

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

Complaint No. **CC006000000171645**
Mrs. Pramila Bangera ... Complainant.

Versus

M/s. Lodha Palava Developers Pvt Ltd ...Respondent.

MahaRERA Project Registration No. **P51700013158**

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

The complainant appeared in person.

Ld. Adv. Prashant Gawali a/w Ld. Adv. Nitin Waghmare a/w Ld. Adv. Aksahy Pare appeared for the respondent.

ORDER

(4th August, 2021)

(Through Video Conferencing)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondents to refund the amount paid by her along with interest and compensation 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 his flat no. C-906 on the 9th floor in the respondent's registered project known as "**Palava Estela A, B, C**" bearing MahaRERA registration No. **P51700013158** situated at Palava, Dist. Thane.
2. This complaint is scheduled for hearing on 13-10-2020 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

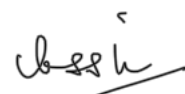
and they were also informed to file their written submissions, if any. Accordingly, the both the parties appeared for the hearing and made their submissions. On the said date of hearing, after hearing the arguments of both the parties, two weeks' time was granted to both the parties to settle the matter amicably and the case was concluded for order. However, the parties could not settle the matter amicably. Hence, this complaint was again scheduled for hearing on 01-12-2020, when both the parties appeared and showed their willingness to settle the matter amicably. Hence on request of both the parties the matter was referred to Conciliation Forum for appropriate action.

3. However, the parties could not arrive at any mutually agreeable terms and hence the matter is again transferred to MahaRERA on 04-05-2021 by the Conciliation Forum. Hence this complaint was again scheduled for hearing on 07-06-2021 and same was heard finally on 24/06/2021, in presence of both the parties. The MahaRERA heard the arguments of the parties and also perused the available record.

4. It is the case of the complainant that she booked the said flat with the respondent with a down payment of INR 99,000/- on 02-10-2019. Thereafter, she entered into an agreement for sale dated 07-10-2019. She further stated that Mr. Shetty and Mr. Rajan from respondent's office assured her of loan approvals and Mr. Prakashchandra Joshi from respondent's finance team checked her loan eligibility and based on some calculations, she was assured of a loan approval of upto INR 40 lacs. Thereafter, she

received an email from Mr. Joshi asking for documents for loan processing and since her job is in Hyderabad and involves a lot of travel, to save time, she submitted the documents to her bank for loan approval. Further, since there was no communication from respondent in the interim, she was informed that Mr. Joshi tried in 6 banks but unfortunately her loan application was rejected everywhere since November 2019. Thereafter, the complainant requested the respondent to cancel the registration since loan was not being approved but it refused to cancel, and instead rudely asked her to borrow from family and friends. The complainant further stated that if she had known that she was not eligible for a loan, she would not have booked the flat since her hard-earned money is now stuck. Moreover, being a single lady, it is very difficult for her to manage her job that involves a lot of travel and hence requested to cancel the said flat and refund her money.

5. The respondent has refuted the claim of the complainant and has filed its affidavit in reply on record on 30-11-2020 denying the contents of the complaint and stating that the complainant is solely responsible to obtain loan and respondent is not obligated for the same as per clauses 1.34 and 7 of the said agreement for sale. Moreover, she has failed to provide any documentary evidence to prove the same. It is stated that the consideration value of the said unit is Rs.38,17,427/- while the complaint has not even paid 10% of the consideration value. It is further stated that the complainant has signed the agreement out of her own free will and without any coercion as per clause 3.2. Further, it has attempted to assist her by approaching several banks but considering her financial statements and past records, the

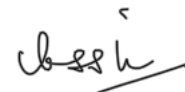


financial institutions have declined to sanction her a loan, which is beyond the control of the respondent. Further, the complainant has defaulted in making time-bound payments as per the payment schedule and hence it is liable to forfeit 10% of consideration value towards liquidated damages as per clause 1.33 of the said agreement for sale. According to clauses 11.2 and 11.2.1, the company has a right to terminate the said agreement. Moreover, the complainant is not entitled for any interest or compensation and hence the complaint deserves to be dismissed with costs.

