

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

Complaint No. CC006000000198830

Mohan P. Shimpi

.... Complainants

Versus

Poddar Housing And Development Ltd

.... Respondent

MahaRERA Project Registration No. P51700023508

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

None appeared for the complainant.

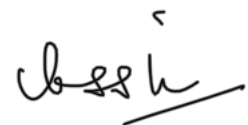
Ld. Adv. Anil Jarial appeared for the respondent.

ORDER

(Wednesday, 23rd February 2022)

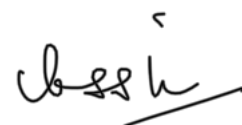
(Through Video Conferencing)

1. The complainant has filed this complaint seeking direction from MahaRERA to the respondent to refund the booking amount under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of a flat bearing no. 706, in A-3 tower, in respondent's registered project known as "**Poddar Riviera Phase - I**" bearing MahaRERA registration No. **P51700023508** situated at Mharal Kh. (N.V), Dist. Thane.
2. This complaint was heard on 20-12-2021 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



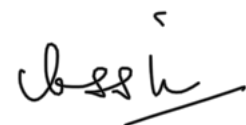
informed to file their written submissions, if any. Accordingly, the learned advocate for the respondent appeared for the hearing and made their submissions. However, despite the notice none appeared for the complainant. During the course of hearing, the learned advocate for the respondent has stated that the respondent has given some offer to the complainant and the complainant has accepted the same. Hence the respondent prayed for disposal of this complaint.

3. Considering the said submissions made by the respondent, it was directed that the same be verified from the complainant. With the said direction the hearing was concluded, and the order was reserved.
4. Accordingly, the complainant was contacted through registered mobile phone, when he informed that the offer given by the respondent of Rs. 1,20,000/- is not acceptable to him as he has paid an amount of Rs. 1,44,000/- to the respondent. Further he has cancelled the said booking mainly due to the reasons that the respondent has failed to arrange the loan facility to him as agreed by the respondent. Hence, he sought cancellation of the said booking and refund of the entire amount paid by him to the respondent.
5. The record shows that the complainant is mainly seeking cancellation of the said booking was done on 8-05-2021. The complainant is seeking cancellation mainly on the ground that the said the respondent has failed to adhere its commitment to arrange the home loan facility of Rs. 2,00,000/- to him for payment of stamp duty. The complainant has paid the booking amount of Rs. 24,000/- as earnest money by



signing the booking application form.

6. The respondent promoter has accepted the cancellation request of the complainant and offered refund of an amount of Rs. 1,20,000/- by deducting an amount of Rs. 24,000/- paid by the complainant towards earnest money, which is not acceptable to the complainant. Hence the complainant seeks refund of entire amount of Rs. 1,44,000/- paid to the respondent.
7. Even though the complainant is seeking refund of the booking amount paid by him to the respondent, however, he has not specifically proved under which provision of RERA he is seeking such reliefs. Admittedly, there is no registered agreement for sale or allotment letter signed/ issued in favour of the complainant, showing any agreed date of possession. Hence, the claim of the complainant cannot be considered under section 18 of the RERA. Even if the claim of the complainant is to be considered under section 12 of the RERA, the complainant though has pleaded the misrepresentation by the respondent, he has not produced any cogent documentary proof on record of MahaRERA to show any violation of section 12 of the RERA by the respondent. Hence, the claim of the complainant is not cannot be considered under section 12 of the RERA.
8. However, the MahaRERA has noticed that in the in the booking application dated 8-05-2021, no forfeiture clause of the earnest money is mentioned. Moreover, the respondent has already accepted the cancelation request made by the complainant also offered refund.

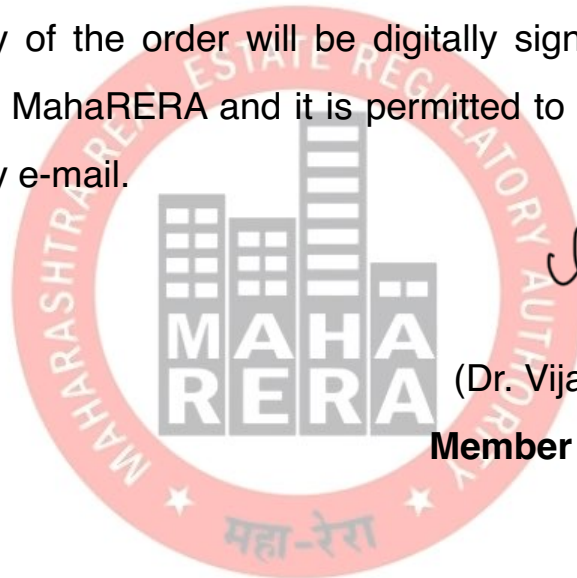


Hence, the MahaRERA is of the view that the respondent is not entitled to forfeit the earnest money.

9. Considering these facts and in compliance of principles of natural justice, the respondent is directed to refund the entire amount to the complainant without any interest within a period of 60 days.

10. With the above directions, the complaint stands disposed of.

11. 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