

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

Complaint No. **CC006000000161300**

Jay Prakash ...Complainant  
Versus  
Godrej Greenview housing pvt Ltd ...Respondent

MahaRERA Project Registration No. **P51700000120**

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

The complainant appeared in person.

Ld. Adv. Chirag Modi a/w Ld. Adv. Abhijit Mangade appeared for the respondent.

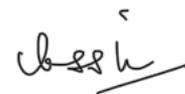
**ORDER**

(22<sup>nd</sup> June, 2021)

(Through Video Conferencing)

**Facts in brief-**

1. The complainant above named has filed this complaint seeking directions from MahaRERA to the respondent to refund the amount paid by her 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 his flat in the respondent's registered project known as "**Godrej Emerald Thane**" bearing MahaRERA registration No. **P51700000120** at Ghodbunder, Thane.
2. This complaint was transferred to this bench on 02/05/2021 from Hon'ble Member 2, MahaRERA and accordingly the same is 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 for the hearing and made the submissions. MahaRERA heard the arguments of the complainant and also perused the available record.

**Pleadings of the parties -**

3. It is the case of the complainant that he booked the said flat in the respondent's project for total consideration amount of Rs. 77,40,493/- in the year 2018. The registered agreement for sale was executed on 05-10-2018. As per sale offer the respondent had offered him monthly EMI of Rs. 9999/-p.m until possession in 2024. The said monthly EMI amount was very feasible for him as he is a salaried person and thus opted for this scheme on the promise made by the respondent. The said offer is still visible on the website of the respondent. However, after execution of the registered agreement for sale, the respondent backed out from its promises and started asking him full slab wise payments which was not acceptable to him. The respondent in the month of February, 2019, sent him a termination letter to cancel the said agreement and refused to refund any amount. Hence he has filed this complaint seeking full refund along with interest. During the course of hearing, the complainant has stated that if the respondent is ready and willing to give 40% discount of current market rate, he is ready and willing to continue in the project. The complainant therefore prayed to allow this complaint.

4. The respondent on the other hand has refuted the claim of the complainant by filing detailed reply on record of MahaRERA. It has mainly stated that the present complaint is liable to be dismissed

since it is filed by suppressing material facts and it showed its willingness to honour the commitment subject to the complainant procuring the loan from any bank. It has further stated that the complainant has failed to mention any section which has been violated by it. It has further stated that the complainant has booked the said flat by signing the booking application form dated 15-08-2018 for total consideration amount of Rs. 77,40,493/-. The allotment letter was issued by it on 25-09-2018 and thereafter, the registered agreement for sale was executed on 5-10-2018. Further at the time of booking, the complainant was promised for gold voucher, which he has collected on 5-10-2018. At the time of booking, the complainant in the booking application form has mentioned that he has purchased the said flat for investment purpose. At that time, the complainant was informed about the subvention scheme as was offered to him by select bank and the said scheme can only be availed subject to the eligibility as per the eligibility criteria of the concerned bank. Accepting the said scheme, he paid further amounts to the respondent. On 21-11-2018, the complainant shared his loan sanctioned letter dated 5-09-2018 issued by the Indiabulls Housing Finance Ltd in respect of sanctioned of loan of Rs. 72,00,000/- having estimated EMI of Rs. 63,858/-pm. However, the same was only an approval in principle. After execution of agreement for sale, it has raised demand letters on 5-10-2018 for payment of Rs. 39,09,880/- towards completion of first slab. At that time, the complainant vide his email dated 23-10-2018 admitted the fact that though the Indiabulls has sanctioned the home loan, it has not disbursed the same due to financial crisis. Since the complainant was unable to procure the home loan from Indiabulls, on request of the complainant, it has shared contact

