

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

Complaint No. **CC006000000171779**

Mrs. Priti Mridul Dubey and Anr.

...Complainants

Versus

M/s. Skylark Realtors Private Limited and Ors. ...Respondents

MahaRERA Project Registration No. P51700016290

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

Mr. Mridul Bune Dubey, complainant no. 2 appeared in person.

Ld. Adv. Mr. Abir Patel appeared for the respondents.

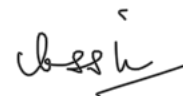
ORDER

(01st July, 2021)

(Through Video Conferencing)

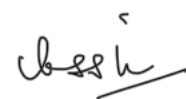
1. The complainants above named have filed this complaint seeking directions from MahaRERA to the respondents to refund the amount paid by her along with interest under the provisions of section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of a flat in the respondent's registered project known as "**JP North Euphoria**" bearing MahaRERA registration No. **P51700016290** at Vinaynagar, Mira-Bhayandar (M Corp.), Dist. Thane.

2. This complaint was transferred to this Bench from the Hon'ble Member-2 MahaRERA on 30-04-2021 and accordingly same was scheduled for hearing today as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of

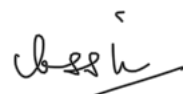


complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions, if any. Accordingly, both the parties appeared for the hearing and made their respective oral as well as written submissions. The MahaRERA heard the arguments of the parties and also perused the available record.

- 3.** It is the case of the complainants that they booked the said flat in the respondent's project as they were in need of a residential flat for their own residential use. At the time of said booking the respondent represented that for 3 BHK, saleable area is 1386 sq. ft. and carpet area is 900 sq.ft at the rate of Rs.7200/- per sq. ft. and floor rise charges of Rs.40/- per sq.ft. per floor and quoted total consideration amount of Rs.1,20,19,646/-. They further represented and assured that they were going to construct residential Tower known as "J.P. Euphoria" Tower in the said project on the plot of land bearing Survey No. 117/1 (part) etc., at Vinay Nagar, Mira Road, Thane. The complainants further stated that the project was at a pre-launch stage and no flat or sample flat was available for her perusal and the respondents have shown the measurement of 3 BHK Flat on paper. They were desirous of purchasing flat at higher floor and preferred flat on 27th or 29th floor, however, as Plan for 33rd floor was not approved at that time, the respondents offered to sale flat no. 2106 on 21st floor. The said respondents further represented and informed to them that they had constructed various buildings and they are known in the market for their honesty and construction of quality and in time possession. The complainants had to take loan to purchase the said flat. On the basis of the said

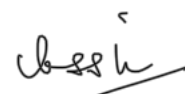


representations, they booked the said flat and paid a sum of Rs.2,40,394/ towards the booking amount with the clear understanding that the saleable area of the flat will be 1386 sq.ft for 3 BHK and 900 sq. ft. carpet, as shown on hand written paper. Thereafter, the registered agreement for sale was entered into between the complainants and the respondents on 15-02-2019. The complainants were not allowed to read and go through the said bulky and voluminous agreement. Furthermore, the complainants had no any doubt of the assurance and promise of the respondents. After execution of said agreement for sale, the complainants applied for home Loan to L & T Finance, the same has been sanctioned and till date, the complainants has paid about a sum of Rs.42,000,00/-. However, they read the agreement for sale, and they got shocked and surprised to see the area of flat only adm. 645 sq.ft. The complainants immediately rushed to the office of the respondents and asked as to why area was shown only 645 sq.ft. in the agreement for sale, because the respondents had assured the complainants about carpet area of 900 sq.ft. at the time of booking. The respondents failed and neglected to answer the queries of complainants about the carpet area issues. The complainants being cheated by the respondents, vide their letter dated 12/10/2019, cancelled the agreement for sale dated 15/02/2019 and called upon the respondents jointly as well as severally to refund their total amount of Rs.42,000,00/ together with interest at the rate which they have paid and or paying to said L & T Housing finance, being Rs.1,51,479/- + stamp duty and registration charges etc., total being Rs.51,026,79/-, within a week from the date of receipt of the said letter. However, the respondents have not taken any action on it. Hence the complainants have filed this complaint.



4. The respondent No. 1 is the company who has registered this project with MahaRERA, and the respondent nos. 2 to 4 are the directors of the respondent no. 1 company (hereinafter referred to as the respondent). It has refuted the claim of the complainants by filing affidavit in reply on record on 30-11-2020 denying the contents of the complaint and stating that it has not committed violation of any of the provision of RERA. It has stated that the complainants' case that the flat which was promised to be sold would be of 1386 sq. ft. However, the flat admeasures 645 sq. ft and there is a false representation made by the respondent. However, there are multiple documents which have been signed by the complainants, wherein it is mentioned that the carpet area of the flat is 645 sq. ft. e.g. i) booking form dated 30-01-2019 signed by the complainants wherein the carpet area of the said flat is mentioned as 645 sq. ft. ii) the agreement for sale dated 15-02-2019 signed by the complainants for flat having the carpet area of 645 sq. ft.

