

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

Complaint No. CC006000000333960

Visha Yashwant Paradkar

... Complainant

Versus

M/S Lucina Land Development Limited

... Respondent

MahaRERA Project Registration No. P52000000709

Coram: Shri. Mahesh Pathak, Hon'ble Member - I/ MahaRERA

Ld. Adv. Ajay Dubey appeared for the complainant.

Ld. Adv. Deep Madnani appeared for the respondent.

ORDER

(Order Pronounced on Monday, 13th January 2025)

(Matter reserved for order on 03-09-2024)

(Through Video Conferencing)

1. The complainant above named has filed this online complaint before the MahaRERA on 10-02-2023 seeking directions from the MahaRERA to the respondent - promoter to refund the entire amount paid by the complainant along with interest and compensation as prescribed 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. 1801, on 18th Floor in the respondent's registered project known as "**Indiabulls Park 1**" bearing MahaRERA project registration No. **P52000000709** located at Village Kon, Panvel, Dist. Raigarh.
2. This complaint was heard by the MahaRERA on 13-02-2024, 14-05-2024, 06-08-2024 and on 03-09-2024 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 parties appeared as mentioned in the Roznama and made their submissions. The MahaRERA heard the arguments of the parties and also perused the available records.

3. After hearing the arguments of the parties the following Roznama was recorded in this complaint –

On 13-02-2024

“Both the parties are present. The complainant has filed this complaint for refund along with interest and compensation for delay as per an allotment made in 2011 and receipts issued for the said flat in February, 2011. The respondent is directed to file a reply to the complainant within four weeks i.e. by 12-3-2024. Further four weeks’ time i.e. 9-4-2024 is granted to the complainant to file rejoinder to the aid reply. The matter is adjourned to a suitable date after 9-4-2024 for further hearing. List the matter for next hearing on 14-05-2024.”

On 14-05-2024,

“Both the parties are present. The respondent has not filed any reply to the complaint despite directions and is directed to do so along with written arguments within a period of three weeks i.e. by 4-6-2024. Further three weeks’ time i.e. till 25-6-2024 is granted to the complainant to file rejoinder along with written arguments. The complainant has paid more than Rs.28 lakhs for the booking. However, admittedly there is neither an allotment letter nor a date of possession mentioned but the complainant has receipts for the said payments issued in 2011. According to the complainant, despite requests neither the agreement for sale was signed nor the project is complete. Therefore, the complainant prays for refund along with interest and compensation for delay. The matter is adjourned to a suitable date after 25-6-2024 for final arguments by both sides. List the matter for next hearing on 6-8-2024.”

On 06-08-2024

Both the parties are present. Despite direction the respondent has not filed any reply to the complaint nor has filed any written arguments. Therefore, the respondent may do so within a period of 2 weeks i.e. by 20-08-2024 as a last chance. The complainant has already filed written submissions, however, the complainant needs to clarify whether the flat no. in the complaint is 1801 or 1802. The complainant may do so by filing rejoinder and additional written submissions within a further period of one week i.e. by 27-08-2024. This matter is adjourned to a suitable date after 27-08-2024 for final arguments by both the sides. List the matter for next hearing on 03-09-2024.

On 03-09-2024

Both the parties are present. The respondent has filed a reply to the complaint although late. Therefore, the complainant seeks time to file a rejoinder to the said reply of the respondent and is granted two weeks time to file rejoinder along with written arguments i.e. till 17-09-2024. The respondent in its reply has contended that there is neither an allotment letter nor an agreement for sale however, there is a booking application form of 2011. Moreover, the said booking was under the MOFA and there is an arbitration clause mentioned in the said booking application form. Further, the complainant has cancelled the said booking in October, 2019 and the respondent is able and willing to refund the amount as per the terms and conditions mentioned in the said booking application form. The respondent has also pointed out that the complainant is not sure whether the flat no. allotted is 1801 or 1802 and the complaint is also filed beyond limitation as it is filed more than 12 years after the said booking. However, the complainant has refuted the contentions of the respondent and has pointed out that even as late as 2016 it has been making regular payments and a total amount of more than Rs.28 lakhs have been paid towards the said booking. However, the agreement for sale has not been executed but in the booking application form of 2011, the date of possession mentioned is within 3 years i.e. 2014. The complainant also refutes the contention of the respondent that the arbitration is applicable as the project is registered under the RERA and that there is confusion about the flat no. which is 1802. The complainant also contends that as

there is delay in completion of the projects and the OC has not yet been received hence, the complainant prays for refund along with interest and compensation for delay and that the respondent has despite cancellation of the booking not refunded any amount to the complainant. The respondent may file a sur rejoinder if any and written arguments within a further period of one week i.e. till 24-09-2024. Accordingly, this matter is reserved for orders suitably after 24-09-2024 based on the arguments of both the parties as well as the reply, rejoinder, written arguments and sur rejoinder if any filed in the complaint.

