

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

Complaint No. CC006000000194882

Mangesh Krishna Zagade

Pradnya Mangesh Zagade

.... Complainants

Versus

Chintan Sheth

.... Respondent

MahaRERA Project Registration No. P51800017754

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

Ld. Adv. Rajesh Mudholkar appeared for the complainant.

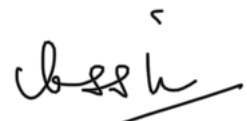
Ld. Adv. Yash Mehta appeared for the respondent.

ORDER

(Friday, 1st April 2022)

(Through Video Conferencing)

1. The complainants have filed this complaint seeking directions from MahaRERA to the respondent to refund the entire amount paid by them 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 a flat bearing no. B-404 on 4th floor, in wing B of the respondent's registered project known as "**Montana Phase-3**" bearing MahaRERA registration No. **P51800017754** located at Mulund West, Mumbai.
2. This complaint was heard on 20-01-2022 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 and made their submissions. After hearing the arguments advanced by both the parties following roznama was passed:

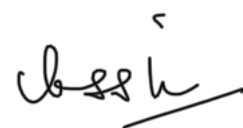
“Both the parties are present. Heard the submissions. One-week time is granted to the parties to file their reply/ written submissions/ rejoinder etc. if not filed on record of MahaRERA. The final order would be passed after one week based on the submissions made by both the parties. The hearing is concluded. Order is reserved.”

3. Pursuant to the said directions, the respondent has filed is written reply in hard copy on record of MahaRERA on 31-01-2022. The same is taken on record. MahaRERA perused the available record. However, it was not possible to decide the matters expeditiously since the office work was severely impacted by Covid 19 pandemic, heavy workload on the subordinates and shortage of staff.
4. It is the case of the complainants that on assurance of the respondent that cost of the said flat would be Rs.1,85,68,200/- inclusive of stamp duty, registration, GST, and processing fees, booked the said flat by paying initial amount of Rs. 2,00,000/- on 26/10/2018. Thereafter without complying with requisitions and statutory obligations they were asked to pay further amount and accordingly they have paid amounts

as per demand raised by the respondent totalling to Rs. 17,13,750/- including EGST, SGST and TDS. Thereafter on 3/12/2018 respondent issued mail to them informing that the flats RERA area 733 square feet, balcony area 21 square feet and dry balcony 14 square feet. However, on the schedule of payment given to them, area of the flat was mentioned as 768 square feet and below that it was written that balcony area is 21 square feet and dry balcony is 14 square feet. Further, on 7/3/2019, they received mail from respondent calling upon them for registration of the agreement but no printed agreement draft for perusal was given and they could not check the particulars of area and other terms and compare with draft uploaded. Hence, they sent an email dated 22/12/2019 stating that due to personal difficulties they are unable to go-ahead with the current booking and informed for cancellation of the flat booking. On 20/1/2020 they received an email from respondent's office stating that advance paid by them is forfeited and that respondent will dispose of the flat at respondent's discretion. However, no such details about the forfeiture has been provided to them. Hence, they issued notice dated 21/9/2020 to respondent to refund the amount but respondent failed to comply the same. Hence, the present complaint is filed seeking refund of the entire amount of Rs. Rs. 17,13,750/- including EGST, SGST and TDS paid by them to the respondent along with interest and compensation.

5. The respondent on the other hand has filed his preliminary reply cum written submissions on record of MahaRERA and refuted the claim of the complainants. He has mainly stated that he has not received the complete copy of the complaint and hence, he could not file his reply.

He has further stated that, the present complaint is not maintainable as the same is without any cause of any action and is also vague, misconceive and liable to be dismissed. He has further stated that, there is no privity of contract between him and the complainant and on this ground he requested to dismiss the complaint. The respondent further stated that a copy of the complaint is being provided through known resource being informed that it is uploaded by the complainant on MahaRERA portal. however, it is incomplete copy and there is no cause-title annexed to the complaint nor the complainant has provided any description of the parties except mentioned of his name in individual capacity. Further, the arrangements of exhibits, pagination, running paragraph numbering is also vague and absurd. He has further stated that, the complaint is also liable to be dismissed on the ground of misjoinder and non-joinder of the parties as he is not the promoter of the building Gionia in the project knowns as "Sheth Montana" as alleged by the complainant. He further stated that the present cause of action as alleged by the complainant appears to be arisen from the booking form dated 20-10-2018 to which he has no privity to. He has further stated that the complainant is not entitled to claim any reliefs whatsoever from third party who is not party to the original contract i.e. booking form signed by the complainant as alleged. He has further stated that the pre-requisite of filing complaint u/s 31 of the RERA is not being complied with by the complainant as on mere further reading of section 31 of the RERA makes it ample clear that the complaint under section 31 only lies against the promoter, the allottee or real estate agent. As he is not the promoter of the said project as defined under section 2(z)(k) of the RERA the