5. It has further stated that a copy of the agreement for sale was sent to them in advance before its execution. Further, in the complaint in recital of the said agreement for sale, the complainants have confirmed having perused the information available on the MahaRERA website whereas on MahaRERA website there is no flat mentioned as 1386 sq. ft. in the project. Therefore the complainants are misleading the MahaRERA about the 1386 sq. ft. flat. Moreover, on the basis of the agreement for sale where the carpet area is mentioned as 645 sq. ft., they have availed the home loan from L&T Housing Finance by mortgaging the said flat. The complainants have acted in furtherance of the

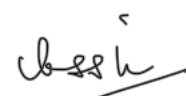


said agreement for sale and relying upon it, they availed of the housing loan. Therefore, there is no evidence that it has given any false information about the flat being of 1386 sq. ft. The said agreement for sale states that the flat is of 645 sq. ft. and therefore there is no case of false representation / information. To support its contention, the respondent has relied upon the judgement and order passed by the MahaRERA in complaint filed by one Mr. Sachin Patil vs Manish Khandelwal, wherein in it is held as follows:

"In view of this situation I find that there is no expressed provision in the RERA under which this complaint can be entertained. So far as the refund of the advances / payments are concerned, this authority does not get jurisdiction to direct the promoter to refund the same unless and until the case comes under the one of the sections such as 7, 11(5), 12, 14, 18 or 19. The complainant's case does not come under any of the sections of the Act and therefore the Authority does not get the jurisdiction to entertain this complaint". It has further

stated that there is no document produced by the complainants to show that the respondents have agreed for a flat of 1386 sq. ft. Hence after signing such agreement for sale, they cannot seek any reliefs from MahaRERA towards any modifications in it. Hence it has prayed for dismissal of this complaint.

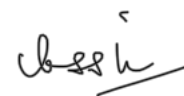
6. The complainants in rejoinder to the submissions made by the respondent have stated that they have booked the said flat on the representation of the respondent that the flat has saleable area measuring 1386 sq. ft. and when they realised that the flat



area mentioned in the agreement for sale is lesser than what is agreed upon between the parties, they sent an email to the respondent which has not been considered by the respondent. The complainants therefore stated that due to the false representation by the respondent, they want to withdraw from the project. Further, during the hearing, the complainants prayed MahaRERA to give some sort of concession to them under the provisions of RERA.

7. The MahaRERA has examined the rival submissions made by both the parties as well as records. In the present case, by filing this complaint, the complainants are seeking refund along with interest and compensation for violation of various provisions of the RERA by the respondent. The claim of the complainants has been denied by the respondent by filing detailed reply on record of MahaRERA. It has mainly contended that it has not violated any of the provisions of the RERA and therefore prayed for dismissal of the complaint. Admittedly, there is registered agreement for sale entered into between the complainants and the respondent dated 15-02-2019 and the said booking was done after commencement of RERA and hence all provisions of RERA are applicable to this case.

8. With regard to the claim raised by the complainants for refund along with interest the MahaRERA is of the view that, under the provisions of RERA, the allottee is entitled to seek refund of the entire amount with interest and compensation in case of any



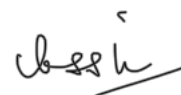
violation / default on the part of the promoter as stated under the provisions of sections 12 and 18, 19 of the RERA.

9. However, in the present case it is not the case of the complainants that the respondent has ever failed and neglected to handover the possession of their flat on the agreed date of possession, as the date of possession mentioned in the agreement for sale dated 15/02/2019 is yet to come. Hence, the claim of the complainants under section 18 of the RERA is premature as on date. Even, the complainants have not pleaded any facts in their complainant for any violation of section 19 of the RERA by the respondent.
10. As far as the reliefs sought by the complainants under section 12 of the RERA is concerned, the MahaRERA is of the view that the complainants have alleged that the respondent has made false representation about the flat area being 900 sq.ft carpet area. However, they have not produced any document duly signed by the respondent on record of MahaRERA to show that the respondent has ever agreed to allotting a flat of area 900 sq. ft. carpet area. On the contrary, the complainants themselves have signed the agreement for sale with flat area 645 sq. ft.
11. Even if the contention of the complainants is considered under the provisions of section 12 of the RERA , the said section reads as under—

"12. Where any person makes an advance or a deposit on the basis of the information contained in the notice

advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act: Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act."

12. The aforesaid provision of section 12 of RERA clearly provides that if the promoter makes any false representation/statement by way of any notice /advertisement / brochure due to which the allottee suffers from any loss, in that case the allottee is entitled to seek refund along with interest and compensation. However, in the instant case, no such document is produced on record by the complainants to show that the respondent has ever given any false notice or ever agreed to allot them flat having an area admeasuring 900 sq. ft. Further , the complainants have signed the booking application form on 30-01-2019, which is submitted on record of MahaRERA at Exhibit- B. The said booking application form shows the area of the flat as "59.95Sq.mtrs". It shows that the complainants were made aware of the flat area at the time of said booking. Hence, the complainants after signing the booking application form can not make such allegations about false representation. Therefore, in absence of any cogent documentary



evidence in support of their contention of false representation, the claim of the complainants under section 12 of the RERA cannot be considered by MahaRERA.

13. Moreover, the MahaRERA is of the view that the complainants have booked the said flat after commencement of the RERA in the MahaRERA registered project. They signed the agreement for sale after commencement of RERA and hence, being the prudent allottees, the complainants should have obtained the relevant information including the flat area from the MahaRERA web portal before booking of the said flat. However, it appears that no such steps seem to have been taken by the complainants before booking of the flat. Hence, the complainants after signing of the agreement for sale cannot pray MahaRERA to rewrite the terms and conditions of the agreement for sale which supersedes all the earlier contracts oral as well as written. Therefore, MahaRERA is of the view that there is no violation of section 12 of the RERA by the respondent as alleged by the complainants. Hence, their claim under section 12 of RERA stands rejected. Moreover, there is no provision under RERA to grant any sort of concession in cancellation as sought by the complainants during the course of hearing.

14. Considering these facts and circumstances of this case, in absence of any violation of the provisions of RERA by the respondent, if the complainants are still willing to cancel the said agreement, then they are at liberty to take appropriate action for such cancellation only in accordance with the terms and

conditions of the said agreement for sale signed by both the parties. No directions are required to be given by MahaRERA in this regard.

15. With these observations, the complaint stands dismissed for want of merits.
16. 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