

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

**Complaint No. CC006000000197492**

Mrs. Prathitha Krishnamoorthy through

Mr. Srikant Krishnamoorthy

.... Complainant

***Versus***

Lohitka Properties LLP

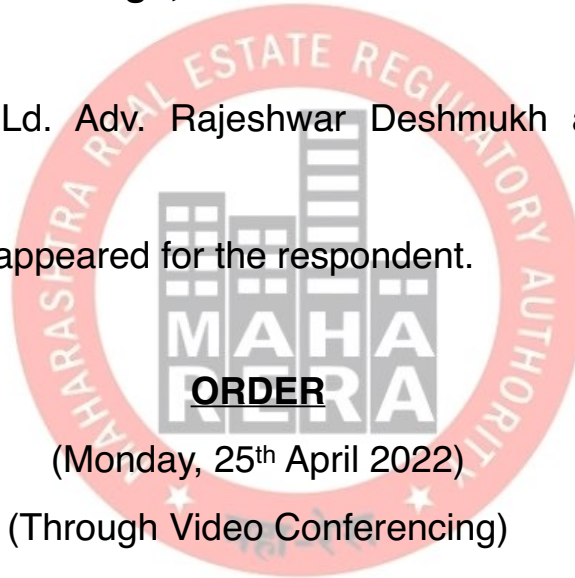
.... Respondent

**MahaRERA Project Registration No. P51800017754**

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

Junior Advocate of Ld. Adv. Rajeshwar Deshmukh appeared for the complainant.

Ld. Adv. Yash Mehta appeared for the respondent.



(Monday, 25<sup>th</sup> April 2022)

(Through Video Conferencing)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to refund the entire amount paid along with compensation and legal charges under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of booking of the flat No. B-1801 in the respondent's registered project known as "**Montana Phase 3**" bearing MahaRERA registration No. **P51800017754** located at Mulund West, Mumbai.

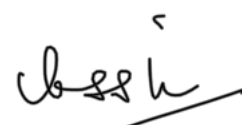
2. This complaint was heard by MahaRERA on 20-01-2022 as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions, if any. Accordingly, both the parties appeared and made their submissions. MahaRERA heard the submissions made by both the parties and also perused the available records. After hearing the arguments of both the parties the following Roznama was recorded –

***“Both the parties are present. Heard the submissions. The leaned advocate for the complainant seeks an adjournment on the ground that the advocate on record Mr. Rajeshwar Deshmukh is suffering from Fever. Hence, 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.”***

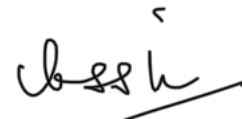
3. Pursuant to the said direction, on 27-01-2022 the respondent has uploaded its written submissions on record of MahaRERA. Thereafter, the complainant on 31-01-2022 has filed her written arguments on record of MahaRERA. The MahaRERA heard the submissions made by the parties and also perused the available record. However, it was not possible to decide the matters expeditiously since the office work was severely impacted by Covid 19 pandemic, heavy workload of the subordinates and shortage of

staff.

4. It is the case of the complainant that vide booking form, she has been allotted the said flat and it was agreed by the respondent to give possession in the year 2024. Further, the major proceeds for payment was to be made from sale of the complainant's existing property but due to Covid-19 pandemic and depression and recession in the market the complainant could not get any offer for the sale of the existing property and therefore she wishes to withdraw the booking in order to avoid inconvenience to either parties and requests for refund of the amount paid aggregating to Rs.42,82,200/- but the respondent is deducting 7% of the total flat consideration which is stated in the booking form which is neither a contract nor an agreement as per the Indian Contract Act, 1872 and therefore she seeks for the complete refund of the amount. Further the total price consideration for the said flat is Rs.2,16,00,000/- and she has paid Rs.44,98,200/- including GST. Therefore, the complainant prays that the respondent be directed by the Hon'ble MahaRERA to pay her the amount of Rs.42,82,200/-, refund of legal charges and compensation.
5. The respondent has refuted the claim of the complainant and has filed its affidavit in reply stating that she has abstained from making payment towards the said allotment and to execute the agreement for sale and the said booking form was cancelled/ terminated on her sole request and not due to inability of respondent in completing the said project and neither on account of any delay whatsoever in handing over possession. Further, the complainant is an investor and has