present complaint is not maintainable against him. He further stated that, even if the complainant is entitled to file complaint u/s 31 of the RERA, the reliefs sought by the complainant are u/s 18 of the RERA and even this complaint is not maintainable u/s 18 of the RERA as the section 18 of the RERA mandates the agreement for sale which in the present case is not yet been executed. Further, in the present case, the agreement for sale is not executed between the complainant and him, further, assuming that the booking form is treated equivalent to the agreement for sale, no reliefs can lie against him as he is not the party to alleged booking form. The respondent is completely alien to the contents and existence of such booking form and not aware of such booking form. He further stated that, the present complaint against him is not entitled to any reliefs u/s 18 of the RERA and hence, he prayed for dismissal of the complaint. He has further stated that, the complainant has not approached MahaRERA with clean hands and Hence, he prayed for dismissal of the complaint.

6. The MahaRERA has examined the submissions made by both the parties and also perused the available record. In the present case, by filing this complaint, the complainants are seeking refund of the entire amount paid by them mainly on the ground that the draft agreement for sale was not provided to them before execution of the said agreement for sale and even the respondent has not provided any details of the project to them. The said claim has been refuted by the respondent by filing his preliminary reply mainly contending that the present complaint is not maintainable for mis-joinder and non-joinder of necessary parties. He has also stated that he has not been served

with complete set of complaint along with all enclosures, due to which he is unable to file his detailed reply.

7. Keeping all these technicalities pointed out by the respondent , the MahaRERA has perused the online complaint filed by the complainants. On bare perusal of the same, prima facie it appears that the complainants though have sought reliefs of refund along with interest and compensation based on the booking application form, however they have not specified as to in which section of the RERA they are claiming such reliefs. Further, the MahaRERA can grant such relief of refund for violation of section 12 and 18 of the RERA.
8. However, in this case, the complainants have not pleaded the fact in this complaint that the respondent has given any misleading information by way of false notice/ advertisement due to which they suffered from any loss. Further during the course of hearing the complainants have mainly stated that the respondent has not provided any details about the project and without providing them draft agreement for sale, they called upon them to execute the registered agreement for sale by mentioning the unilateral clauses in this agreement. To support their contention they have filed relied upon certain judgements passed by the apex court.
9. Considering these submissions made by the complainants, the MahaRERA is of the view that the complainants have booked their flat in the year 2018, when this project was already registered with MahaRERA by M/s. Lohitka Properties LLP with MahaRERA on

1-09-2018, and all information pertaining to the said project was uploaded online on MahaRERA webpage, including the draft model agreement for sale. Hence, there is no substance in the contention raised by the complainants that no details of the project have been provided to them and therefore the claim of the complainants can not be considered for violation of section 12 of the RERA.

10. Further, admittedly there is no allotment letter/ agreement for sale has been issued/executed between the parties showing any agreed date of possession , which is over. Hence, their claim can not be considered for violation of section 18 of the RERA.

11. However, the only grievances the complainants have made is about the not providing the draft agreement for sale to them before execution, which seems to be genuine cause. The complainants being allottees of this project should have been provided the draft agreement for sale before execution and registration.

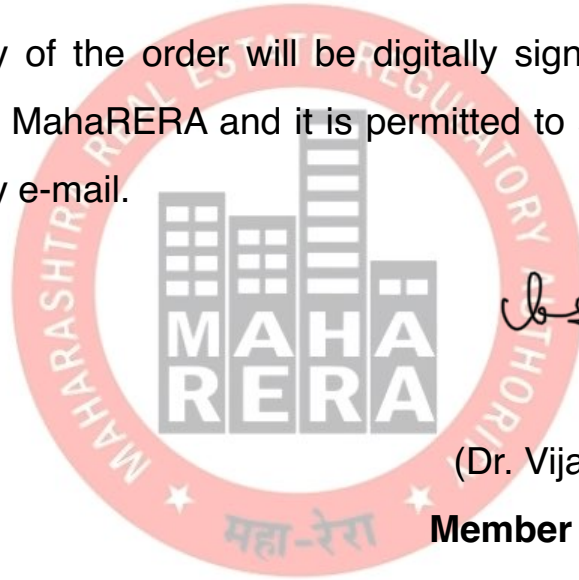
12. Considering these facts, the MahaRERA prima facie feels that there is no legal substance in the claim of refund along with interest and compensation agitated by the complainants.

13. In view of above, the only directions that can be issued by MahaRERA in compliance of principles of natural justice, to the promoter of this project with whom the complainants have privity to forward the draft agreement for sale to the complainants within a period of 15 days from the date of receipt of this order. If the complainants fail to execute the

registered agreement for sale within a period of 30 days, the money paid by them towards the consideration amount including the booking amount be refunded without any interest within next 30 days as per clause no. 18 of the draft Model agreement for sale prescribed under the provisions of section 13 of the RERA and the relevant rules made thereunder.

14. With these directions, the present 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