

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

COMPLAINT NO: CC006000000001804

Vysyaraju Jagadheeswara Raju ... Complainant.

Versus

Dhruva Woonen Mills Pvt Ltd
(Runwal Garden City Dahlia) ... Respondents.

MahaRERA Regn: -P51700001095.

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

Appearance:

Complainant: in person.

Respondents: Adv. Mr Raju Rode.

Final Order.

15th February 2018

Heard the complainant in person & Adv. Mr Raju Rode for the respondents on the issue of maintainability of the complaint.

2. The complainant contends that he booked Flat No.-D2002 in tower D of respondents' registered project Runwal Garden City and paid the respondents Rs. one lac as booking amount on 28.02.2017 on the basis of the respondent's advertisement appearing in Hindustan Times dated 19th March 2017. The respondents offered third bed room free and therefore he booked a flat. However, he could not receive his retirement benefits in time and the respondents started to impose delay payment charges on the amount which became due. Hence he cancelled the booking by sending email on 22.04.2017 because of financial crunch but the respondents refused to refund the token amount of Rs. 1 lac. He contends that he cancelled the booking as the respondents showed wrong calculations.

3. The respondents have raised preliminary objection regarding jurisdiction. They have contended that the complainant paid them Rs. 1 lac at the time of booking by signing the booking form dated 28.03.2017. Thereafter, they sent demand notice on 10.04.2017. The complainant sent them email dated 22.04.2017 and thereby cancelled his booking and



demanded the refund of booking amount. However, as per the terms and conditions of the form of booking, his entire amount is liable for forfeiture. Therefore, they have rejected complainant's prayer for refund of booking amount. They have not committed breach of any provision of The Real Estate (Regulatory & Development) Act, 2016 (for short, RERA). Hence the Authority has no jurisdiction to entertain this obligation.


4. RERA has come into force in the state of Maharashtra with effect from 01.05.2017. The Authority gets jurisdiction u/s. 31 of the Act to entertain the complaint only when any of the provision of RERA, rules and regulations framed thereunder is either violated or contravened. On this backdrop when I look at the facts contended by the complainant himself, I find that he has unilaterally cancelled the booking by sending email on 22.04.2017. So the cause of action arose on 22.04.2017 but on that day RERA was not in force. RERA applies prospectively. Therefore, I do not find that on 01.05.2017 there was existing cause of action to file complaint on the day of commencement of RERA or thereafter.

5. Section 11(5) of RERA casts obligation on the promoter to cancel the allotment only in terms of the agreement for sale. Except this provision, there is no provision in RERA regarding the cancellation of the booking. In view of these reasons, I find that the facts of the complaint do not attract the provisions of RERA. Complainant refers to misleading advertisement published by the respondents but it appears that he refers to it only as an afterthought to bring the case within the ambit of RERA somehow or the other. I say so because he has not mentioned it anywhere in his letters addressed to the respondents. To conclude, I find that the complaint is not maintainable before this Authority.

In result, the order.

ORDER.

The complaint stands disposed for want of jurisdiction.


15-2-18

(B.D. KAPADNIS)

Member & Adjudicating Officer,
MahaRERA, Mumbai.

Mumbai
Date: 15.02.2018