

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

Complaint No. CC006000000193484

Shreeharsh Bhandari

Complainant

Versus

Macrotech Developers Limited

Respondent

MahaRERA Project Registration No. P51700001031

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

The complainant appeared in person.

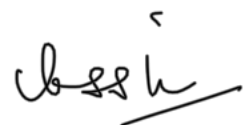
Ld. Adv. Prashant Gawali a/w Ld. Adv. Yashodhan Gawankar a/w Ld. Adv. Megha Gupta appeared for the respondent.

ORDER

(Friday, January 28, 2022)

(Hearing Through Video Conferencing)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to refund the entire amount paid by him to the respondent along with interest under the provisions of section 12 and 14 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of the flat bearing no. 2601 on 26th floor in the respondent's registered project known as "**Lodha Amara - Tower 26, 27, 28, 30, 34, 35**" bearing MahaRERA registration No. **P51700001031** located at Thane.
2. This complaint was referred to MahaRERA Conciliation Forum for further

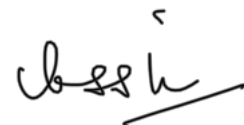


necessary action. However, the parties could not arrive at any mutually agreeable terms and hence this complaint was again referred to MahaRERA on 28-05-2021 for passing appropriate order.

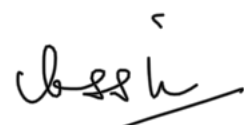
3. Accordingly, this complaint was scheduled for hearing on 11/08/2021 as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions, if any. Accordingly, both the parties appeared for the hearing and made the submissions.
4. On the said date of hearing, the respondent sought time to file its reply and hence on request of the respondent, two weeks' time was granted to it to file its reply covering the issue as to why this complaint should be transferred to Ld. Adjudicating Officer/MahaRERA, Mumbai. With the said directions, the matter was adjourned till 22-09-2021.
5. Thereafter on 22-09-2021, the matter was heard in presence of both the parties, when the following roznama was recorded:

“Both the parties are present. The main issue pointed out by the complainant that the usable area is different from the brochure. The respondent denied it and contended that, it is as per the agreement for sale. The complainant further states that the respondent has not provided sufficient time to study the agreement for sale before signing the same. Heard the arguments of both the parties. Order reserved”.

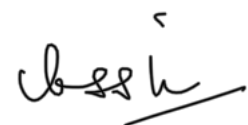
6. The MahaRERA heard the submissions of the parties and also perused the available record.



7. It is the case of the complainant that, he has booked the said flat no. 2601 in wing 28 of the respondent's registered project. Till date he has paid 75% of the consideration value to the respondent. The complainant stated that he was handed over a brochure by the respondent and was shown a sample flat based upon which he has booked the said flat. However in November 2019 when he visited the site of construction he was not shown his own flat but was shown some other flat which was claimed by the representative of the respondent to be the same as allotted to him. At that he noticed that the Pooja space and the kitchen storage room has been constructed in a different manner than what was promised in the brochure and what was shown to him in sample flat. Now the constructed space is redundant and not useful. Further, the living room which included the Pooja room is not matching with what was promised originally via Brochure and sample flat. Moreover, the Pooja room and the Kitchen storage space was originally promised as rectangular shaped whereas post construction it has become L-shaped which is completely of no use to the complainant. The complainant stated that the brochure shown to him was not according to the sanctioned plans and due to such false information published by the respondent he is suffering losses and damages. The complainant tried to communicate with the respondent to resolve the grievance however the respondent has not taken any action on it. Hence, he has filed this complaint seeking refund of the amount paid by him along with interest.
8. The responding-promoter has resisted the claim of the complainant by filing its reply dated 20/09/2021 on record of MahaRERA. It has denied the claim of the complainant on the ground that there is no violation of any of the provisions of the RERA by it and the complainant wants to exit from the project without incurring any penal consequences provided in the registered