4. However, despite specific directions being issued by the MahaRERA, neither the complainant nor the respondent has uploaded any further submissions on record of MahaRERA. Hence, the MahaRERA has perused the available record.
5. It is the case of the complainant that the respondent, who is a builder/developer had come up with public offer to sell flats in the said project 'Indiabulls Green' at Panvel with a completion date as 2014. Believing on the said representation, she negotiated with the respondent so as to book the said flat no. 1801 by paying advance amount of Rs. 1 lakh on 25-02-2011 out of the total consideration of Rs.28,15,707/-. She was promised that necessary approvals/permissions would be obtained by respondent in a short period and construction work will commence soon and possession would be handed over to her on or before 2014. Further, she paid an amount of Rs.28,15,707/- till date i.e. 18-2-2016 however, the project has not yet been completed as the respondent gave the reason that they could not get necessary permission from various authorities to start the construction. Hence, she informed the respondent to return her money and cancel the booking however, to her dismay, the respondent was deducting the amount of Rs. 9,97,194/- in the name of VAT and GST and cancellation charges. Therefore, the complainant

prays to direct the respondent to cancel the said deal between them and refund the amount already deposited by the complainant in respect of the said flat; to pay interest; compensation towards mental and physical harassment and for legal cost.

6. The respondent has denied the aforesaid contentions of the complainant and stated that *there is neither an allotment letter nor an agreement for sale duly signed with the complainant. However, there is only a booking application form signed by the complainant on 25-02-2011. Further, the said booking was done under the MOFA and also there is an arbitration clause mentioned in the said booking application form. Therefore, this complaint filed under the RERA is not maintainable. As the complainant needs to opt for arbitration. The respondent further stated that the complainant has cancelled the said booking in October, 2019 and hence, it has shown its willingness to refund the said amount to the complainant as per the terms and conditions mentioned in the said booking application form. The respondent has also pointed out that the complainant is not sure whether the flat no. allotted is 1801 or 1802 and the complaint is also filed beyond limitation as it is filed more than 12 years after the said booking was done. Hence, it has prayed for dismissal of this complaint.*
7. The complainant has uploaded a restoration application on 9-3-2024 and has later uploaded a letter on 22-3-2024 stating that the restoration application has wrongly been sent by her.
8. The complainant has filed written submission on 25-06-2024 reiterating what has been stated in her complaint hereinabove.
9. The respondent has filed its reply denying the contentions made in the

complaint and stating that there is neither an allotment letter nor an agreement for sale duly signed with the complainant. However, there is only a booking application form signed by the complainant on 25-02-2011. Further, the said booking was done under the MOFA and also there is an arbitration clause mentioned in the said booking application form. Therefore, this complaint filed under the RERA is not maintainable. The respondent has further stated that as there is an arbitration clause in the booking form, the complainant needs to opt for arbitration. The respondent further stated that the complainant has cancelled the said booking in October, 2019 and hence, it has showed its willingness to refund the said amount to the complainant as per the terms and conditions mentioned in the said booking application form. The respondent has also pointed out that the complainant is not sure whether the flat no. allotted is 1801 or 1802 and the complaint is also filed beyond limitation as it is filed nearly 12 years after the said booking was done. Hence, it has prayed for dismissal of this complaint.

10. The MahaRERA has examined the rival submissions made by both the parties and also perused the available record. The complainant claiming to be an allottee of this project has approached the MahaRERA mainly seeking refund of the entire money paid by her along with interest and compensation on account of delay in handing over possession of the said flat to him as per the allotment done by the respondent on 25-02-2011. The complainant further stated that she booked the said flat for a total consideration amount of Rs. 1,31,80,308/- (said amount is taken from the legal notice sent by the complainant on 19-12-2019 as the complainant has mentioned the total consideration amount of Rs.28,15,707/- in her complaint copy) out of which, it has paid an amount of Rs. 28,15,707/- towards the said booking. The

complainant further contended that at the time of said booking, the respondent orally promised to handover possession of the said flat to him in 2014 and it has advertised the said project accordingly. However, it has failed to complete this project and to handover possession of the said flat to her on that date. Also, despite the fact that she sought withdrawal from the project by sending various emails to the respondent, however, the respondent did not reply to the same and has offered refund to her after deducting an amount of Rs. 9,97,144/- . Hence, she has filed this complaint seeking refund of the entire money paid by her along with interest and compensation on account of delay under section 18(1) of the RERA.

11. The respondent on the other hand has refuted the claims of the complainant mainly contending that the said booking done by the complainant was provisional booking and was subject to approval of the final plans by the competent authority. Also, the complainant has done the said booking by signing a booking application form dated 25-02-2011. Moreover, the said booking application form has an arbitration clause and hence, the complainant has to opt for arbitration in case of any dispute. On various occasions when the complainant was called upon to accept the revised allocation by signing the cost sheet, she willingly chose not to revert for reasons best known to her. Also, the complainant has not clarified whether she booked a flat no. 1801 or 1802. However, the complainant despite the conditions of application form and despite being provided with various options including to exit from the project deliberately failed and neglected to exercise the options. In the year 2019 the complainant wrote an email to the respondent seeking cancellation of the booking and refund of the amount paid to the respondent in respect of the said flat. However, it showed its willingness to refund the said amount as per the

terms and conditions of the said booking application form, which the complainant has refused to accept. Hence, it has prayed for dismissal of this complaint.

