

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

Complaint No. CC006000000161385

Mr. Deepak Dhanraj Daryanani Complainant

Versus

M/s Smart Value Homes Respondent

Project Registration No. P99000000811

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

Adv. Sarosh Damania appeared for the complainant.

Adv. Mohd. Salim Rakhangi appeared for the respondent.

ORDER

(13th March, 2020)

1. The complainant has filed this complaint seeking refund of the entire amount paid by him to the respondent alongwith interest and compensation under section-18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA") in respect of booking of a flat nos. 403 and 404 in the respondents' project known as "**New Haven Compact Boisar II Phase I**" bearing MahaRERA registration no. P99000000811 at Boisar (East), Dist Palghar.
2. This complaint was heard on several occasions and was heard finally on 24.01.2020 when both the parties appeared and made their submissions. During the hearing both the parties sought sufficient time to file their submissions and in compliance of principles of natural justice the same was granted by MahaRERA.
3. It is the case of the complainants that in the year 2015 he has booked two flats bearing nos. 403 and 404 for a total consideration amount of Rs.23,10,528/- and Rs.22,36,278/- respectively for which an allotment letter was issued on 23.7.2015 and 28.9.2015. At the time of booking the respondent had agreed to hand over possession of the said flats to the complainant on or before 31.12.2018. The complainant further stated that he had paid 50% amount towards the cost of the said two flats respectively. However, the respondent has failed and neglected to

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execute the agreement for sale with him and thereby violated the provisions of MOFA. The complainant visited the project site in the month of March 2019 when he noticed that the project was incomplete. However, on 3rd July, 2019 the respondent informed him that it has already applied for occupancy certificate. As on MahaRERA website, the date of completion was mentioned by the respondent as 31.3.2019, the respondent itself has made false representation which amounts to deficiency in service and unfair trade practice. Hence the complainant has filed this complaint seeking refund of the entire amount paid by him.

4. The respondent on the other hand has resisted the claim of the complainant by raising various defences in their reply filed on record of MahaRERA and prayed for dismissal of the complaint. The respondent has mainly contended that the complainant had booked two flats and made part payment. The demand was raised for further payment to the complainant as per the payment schedule mentioned in the allotment letters dated 23.7.2015 and 28.9.2015. However, since the complainant has failed to pay the outstanding amount the respondent issued two separate cancellation letters to the complainant on 22.03.2019. The respondent further stated that the complainant had through e-mail dated 1.9.2017 and 10.9.2017 had cancelled the booking due to financial difficulty. However, he wanted to cancel the booking for flat no.404 and to retain flat no. 403 in the year 2017 itself and therefore the ground for delay as alleged by the complainant seeking refund is totally false. Moreover, there is no provision under the RERA to entertain the complaint, as he is seeking cancellation for his flats. Hence the present complaint is not maintainable and the same is liable to be dismissed. The respondent further stated that after allotment of the flat i.e. in the year 2015 it has informed the complainant to pay the stamp duty and registration charges to register the agreement for sale. However, the complainant did not pay the same and hence the final reminder letter dated

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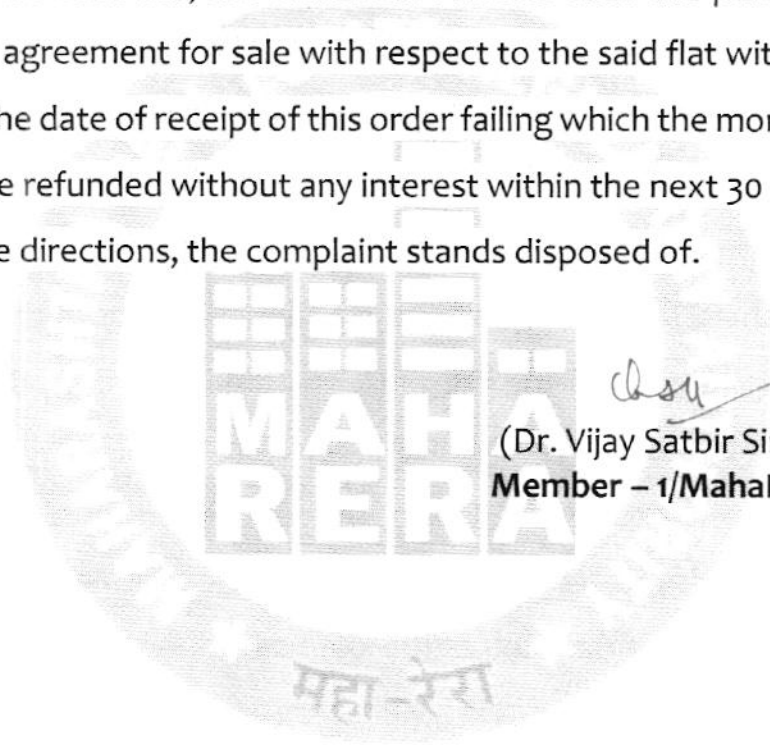
22.2.2018 was issued to the complainant to make such payment. Despite that the complainant failed and neglected to make the said payment and to execute the registered agreement for sale. The respondent therefore cancelled the allotment letters issued by it in accordance with the terms and conditions of the allotment letter and also intimated him to take refund after deduction of the forfeiture amount as per the application form. Thereafter, the complainant denied his e-mail dated 24.3.2019 and intimated them not to cancel the said booking as he has got his loan sanctioned from Bank of Baroda. Further several opportunities have been given to the complainant to pay the outstanding dues however, no step has been taken by him and now they have obtained the occupancy certificate for the project on 17.7.2019 and hence there is no cause of action under section-18 of the RERA. Hence the complainant prayed for dismissal of this complaint.

5. The MahaRERA has examined the arguments of both the parties as well as the available record. In the present case, the booking of the flats has been done when the provisions of MOFA were in force. By the said booking, the complainant has booked two residential flat nos. 403 and 404 and the respondent's project for which two separate allotment letters have been issued. In the said allotment letter the date of possession has not been mentioned. Moreover, there is no registered agreement for sale registered with the complainant and the respondent/promoter showing any agreed date of possession. In this regard, the MahaRERA has observed that provisions of section-18 of the RERA will apply in case where there is a registered agreement for sale showing the agreed date of possession which has already lapsed. Hence the provisions of section-18 cannot apply in this case and therefore the complainant cannot claim any refund under section-18 of the RERA. The complainant has already cancelled the said booking by issuing various reminder letters and by final termination letter and offered the refund of the amount in



accordance with the terms and conditions of the application format i.e. after deducting 10% of the total cost. In this case, admittedly, the complainant has paid more than 20% amount. As per the provisions of section-13 of the RERA, the parties could have taken appropriate steps for execution of the registered agreement for sale. However, no steps have been taken for that. Although the respondent has cancelled the said booking, the money has not yet been refunded entirely to the complainant. Hence the said termination has not reached its finality.

6. In the present case since the complainant has paid more than 10% out of total consideration for each flat, the MahaRERA directs both the parties to execute the registered agreement for sale with respect to the said flat within a period of 30 days from the date of receipt of this order failing which the money paid by the complainant be refunded without any interest within the next 30 days.
7. With the above directions, the complaint stands disposed of.



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