

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY MUMBAI

Complaint No. CC005000000106820

Sofia Bernard Swamy

.... Complainants

Versus

Godrej Properties Limited

Dreamworld Landmark LLP

.....Respondents

MahaRERA Project Registration No. P52100000985

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

Ld. Adv. Sarita Fernandez appeared for the complainant.

Ld. Adv. Prabhakar Narwane appeared for the respondent no. 2.

ORDER

(Monday, 11th November 2024)

(Through Video Conferencing)

1. The complainants above named have filed this online complaint before the MahaRERA on 24-03-2022 seeking directions from MahaRERA to the respondents to refund the booking amount with interest; cost and penalty prescribed 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. A0204 in the respondents registered project (hereinafter referred to as the "said flat") known as "Godrej Greens," bearing MahaRERA registration No. **P52100000985** located at Haveli Pune. (hereinafter referred to as the "said project").
2. This complaint was heard on 12-05-2022 and 22-08-2023 on merits 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 respondent has appeared and made its submissions. However, the complainant remained absent on both these aforesaid hearings. Hence this authority has passed an order dated 22-08-2023 and the complaint was dismissed for default.

3. Thereafter the complainant has filed the restoration application and prayed to set aside the said order as well as to restore the present complaint and that the same be decided on merits.
4. Accordingly, this complaint was heard on 13-05-2024 and the same was heard finally on 23/07/2024 on merits, 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 their submissions. MahaRERA heard the submissions of the parties and perused the available record.
5. After hearing the arguments of both the parties, the following Roznamas were recorded -

On 13-05-2024:-

"First Hearing Matter" The complainant is present. The respondent is absent. The complainant has filed this restoration application for restoration of the original complaint which was dismissed as the complainant was absent for 2 consecutive hearings. The complainant mentions that due to certain technical issues, she could not attend the said hearings. In view of the above, this matter is restored for the hearing. The complainant further desires that the matter may be referred for conciliation to explore the possibility of an amicable settlement. Therefore, the matter is referred to the Conciliation

Forum. In case conciliation fails, the matter would be fixed for regular hearing strictly as per seniority."

On 23/07/2024:-

Both the parties are present. This complaint has been restored vide an order dated 22-08-2023 as the matter was dismissed for default earlier. The complainant has prayed for refund of an amount of R.3,89,604/- for the online booking done in June 2020 in the respondent's project. However, due to personal reasons, the complainant has withdrawn from the project and requests for refund of the said amount along with interest. Both the parties are directed to upload a copy of the booking application form which is issued in June 2020 as per the complainant's contention that the payments were made on 5-6-2020 and the booking form was issued on 30-6-2020. The respondent has pointed out to the clause in the booking application form vide which the earnest money for such bookings of 20% of the consideration for the flat was supposed to be forfeited in case of early withdrawal from the project. Therefore, the respondent contends that no amount is due and payable to the complainant. However, the complainant refutes this contention of the respondent and points out that he had informed the respondent on 26-9-2020. The respondent may file a reply to the complaint along with written arguments and upload all the documents within a period of four weeks i.e. by 20-08-2024. Further one week's time i.e. till 27-8-2024 is granted to the complainant to file a rejoinder to the reply of the respondent along with written arguments. The matter is reserved for orders suitably after 27-8-2024 based on the arguments of both sides as well as the reply, rejoinder and written arguments filed in the complaint. It is expected that all the documents with regard to the said allotment would be uploaded by both the parties by filing their reply and written arguments.

6. Pursuant to the aforesaid direction issued by the MahaRERA, the

complainant has uploaded list of documents along with synopsis and written submission on the record of MahaRERA on 19-08-2024 and on 18-09-2024. The same has been taken on record. However, despite the direction, the respondents have not uploaded any reply/rejoinder/written submission on the record of MahaRERA. Hence the MahaRERA has perused the available record.