12. From the aforesaid submissions made by both the parties and after perusing the available record, the MahaRERA has noticed that the complainant has claimed that he has done the said booking by signing booking application form on 25-02-2011.
13. As far as the issue of maintainability of this complaint raised by the promoter in view of the arbitration clause mentioned in the said booking application form dated 25-02-2011, the MahaRERA has perused the recent judgement of Hon'ble Bombay High Court in its order dated 25-10-2024 passed in Second Appeal No. 434 of 2023, wherein it is held that *"The dispute between the individual allottee and the promoter or the dispute between the Association of the Allottees and the Promoter covered under Real Estate Regulation and Development Act, 2016 is non-arbitral in nature."* The Hon'ble Court further held that *"The jurisdiction of Real Estate Regulatory Authority established under Section 20 of the Real Estate Regulation and Development Act, 2016 is not ousted, even if the agreement between the promoter and the allottee contains arbitration clause."* Hence, the MahaRERA prima facie finds no substance in such an issue of maintainability raised by the promoter. Hence, the same stands rejected.
14. On bare perusal of the said booking application form, admittedly, it appears that the said booking was done by the complainant prior to commencement of RERA. The said flat was booked by the complainant for a total consideration

amount of Rs. 1,31,80,308/- (as per the complainant) out of which he has paid an amount of Rs. 28,15,707/- which comes to nearly more than 20% of the total consideration value of the said flat. However, the registered agreement for sale was not signed and executed between the parties, due to best reasons known to them.

15. In the present case, it is an admitted fact that there is no specific date of possession mentioned in the said booking application form dated 25-02-2011. Also there is no agreement for sale /allotment letter duly signed by both the parties showing any agreed date of possession which has lapsed.
16. In absence of any agreed date of possession mentioned in the agreement for sale or allotment letter/booking application form, the MahaRERA needs to take into consideration the date of completion of this project mentioned by the respondent - promoter on MahaRERA website while registering this project with the MahaRERA. However, on bare perusal of the webpage information uploaded by the respondent promoter on the MahaRERA website, it appears that the respondent has mentioned the proposed date of completion of this project as 27-08-2021 and revised date of completion as 31-03-2024 which is further extended till 31-03-2027. The said date is yet to come. Hence, the MahaRERA does not find any substance in the claim of refund sought by the complainant under section 18 of the RERA and the same is premature as on date.
17. Even if the said claim of refund sought by the complainant is considered under section 12 of the RERA, the MahaRERA has noticed that the complainant has failed to prove what false information was given by the respondent on the

basis of which she seeks refund along with interest and compensation under section 12 of the RERA. Moreso, after commencement of the RERA on 1-05-2017, the respondent has registered this project with the MahaRERA being an ongoing project on the MahaRERA website. Hence, all information pertaining to the project details and the date of completion of this project was uploaded on the MahaRERA website in the year 2017. If the complainant was so aggrieved by any such false information, she should have approached the MahaRERA at the relevant time before the MahaRERA admitting her claim and should not have waited till 10-02-2023 to file this complaint. Hence, the MahaRERA does not find any substance in the claim of refund along with interest and compensation sought by the complainant under section 12 of the RERA.

18. In the present case, the MahaRERA has noticed that there was no such policy set out by the MahaRERA for cancellation of the booking prior to execution of the agreement for sale framed by the MahaRERA. However, it was only on 12-08-2022 the MahaRERA vide issuing an order No. 35 of 2022 dated 12-08-2022, prescribed the format of allotment letter, which permits the promoter to forfeit 2% of the consideration amount in case of any cancellation done by the allottee. Hence, any cancellation the complainant allottee seeks in this matter is governed by the said MahaRERA Order No. 35 of 2022.
19. Although the aforesaid MahaRERA order was issued recently (in the year 2022), however, earlier there was no prescribed format of allotment letter issued by the MahaRERA. Now the settled principle for cancellation of the booking (before the execution of agreement for sale is executed) has been prescribed by the MahaRERA by way of such order. Hence, any action on the

part of the respondent for forfeiture of an amount by offering the complainant an amount after forfeiting 10% of the total consideration value of the said flat is not in consonance with the said circular dated 12-08-2022 issued by MahaRERA. Further, as per the webpage information uploaded by the respondent on the MahaRERA website, the respondent has not uploaded any deviation report to the said Order No. 35 dated 12-08-2022 issued by the MahaRERA. In view of the above, since this project is registered with the MahaRERA, the said MahaRERA Order can be made applicable while deciding such cases on merits.

20. In view of these facts, the following order is passed:

- a. The complaint is partly allowed.
- b. The claim of interest sought by the complainant along with the entire refund amount stands rejected in view of the observations made in aforesaid para nos. 14,15 and 16.
- c. The respondent is directed to refund the money paid by the complainant towards the consideration of the said flat without any interest, after deducting 2% of the total consideration (value) of the said flat (excluding the statutory dues paid to the government/brokerage if any) within a period of 45 days from the date of this order.

21. With these directions, the present complaint stands disposed of.


(Mahesh Pathak)

Member - 1/MahaRERA