6. 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 her 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 provision of RERA.
7. With regard to the relief sought by the complainant towards refund, the MahaRERA is of the view that the said booking was done on 2-10-2019 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.
8. In the present case, admittedly the complainant is seeking cancellation of the booking and refund of the entire money paid

by her, due to her personal difficulties as she could not get the loan sanctioned from the financial institution. There is a registered agreement for sale dated 07-10-2019 entered into between both the parties and the said booking is done under RERA regime. On perusal of the complaint, prima facie, it is the case of the complainant that the respondent has given false assurance that she will get the loan sanctioned from a financial institution. However, all 6 banks have rejected her loan application. To support her contentions, she has relied upon the telephonic communications exchanged with the representative of the respondent. However, the complainant has failed to produce any cogent documentary evidence on record of MahaRERA duly signed by the respondent whereby it has ever assured to get her loan sanctioned. Hence, in absence of any supportive evidence of any alleged false assurance, the claim of the complainant for violation of the provisions of section 12 of the RERA has no substance. Furthermore, the eligibility to get the loan sanctioned totally depends upon the financial credibility of the applicant. Hence the reliefs sought by the complainant towards refund cannot be considered under section 12 of the RERA.

9. The said claim of the complainant cannot be considered under section 18 of the RERA also, since the complainant has failed to made out any case that the agreed date of possession mentioned in the agreement for sale dated 7-10-2019 has lapsed. Hence, the claim of the complainant under section 18 of the RERA towards refund along with interest and compensation cannot be considered by MahaRERA.



10. In view of the aforesaid legal position, if the complainant wants to cancel the said agreement for sale, the same has to be done in accordance with the terms and conditions of the agreement for sale entered into between the parties. However, the respondent has contended that as per clause no. 1.33 of the agreement for sale signed by the complainant, in case of any cancellation of the said agreement by the complainant, the respondent is entitled to forfeit 10% of the total consideration of the said flat. The complainant has admittedly paid less than 10% of the total consideration amount of Rs. Rs.38,17,427/-. The respondent further contended that it has paid stamp duty and registration charges for the registration of the said agreement and the complainant has paid an amount of Rs. 1.90,000/-. In this regard, the MahaRERA is of the view that there is no provision under RERA for such forfeiture and even the model agreement for sale prescribed under RERA does not talk about such clause of forfeiture. Even, the apex courts in various orders has held that such forfeiture clauses are one sided and same cannot be acted upon under the provisions of RERA.

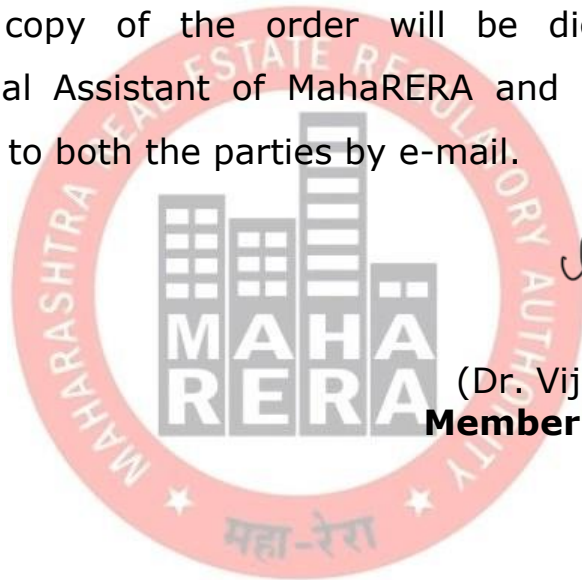
11. However, in the present case, since the respondent has already paid an amount of Rs.1,00,000/- towards the stamp duty and registration charges and there is no default on the part of the respondent under the provisions of the RERA, the MahaRERA is of the view that the complainant is not entitled to seek refund of the entire amount paid by her with interest as sought for in this complaint.

12. Considering the facts and circumstances of this case, the MahaRERA directs the respondent to refund the balance amount

deducting the stamp duty amount to the complainant without any interest within a period of 2 months considering the present pandemic situation. The respondent would be entitled to seek refund of the stamp duty as and when it gets refunded from the concerned authority. The complainant is directed to co-operate with the respondent.

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

14. 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