shown keen interest in investing in the said flat with the sole purpose of re-selling it to third party at whopping profits. As regards the cancellation/ termination, the complainant in her own email dated 16/3/2021 has made it amply clear that she was at all times aware that in the event of cancellation/ termination, the amount would be forfeited and in accordance with booking form, it has already refunded back an amount of Rs.25,35,840/- being the amount of entitlement towards refund. Further, the complainant had approached it through her broker 'Fanm Property Service Pvt Ltd.' for investing/ purchasing the said flat and after thoroughly going through the terms and conditions of the booking form, she had entered and drawn her hands upon booking form dated 16/3/2019. Thereafter vide email dated 16/12/2019 the complainant sought extension of time in making payments towards the demand letter dated 11/12/2019 on account of medical emergency and ill health in their immediate family whereby she was informed that the said extension sought had been rejected and to make the payment at the earliest to avoid interest on delayed payment. It stated further that it considered the request of the complainant but vide email dated 11/3/2021 she opted for unilateral cancellation and respondent vide email dated 16/3/2021 brought to her notice that in accordance with the terms and conditions of booking form, in the event of cancellation, withdrawal a minimal of 7% of the total consideration would be forfeited to which the complainant vide legal notice dated 5/4/2021 called upon the respondent to refund advance payment along with taxes which was duly replied through its advocate's letter dated 23/4/2021 and in adherence with the terms and conditions, it has refunded the entire amount of Rs. 25,35,840/-.

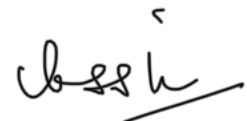


The respondent has replied to the complaint parawise and stated that complainant is not entitled to any reliefs as prayed for and complaint deserves to be dismissed with costs.

6. The complainant has filed her rejoinder on record on 31-01-2022 agreeing to the fact that she did approach for booking through Fanm and further had requested for time and to waive the interest but it was informed to her that the letter was a standard letter being sent to all customers and the team had requested us to make the payment at the earliest. Further, even though time was granted, despite effort, she could not sell out the existing flat due to the pandemic. Thereafter, though time was provided for making payment till 31/12/2020 without interest, she could make the payment by 8/12/2020 for the plinth completion. The complainant has denied that she booked the said flat in order to resale the same at a higher price. She stated that due to medical illness in her immediate family and to avoid further loss she proceeded to cancel the booking. The complainant agreed the amount of Rs.25,35,840/- being returned which should have been paid in full and hence she has filed the present complaint.
7. 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 complainant is mainly seeking refund of the entire amount paid by him along compensation. The said claim has been refuted by the respondent stating that it has refunded an amount of Rs. 25,35,840/- to the complainant as per cancellation

policy as the complainant for her own personal reasons has cancelled the said booking. Hence, it has prayed for dismissal of this complaint.

8. Admittedly, the complainant is not seeking the reliefs under section 12 and 18 of the RERA. However, in the present case, the MahaRERA has noticed that the complainant has booked the said flat by signing the booking application form on 16-03-2019. The said flat was booked for total consideration amount of Rs. 2,16,00,000/-. Out of the same, she has paid an amount of Rs. 44,98,200/- inclusive of GST. However, she could not pay the outstanding dues as demanded by the respondent, hence he vide his email dated 16-03-2021 sought cancellation of the said booking and refund of the entire amount.
9. Thereafter, the respondent has refunded an amount of Rs. 25,35,840/- to the complainant as per the cancellation policy and the said fact not been denied by the complainant. It shows that the request of the complainant for cancellation of the said booking has already been acted upon by the respondent and the money has also been refunded to the complainant as per cancellation policy. Hence, now the complainant after accepting the refund amount cannot approach MahaRERA seeking the balance amount of refund challenging the cancellation policy adopted by the respondent as the same is afterthought.
10. Moreover, there is no provisions under RERA to grant such reliefs as sought by the complainant. In addition to this as the refund amount has already been accepted by the complainant, hence, on the date of



filing of this complaint, the complainant was not an allottee of this project.

11. Considering, these facts, the MahaRERA does not find any merits in this complaint. Consequently, the complaint stands dismissed for the reasons as cited hereinabove.
12. 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.