agreement for sale dated 14/05/2018. Hence the respondent has stated that the claim of refund as agitated by the complainant is illegal and untenable as the same is agitated without any cause of action under section 12 and 14 of the RERA. The respondent further stated that the complainant had booked the said 3-BHK flat for total consideration amount of Rs. 1,78,80,148/- and paid and 75% of the consideration value. Thereafter in the month of November 2019 he visited the another flat of similar typology and started raising the frivolous objection that there is change in the layout of the flat and refused to make further payment though it has obtained the occupancy certificate pertaining to the complainant's flat on 29/11/2019 and called upon the complainant to make the balance payment and take possession vide its letter dated 06/12/2019. However, the complainant did not make the payment and even failed to take possession of the said unit. The respondent further stated that no case is made out by the complainant under section 12 of the RERA as the layout of the complainant's flat is as specified in the registered agreement for sale dated 14/05/2018. However, the complainant with the sole intention of exiting from the project is alleging that there are certain changes in the layout of the flat from what is depicted to him by way of brochure. However, the said brochure published by it has a disclaimer that it is indicative and the purchaser shall be governed by the terms and condition of the agreement for sale and variation up to plus or minus 2% is in the internal dimension and area is permissible due to design and construction tolerance. The complainant was well aware of the said brochure and agreed to purchase the said flat with full knowledge that minor variation in the internal layout. Hence, now the complainant is estopped from resorting to the said brochure. The respondent further stated that it is not the case of the complainant that there is any violation of any statutory permission and condition imposed by the competent authority, even there is no violation of section 14 of their RERA by it as a complainant flat is constructed as per the

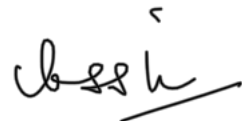


plans and by layout plan sanctioned by the competent authority which is evident from the fact that the complainant's flat is complete and occupancy certificate is received on 29/11/2019.

9. The respondent further stated that on the contrary, the complainant himself has defaulted in making the outstanding payment and thereby caused great loss of opportunity to it. Hence, the respondent prayed for dismissal of the complaint.

10. The MahaRERA has examined the rival submissions made by both the parties and also perused the available record. By filing this complaint, the complainant who is an allottee of this project is seeking refund along with interest alleging violation of section 12 and 14 of the RERA. The complainant has not pleaded any violation of section 18 of the RERA by the respondent. Admittedly, there is registered agreement for sale for sale dated 14-05-2018 executed between the complainant and the respondent whereby he has purchased the said flat for total consideration amount of Rs. 1,78,80,148/-, out of which admittedly the complainant has paid 75% of the total consideration value to the respondent, despite the fact that the occupancy certificate has already been obtained for the said flat in the month of November, 2019. Further though the possession was offered by the respondent, the same has not been taken by the complainant mainly alleging the violation of section 12 and 14 of the RERA.

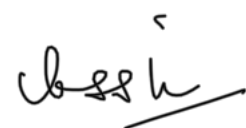
11. The complainant in this case has mainly contended that the respondent has not constructed the said flat as per the brochure and sample flat shown to him at the time of booking of the said flat and further the layout of said flat got changed by the respondent. However, in the present case, the complainant by relying upon the said brochure, has purchased the said flat



and gone ahead with the said booking and executed the registered agreement for sale, wherein the floor plans/dimension of the said flat was shown and attached. The said registered agreement for sale after its execution has binding effect on both the parties. In the present case, the contention of the complainant for violation of section 12 of the RERA would have been considered by the MahaRERA had the respondent shown similar dimensions of the said flat even in the agreement for sale. However, in the instance case, it is not the case of the complainant that the respondent has not provided / constructed his flat as per the terms and condition of the agreement for sale. Moreover, after signing of the registered agreement for sale all earlier contract/ documents signed by the parties comes to an end. Hence, the MahaRERA is of the view that after signing the registered agreement for sale, the complainant cannot agitate any violation of section 12 of the RERA.

12.As far as the relief sought by the complainant for violation of section 14 of the RERA, the MahaRERA is of the view that the complainant has not produced any cogent documentary prove on record of MahaRERA to show that the sanctioned layout plan approved by the competent authority has been changed by the respondent and it has constructed the said flat in contravention of the approved plan. Hence, in absence of any cogent documentary proof submitted by the complainant the allegation of the complainant for violation of section 14 of the RERA by the respondent cannot be accepted.

13.In view of these facts, the MahaRERA does not find any merits in this complaint. Hence the claim of the complainant for refund along with interest stands rejected. However, since the occupancy certificate has already been obtained for this project, the possession of the said flat be handed over to



the complainant subject to payment of outstanding dues payable as per the terms and condition of the agreement for sale. Needless to state, that in case of any default on the part of the complainant in payment, the complainant is liable to pay interest for the delayed payment as prescribed under the provisions of RERA read along with relevant Rules.

14. With these observations and directions, the complaint stands disposed of.

15. 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



Vijay Satbir Singh

(Dr. Vijay Satbir Singh)

Member – 1/MahaRERA