

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

Complaint No. **CC006000000192290**

Mr. Khalil Ahmad

Complainant.

Versus

M/s. Lodha Developer Limited

Respondent.

MahaRERA Project Registration No. P51700001031.

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

The complainant appeared in person.

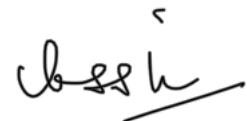
Ld. Adv. Yashodhan Gavankar appeared for the respondent.

ORDER

(27th August 2021)

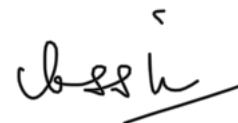
(Hearing Through Video Conferencing)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to refund the entire booking amount paid by him along with compensation under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of his flat bearing no. 406, on 4th floor, in building No. 28, in the respondent's registered project known as "**Lodha Amara - Tower 26, 27, 28, 30, 34, 35**" bearing MahaRERA registration no. **P51700006838** situated at Thane.
2. This complaint was referred to Conciliation Forum for further necessary action. However, the parties could not arrived at any

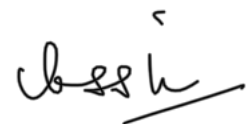


mutually agreeable conditions, and hence this matter was again referred to MahaRERA for further necessary action on 28-05-2021. Accordingly the same was scheduled for hearing on 11-08-2021 as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions, if any. Accordingly, the both the parties appeared for the hearing and made their submissions. After hearing the arguments advanced by both the parties, two days' time was granted to the respondent to file its reply and the case was concluded.

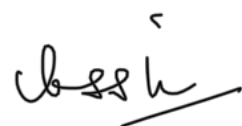
3. Pursuant to the said directions, the respondent has filed its reply on 11-08-2021. The same is taken on record. The MahaRERA heard the arguments advanced by both the parties and also perused the available record.
4. The MahaRERA has examined the arguments advanced by both the parties and also perused the record. In the present case, by filing this complaint, the complainant is seeking cancellation of her booking and refund of the entire amount paid by him along with compensation for mental harassment under the provisions of RERA. The respondent has refuted the said claim of the complainant mainly on the ground that it has not violated any of the provisions of RERA.



5. With regard to the relief sought by the complainant towards refund, the MahaRERA is of the view that the said booking was done on 21-12-2018 under RERA regime, wherein the allottee can seek refund of the entire money including the booking amount in case of any violation of provisions of sections 12 or 18 of the RERA.
6. In the present case, admittedly the complainant is seeking cancellation of the booking and refund of the entire money paid by him, due to his personal financial difficulties as he could not pay the further payments to the respondent. Hence, the complainant has sought cancellation of the said booking through email dated 28-01-2019. Admittedly, there is no registered agreement for sale entered into between both the parties showing any agreed date of possession nor any date of possession is mentioned in the allotment letter dated 18-01-2019, which has lapsed. The said booking is done under RERA regime. Hence, the MahaRERA is of the view that there is no violation of section 18 of the RERA by the respondent.
7. On perusal of the complaint, it appears that the complainant has not pleaded any case for violation of section 12 of the RERA showing any false advertisement or notice being published by the respondent, due to which the complainant has suffered from any loss. Hence, the case of the complainant cannot be considered for violation of section 12 of the RERA. Moreover, the complainant has sought the cancellation due to his own financial difficulties.

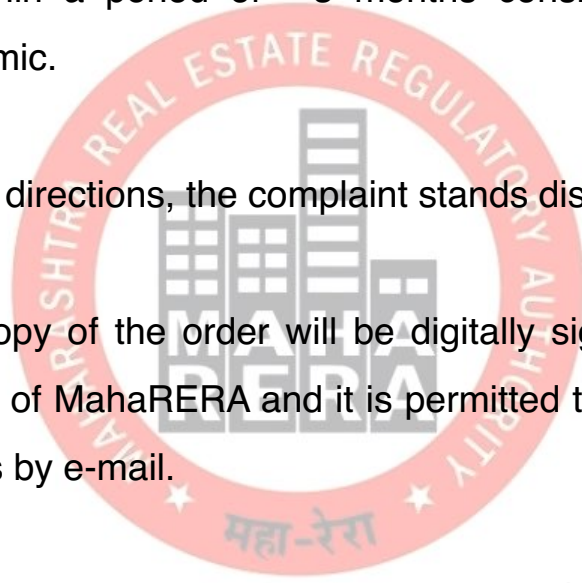


8. In the present case, the MahaRERA has noticed that the complainant has booked the said flat in the year 2018 and has cancelled the same by sending email dated 28-01-2019. However, the respondent has gone ahead and completed the construction and obtained the occupancy certificate on 29-11-2019 by utilising the money paid by the complainant, though admittedly, the complainant has failed to make the balance payment towards the said flat as per the payment schedule mentioned in the booking application form.
9. These facts show that the respondent being promoter of this project has complied with its statutory liability of the completion of the project and obtained the occupancy certificate for the complainant's flat. Hence, the complainant who has sought the said cancellation due to his own personal reasons is therefore not entitled to seek relief against the respondent. Moreover, the complainant has failed to prove any violation of the respondent of any provision of the RERA.
10. In this regard, the MahaRERA is of the view that the intent of RERA is not only to safeguards of the rights/interest of an allottee but also to promote the real estate sector by allowing the completion of projects and do justice to ask the stakeholders. Likewise in the present case, the complainant was silent from the date of booking till the Occupancy Certificate was obtained on 29-11-2019 and subsequently, filed this complaint seeking refund along with compensation after grant of OC, without showing any default on the part of the respondent. Hence, the MahaRERA is of the view that the balance of convenience is in favour of the respondent who has completed the flat



of the complainant irrespective of the facts that the complainant has not made any timely payments to it.

11. In view of these facts, the MahaRERA does not find any merits in the present case. Hence the claim of refund of the booking amount along with compensation stands rejected. However, since the respondent has showed its willingness to refund the amount of Rs. 3,10,485/- to the complainant, in compliance of principles of natural justice, the respondent is directed to pay the same without any interest to the complainant within a period of 3 months considering the present Covid-19 pandemic.
12. With the above directions, the complaint stands disposed of.
13. The certified copy of the order will be digitally signed by concerned Legal Assistant of MahaRERA and it is permitted to send the same to both the parties by e-mail.



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