details of Axis Bank, however, the Axis Bank found him ineligible for home loan. It has sent various demand letters on 3-11-2018, 26-12-2018 and 11-01-2019 to the complainant to clear outstanding dues. But he has failed to make the said payment. Thereafter, it has sent pre-termination letter to him on 29-01-2019 and thereafter final termination letter on 18-02-2019. As per clause nos. 20.1 and 20.2 of the said agreement signed by them, it is entitled to forfeit 20% amount out of total consideration amount of the said flat and therefore it has acted upon the same. Hence the complainant is not entitled to seek any reliefs from MahaRERA. The complainant availed Conciliation through Conciliation Forum, which failed. The respondent has stated that there is no misrepresentation by it and the complainant has approached MahaRERA with unclean hands. By making default in making timely payment as per the agreement for sale on his own, he cannot seek any relief under the provisions of RERA. To support its contention, the respondent has relied upon judgment of Hon'ble Supreme Court of India in Satish Batra V/s Sudhir Rao (2013) 1SCC 345. Order dated 22-08-2019 passed by the Hon'ble Appellate Tribunal in Appeal No. AT0060000010502 in Oberoi Construction v/s Asset Auto etc. Hence it has prayed for the dismissal of this complaint.

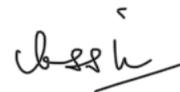
### **Findings and reasonings-**

5. The MahaRERA has examined the rival arguments advanced by the both the parties. By filing this complaint, the complainant is seeking refund of the entire amount paid by him along with interest at the rate of 14% p.a. The said claim has been refuted by the respondent by filing written reply on record of MahaRERA.

The respondent has mainly contended that it has not violated any provision of the RERA for which the complainant can seek refund. It has also shown its willingness to continue the complainant in the project subject to payment by the complainant.

6. In the present case, the complainant has alleged that he booked the said flat on the representation made by the respondent for subvention scheme. However, the complainant has failed to make out any case to show that the respondent has ever given any false notice /advertisement due to which he suffered from any damages. The complainant got his home loan sanctioned from Indiabulls Housing Finance in the year 2018 and the agreement for sale was executed between the parties on 5-10-2018. However, the loan sanctioned could not be disbursed by the Indiabulls Housing Finance due to its internal issues and hence the complainant has opted to approach Axis Bank, which could not sanction his home loan due to his financial eligibility. Hence the complainant could not make further payment to the respondent as per the payment schedule mentioned in the agreement for sale due to which the final termination notice has been issued by the respondent on 18-02-2019.

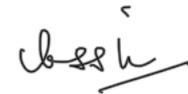
7. From these facts, the MahaRERA feels that there is no violation of section 12 of the RERA by the respondent for which the complainant can seek refund of the entire amount. Hence the claim of the complainant towards refund under section 12 of the RERA has no substance.



8. Even, the complainant in his own admission has stated that the possession is to be given to him on or before 2024. The said date is yet to arrive. Hence the claim of the refund agitated by the complainant is premature under section 18 of the RERA.
9. The complainant in this complaint has not stated any explicit provision of RERA which has been allegedly violated by the respondent due to which the MahaRERA could consider his prayer of refund with interest at the rate of 14% p.a.
10. In absence of any violation of sections 12 and 18 of the RERA, the complainant can seek refund only as per the terms and conditions of the agreement for sale duly signed by both the parties. The respondent has contended that as per clause nos. 20.1 and 20.2 of the agreement for sale, it has cancelled the agreement for sale due to non-payment of outstanding dues by the complainant and the amount paid by him has been forfeited which is 20% of the total consideration of the said flat.
11. In this regard, the MahaRERA is of the view that the agreement for sale has been executed between the parties after commencement of RERA which is as per the provision of section 13 of the RERA. The said provisions mandates that the agreement for sale has to be executed as per the Model Agreement for sale prescribed under Rules. On bare perusal of the model agreement for sale, it appears that no forfeiture clause has been mentioned. Hence, the respondent promoter is not entitled to include such

clauses which is not in consonance of the model agreement for sale. The apex courts in various orders has held that the forfeiture clause is one sided and illegal and same cannot be accepted by MahaRERA in case of any cancellation. However, in the present case, the respondent has also carried out the development in the project irrespective of the fact that the complainant has not made any payment. Hence it is also entitled to be compensated.

12. In view of these facts, the MahaRERA directs the respondent to refund the amount paid by the complainant after deducting the booking amount or 10% of the total amount paid by the complainant whichever is less within a period of 3 months from the date of this order considering the present covid-19 pandemic.
13. With the above direction, the complaint stands disposed of.
14. 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.



(Dr. Vijay Satbir Singh)  
**Member – 1/MahaRERA**