

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

Complaint No. CC00600000057591

Mr. Sumit Mukherjee

Mr. Ashutosh Mukherjee

... Complainants

Versus

M/s. Rajsanket Realty Limited

... Respondents

Project Registration No. P51800012243

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

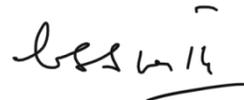
Adv. Shilpa Nagori appeared for the complainant.

Adv. Rohit Shetty appeared for the respondent.

ORDER

(06th July, 2020)

1. The complainants have filed this complaint seeking directions from MahaRERA, to the respondent, to refund the booking amount paid to the respondent along with interest and compensation under the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA), with respect to the booking of a flat No. 2203 in Wing -A , in the respondent's project known as "Rajinfina Phase II Wing A Wing B Wing C" bearing MahaRERA registration No. P51800012243 situated at Malad West, Mumbai .
2. This complaint was heard on several occasions in the presence of concerned parties and same are heard finally today as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through video conferencing. Both the parties were issued prior intimation for this hearing and they were also informed to submit their written submission if any. Accordingly, the parties have filed their respective written submissions on



record. During the course of hearing both the parties appeared through their respective advocates and made their submissions.

3. It is the case of the complainants that they had booked the said flat in the respondent's project on 01/07/2016 for total consideration amount of Rs.2,23,09,890/-. At the time of booking of the said flat, they have paid a token amount along with taxes, in total Rs. 20,00,000/- to the respondent. However, within a period of 40 days from the date of booking i.e. on 10/08/2016 vide a letter addressed to the respondent they cancelled the said booking and sought refund of the amount paid by them to the respondent. Thereafter they made communications with the respondent several times through various emails/ letters/legal notice to get the refund of the said amount. However, the respondent, inspite of its assurances, has failed and neglected to refund the said amount to them. Hence the present complaint has been filed seeking relief as claimed in this complaint.
4. The respondent on the other hand resisted the claim of the complainants by filing written submission on record of MahaRERA on 4th July, 2020 on various grounds relying upon the provisions of RERA as well as the Regulations made there under. The respondent has stated that it never denied refund of the amount to the complainants; however the same has to be done as per the terms and conditions of the booking application form duly signed by the complainants on 1-07-2016. The respondent further stated that they it replied the legal notice dated 6-06-2017 issued by the complainants, on 2-09-2017 and in para 4 of the said reply it expressed its willingness to refund the amount to the complainants as per the cancellation policy stipulated in the booking application form. Even during the hearing , the respondent submitted an oral undertaking to that effect and stated that the money would be refunded to the complainants once it gets new buyers for the said flat which may take some time. In addition to this, the respondent further stated that there is no provision under RERA for refund of the booking amount. However, as per specimen agreement for sale, clause No. 7.5 prescribed under RERA regulation issued in the year 2019, the promoter is



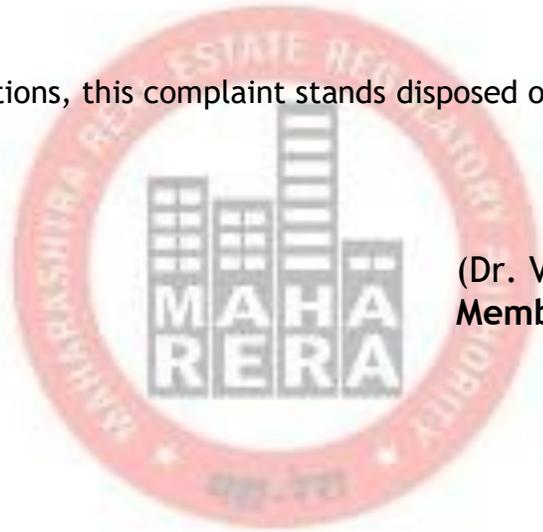
entitled to forfeit the booking amount , if the cancellation is done by the allottee without any fault of the promoter. The respondent therefore prayed to consider its submission and pass appropriate order in this complaint.

5. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case the complaint has been filed seeking refund of the booking amount paid by the complainants in the year 2016. Admittedly , the booking was done on 1st July, 2016 and same was cancelled on 10th August, 2016. The complainants sought refund of the booking amount paid by them to the respondent by issuing various communications. The complainants also issued a legal notice dated 6th June, 2017 to the respondent and same was duly replied by the respondent on 2nd September, 2017, wherein the respondent had agreed to refund the booking amount in accordance with the booking form signed by the complainants. Even during the course of hearing, the respondent undertook to refund the said amount. Moreover in para 3(e)(iv) of the written submissions dated 4th July, 2020 filed on record, the respondent agreed to refund the booking amount by deducting 5% of the token amount. **Hence the MahaRERA feels that the respondent had accepted the cancellation of the booking and refund of money to the complainants.**
6. Further the MahaRERA has also observed that the respondent promoter, by sending reply on 2nd September, 2017, to the legal notice issued by the complainants had agreed to refund the booking amount paid by the complainants on certain terms and conditions. However, although, it agreed to refund the amount as per the cancellation policy stipulated in the booking application form, the respondent did not take any action to comply with the said commitment made in the year 2017 itself for more than 2 years. There was sufficient time for the respondent to sell out the said flat to new buyer and to refund the amount to the complainants as promised. However, due to such act of omission on the part of the respondent, the complainants were compelled to wait for refund for such an unreasonable period and they had to approach MahaRERA by filing this complaint. Moreover, there is no provisions in RERA and rules there under to

forfeit the earnest money The MahaRERA therefore feels that the balance of convenience is in favour of the complainants and hence they are entitled to seek relief from the MahaRERA.

7. In view of the aforesaid facts and circumstances of this case, the MahaRERA directs the respondent to refund the full amount paid by the complainants without any interest. The MahaRERA further directs that, for refund of the amount to the complainants, the respondent promoter is entitled to claim the benefit of “moratorium period” as mentioned in the Notifications /Orders Nos. 13 and 14 dated 2nd April, 2020 and 18th May, 2020 issued by the MahaRERA and the Notification/Order which may be issued in this regard from time to time.

8. With the above directions, this complaint stands disposed of.



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