaining the occupancy certificate.

15.. These express provisions of RERA indicate that these obligations are to be discharged by the promoter after receipt of the occupancy certificate or completion of the project. Section 33 of the Act provides that it is the function of the Authority to ensure the compliance cast upon the promoter, allottee or real estate agent under the Act , Rules and Regulations made thereunder. The Real Estate Regulatory Authority while performing its role as regulator has the duty to see that the promoter discharges the duties imposed by the Act and if he fails then, the Authority has the jurisdiction to rectify the error.

16. Now, this discussion takes me to section 31 of the Act which provides that any aggrieved person can file a complaint with the Authority or the Adjudicating Officer against any promoter, allottee or real estate agent if they violate or contravene any provision of RERA or Rules or Regulations framed thereunder. Therefore, if the cause of action arises which gives right in favour of the aggrieved person and creates obligation or liability on promoter, allottee or real estate agent as per the provisions of the Act, the Authority retains its jurisdiction because section 79 of the Act bars the jurisdiction of Civil Court from entertaining any suit or proceedings in respect of any matter which the Authority or the Adjudicating Officer or the Appellate Tribunal is empowered by or under





the Act to determine. Therefore, I hold that the jurisdiction of the Authority is not lost only because of the receipt of the occupancy certificate or on the completion of the project or when the possession is offered.

**Point No. 3:**

17. By my order dated 28.06.2018, after hearing the parties, I have made it clear that the amount of service tax/MVAT have not been refunded by the respondents though they agreed to refund the same. The respondents already moved the concerned Authority for getting refund of the said amount and therefore, they have been directed to pursue the matter and seek the refund for paying it back to the complainant. It appears that though this order has been taken by the parties with consent, till the date the respondents have not received the said amount.

According to the respondents, the letter of cancellation of the booking signed by the complainant was demanded by the Commissioner of Tax which was not provided by the complainant by contending that the order dated 24.10.2017 passed by the Authority was sufficient. Thereafter the complainant signed the required letter and according to the respondents the matter is still pending whereas the complainant submits that it is dismissed. However, he has not produced the order of dismissal. Hence, I believe the respondents to hold that the matter is still pending before the Tax Authorities. I take this opportunity to request it to take the decision as early as possible so that the complainant's grievance is redressed. I feel that two months' time will be sufficient for it.

18. Complainant has relied upon some orders passed by the Maharashtra Real Estate Appellate Tribunal wherein the tribunal has held that when the allottee withdraws from the project, the promoter is liable to refund him the amount of service tax/ MVAT. I am of the same opinion. These taxes are indirect taxes and their amount is recovered by


the respondents from the complainant and the respondents being the service providers and assessee have to pay it to the government. Therefore, Mr. Tandan rightly submits that the promoter must refund the amount of tax to the allottee first and then he should get it reimbursed from the government. However, it is necessary to note that the parties have not filed the consent terms when the complainant withdrew the earlier complaint. He simply sent a letter regarding the receipt of principal amount and the amount of interest/compensation. Thereafter the parties have obtained the order dated 28.06.2018 based upon their consent as referred to above.

19. It appears from the documents placed on record that the respondents have already moved the Tax Authority for getting refund of the service tax and MVAT. Hence, I do not find that the respondents have wilfully not followed the order dated 28.06.2018. In this circumstance, I do not find the respondents guilty of the offence punishable under Section 63 of RERA.

20. To conclude this point, I find it necessary to direct the respondents to refund the service tax amount of Rs. 7,76,638/- and MVAT of Rs. 1,94,75/- to the complainant within two months irrespective of the result of the proceeding of refund of taxes filed by them. The complainant is entitled to get the interest at prescribed rate on his amount from 28.06.2018 when for the first time the parties with consent took the order of refunding service tax/MVAT. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 8.75%.

**Point Nos. 4 & 5:**

21. It is fact that after 24.10.2017 on receipt of the principal amount and interest/compensation the booking of the said flat came to an end. However, neither the parties have filed the consent terms nor the complainant has written about the cancellation of the booking in his



letters and therefore, the issue went silent at the time of passing the final order. However, the parties had clear idea that after repaying the amount of consideration and interest the complainant's right in respect of the booked flat came to an end. Mr. Tandan relies upon the terms and conditions of the allotment letter which indicate that the society/association of the allottees shall be controlled by the respondents. This fact has been corroborated by several letters placed on record showing that even after passing of the final order dated 24.10.2017 the flat remained in the name of the complainant in society's record and therefore, the society claimed maintenance charges from 01.11.2018 to 31.12.2018. I find both the parties are guilty in this respect because they did not inform the society about the cancellation of booking of the flat. However, the respondents have brought to my notice that after noticing the mistake the society demanded the maintenance charges from the respondents and they paid it.

22. Mr. Tandan submits that the respondents by using the booked flat in his name used it as sample flat, for a commercial purpose. The respondents submit that after cancellation of the complainant's booking of the flat for the purpose of re-selling it, it has been shown to the prospective buyers. In view of this, I do not find that the respondents have indulged in unfair practice. However, I put it on record that they should have taken much care in the matter and it is necessary to warn them.

**Point No. 6:**

23. Mr. Tandan also brings to my notice that the respondents claimed Rs. 44,118/- towards TDS amount by their letter dated 31.10.2018 i.e after cancellation of the booking of the flat. The respondents have also placed the letters on record to show that they withdrew the letter immediately when they came to know that the computer generated letter has been



wrongly sent to complainant. After looking to the facts and circumstances of the case, I do not find that the respondents intentionally to harass the complainant claimed maintenance charges and the TDS amount. Hence, I do not find that the respondents are guilty of indulging in unfair practice.

24. Before parting with this order I want to put it on record that while recording the plea it has been explained to the respondents that they failed to refund TDS amount of Rs. 1,92,678/- . In fact, this claim has been included in the principal amount which has already been paid to the complainant. Hence this allegation is wrongly put to the respondents while recording their plea and I ignore it. Hence the following order.

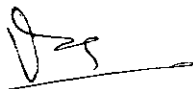
### ORDER

The respondent shall pay the complainant Rs. 7,76,628/- the amount of service tax and MVAT amount of Rs. 1,94,715/- within two months with simple interest at the rate of 10.75% p.a. from 28.06.2018 till their payment.

The respondents are hereby warned to be more careful while dealing with the customers.

The tax Authority is requested to take decision in the matter of refund of service tax and MVAT pending before it preferably within less than two months.

Mumbai.  
Date: 30.04.2019.

  
30-4-19  
(B. D. Kapadnis)  
Member & Adjudicating Officer,  
MahaRERA, Mumbai.