7. It is the case of the complainant that she has purchased the said flat in the respondent's registered project for a total consideration of Rs. 46,66,834/-. She has paid Rs.3,89,604/- as paying booking amount. Further, the said booking was done under the 10:90 offer whereby 10% was to be paid before the registration and 90% after the registration. Moreover, due to Covid-19 and personal issues, she could not pay the entire 10% and informed via email dated 26-09-2020, to the respondents to cancel the booking and refund the entire amount. Furthermore, the complainant was in constant touch with the respondents via calls, emails etc. She was told to bring a client within 6 months or else the respondents would forfeit the amount. She has issued a legal notice to which it has replied through its advocate. However, the respondents have failed and neglected to repay the said amount. Being aggrieved by the conduct of the respondents, she filed the present complaint.
8. The complainant has also uploaded her written submission on 18-09-2024 on the record of MahaRERA. Nearly all the submissions have been repeated by the complainants as per her complaint.
9. In this case, the respondents have failed to file any reply to this complaint although the respondent no. 2 appeared for the hearing held on 23-07-2024. However, during the course of hearing, the said respondent has stated that the complainant is seeking cancellation for her own personal reasons and

hence as per the clause in the booking application form dated 30-06-2020, the earnest money for such bookings of 20% of the consideration for the flat was supposed to be forfeited in case of early withdrawal from the project. Hence, the said respondent 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 who is claiming to be an allottee of this project, by filing this complaint has approached the MahaRERA mainly seeking refund of the entire amount of Rs. 3,89,604/- paid by her along with interest and compensation under the provisions of the RERA.

11. The complainant is seeking such reliefs mainly on the ground that she booked the said flat on 5-06-2020 and the booking application form was issued to her only on 30-06-2020. Also, due to the financial issues faced by her on account of the covid-19 pandemic, she could not make the further payment (upto 10% of the total consideration amount). Hence, she informed the respondents for such cancellation of the said booking vide an email dated 26-09-2020. However, till date the respondents have failed to refund the said money paid by her. Hence, she has filed this complaint.

12. The respondent no. 2 on the other hand has refuted the aforesaid contentions raised by the complainant and stated that the complainant seeks cancellation of the said booking due to her own personal reason (financial issues). Hence, as provided in the booking application form it is entitled to forfeit 20% of the total consideration amount paid by the complainant towards the said booking. Hence, it has prayed for dismissal of this complaint.

13. However, in the present case, on bare perusal of the available record, the MahaRERA has prima facie noticed that the complainant has claimed that she

is entitled to seek refund of the entire money, along with interest and compensation under the provisions of the RERA. However, she has failed to submit any cogent documentary proof on record of MahaRERA to substantiate her case, as to under which provisions of the RERA such reliefs can be considered by the MahaRERA.

14. The complainant has done the said booking in the year 2020 ostensibly after commencement of the RERA and that too, in the project registered with the MahaRERA. Hence, all the relevant information with respect to the captioned project was readily available for the complainant on the MahaRERA website. Further, the complainant has not cited any fact about any false information being given to her by the respondent, due to which she has suffered from any loss. Hence, the MahaRERA cannot consider the claim of the complainant towards refund along with interest and compensation under section 12 of the RERA.

15. In addition to this, the complainant herein has not cited any violation of section 18 of the RERA by the respondents in this online complaint. Moreso, no specific date of possession is mentioned in the said booking application form, which has lapsed. Hence, the said prayer towards refund along with interest and compensation cannot be considered by the MahaRERA favourably.

16. However, in this case, after perusing the submissions made by both the parties particularly, the respondent no. 2, the MahaRERA has noticed that admittedly, the complainant has booked the said flat by signing the booking application form dated 30-06-2020. The said flat was booked for a total consideration amount of Rs.46,66,834/- out of which the complainant has paid an amount of Rs.3,89,604/- towards the earnest money, which is nearly 7 to 8% of the total consideration value of the said flat. Admittedly, the

complainant is seeking withdrawal from the project mainly due to her own personal reasons.

17. However, in this case, the record shows that the respondents while terminating the said booking have forfeited the entire amount paid by the complainant, which is nearly 7 to 8% of the total consideration value of the said flat. The respondents have claimed that as per the said booking application form they are entitled to forfeit 20% of the total consideration amount paid towards the said booking.
18. In this regard, it is pertinent to note that the MahaRERA has recently issued an Order No. 35/2022 dated 12-08-2022 with respect to the prescribed format of allotment letter, which permits the promoter to forfeit 2% amount in case of any cancellation done by the allottee. Although the aforesaid MahaRERA order is 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 and action on the part of the respondent such forfeiture of entire amount paid by the complainant seems to be in consonance with the said circular dated 12-08-2022 issued by MahaRERA. Since this project is registered with the MahaRERA, the said MahaRERA Order can be made applicable while deciding such cases on merits. Moreover, as per the webpage information uploaded by the respondents 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.
19. In view of these facts, the following order is passed:
 - a) This complaint is partly allowed.
 - b) The respondents are 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.

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


(Mahesh Pathak)

Member - 1/MahaRERA

