

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

**Complaint No. CC006000000193599**

Deval Sakharam Khairnar

.... Complainant

***Versus***

Xrbia Chakan Developers / Aryamaan Developers

.... Respondent

**MahaRERA Project Registration No. P51800005456**

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

The complainant appeared in person.

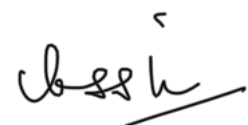
Ld. Adv. Kalpesh Shah appeared for the respondents.

**ORDER**

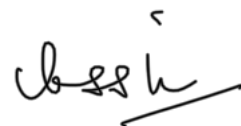
(Monday, 26 October 2021)

(Hearings Through Video Conferencing)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to refund the entire amount paid by him to the respondent 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 the flat bearing no. 2601 on 26<sup>th</sup> floor in the respondent's registered project known as "**Centrona NOVA-A**" bearing MahaRERA registration No. **P51800005456** located at Ghatkopar East, Mumbai.
2. This complaint was transferred from the Conciliation Forum to this Bench on 18-06-2021. Accordingly, the same was scheduled for hearing on 12-08-2021, when the complainant and the representative of L & T appeared for the said hearing. On that date it was directed to call the respondent No. 1 and 2 for hearing and the case was adjourned till 22/09/2021.

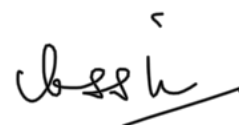


3. Thereafter this complaint was heard on 22-09-2021 as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions, if any. Accordingly, both the parties appeared for the hearing and made the submissions. During the hearing, both the parties were directed to file their respective written submissions/ reply /rejoinder if any on record of MahaRERA within the period of two weeks and the hearing was concluded and the order was reserved.
4. Pursuant to the said directions, the complainant has filed his written submission on record of MahaRERA on 28-09-2021. However, despite directions, the respondents have not filed any written submission/ reply on record of MahaRERA. It shows that the respondents are not interested to contest this complaint. Hence, the MahaRERA heard the submissions made by the complainant and also perused the available record.
5. It is the case of the complainant that he has booked the said flat in the respondent's project in the year 2017. At that time the respondents have agreed to handover possession of the said flat on or before 31-12-2020. Thereafter the respondents have executed the registered agreement for sale with him on 15-10-2018 by mentioning the date of possession as 31-12-2022. Thereafter, on 21-02-2020, the respondents have issued new consent letter stating that the possession date to be further revised to 31-12-2025 as the joint venture agreement is executed with new promoter M/s. L & T Infrastructures, which was not acceptable to him. Hence, on 22-02-2020, he sent email to the respondents to cancel the said booking and to refund the amount. However, no action has been taken on it by the



respondents. Hence, he filed Conciliation Case No. CR006000000054845, when the respondents opted out of conciliation. In the meantime, the L & T has taken over the site office; however it has stated that the cancellation will be dealt with by the respondents only and hence refused to intervene. He further stated that as on date the construction work is not yet started though as per the agreement for sale the date of possession is 31-12-2022. Hence, he has filed this complaint seeking refund under the provisions of RERA.

6. The respondents despite specific directions given by the MahaRERA during the course of hearing held on 22-09-2021, have failed to file their reply/ written submissions on record of MahaRERA even till date. Hence the MahaRERA is of the view that they are not willing to contest this complaint. Hence, the MahaRERA has no other alternative but to proceed with the matter ex-parte on merits.
7. In the present case, the complainant who is an allottee of this project has approached MahaRERA seeking refund of the entire amount paid by him along with interest. However, the complainant has not specified under which provision of the RERA he is seeking the said relief. Admittedly there is registered agreement for sale executed between the complainant and the respondents dated 15-10-2018. The complainant himself has stated that the date of possession is mentioned as 31-12-2022. He further stated that he obtained home loan from the HDFC bank by mentioning the date of possession as 31-12-2022, however he has mainly contended since the respondent has revised the date of completion from 31-12-2022 to 31-12-2025, which is not acceptable to him. The complainant has stated that the respondents are not adhering to their commitment and revising their possession dates by another 3 plus years, which is not acceptable to him. Hence, he is seeking refund of the entire amount paid by him along with

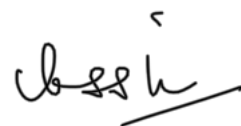


interest.

8. With regard to the relief of refund sought by the complainant, the MahaRERA is of the view that the allottee is entitled to seek refund mainly under section 12 and 18 of the RERA.
9. In case the MahaRERA proceeds to decide the claim of the complainant under section 12 of the RERA, the relevant provisions of section 12 of the RERA is required to be perused which provides as follows:

***“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.”***

10. The aforesaid provision of section 12 provides that if the allottee books any flat believing any false information contained in the notice /advertisement published by the promoter, and suffer from any loss damages in that event, the allottee is entitled to seek refund along with interest as prescribed under RERA. However, in the present case, the complainant has not stated any violation of section 12 of the RERA showing any false notice /advertisement

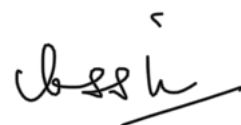


published by the respondent promoter, due to which he suffered from any sort of loss as contemplated under section 12 of the RERA. Hence, the MahaRERA cannot consider the claim of the complainant under section 12 of the RERA.

11. With regard to the relief sought by the complainant under section 18 of the RERA, the MahaRERA has referred the relevant provision of section 18 of the RERA, which reads as under:

***(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.***

12. The aforesaid provision of section 18 (1) provides that if the promoter fails to handover possession of the flat to the allottee on the agreed date of possession mentioned in the agreement for sale in that event the allottees can seek refund along with interest and compensation. If the allottee

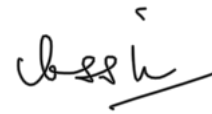


chooses to be in the project, he is entitled to seek only interest for the delay in possession. It shows that section 18 of the RERA mandates agreement for sale, which is there in the present case. Admittedly it is the case of the complainant himself that the date of possession mentioned in the said agreement for sale is 31-12-2022, which is yet to arrive. Hence, the MahaRERA is of the view that the present complaint is premature as on date to seek any relief under section 18 of the RERA.

13. In addition to this if the respondents are seeking any extension in the date of completion of this project as provided on the MahaRERA website with respect to this project, the respondents would not be entitled to re-write the date of possession mentioned in the agreement for sale signed by both the parties, which is binding upon the allottee as well as the promoters.

14. In view of these facts, the MahaRERA does not find any merits in this complaint. Consequently, the complaint stands dismissed being premature.

15. The certified copy of this order will be digitally signed by the concerned legal assistant of the MahaRERA. It is permitted to forward the same to both the parties by e-mail.



(Dr. Vijay Satbir Singh)

**Member – 1/MahaRERA**