

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

Complaint No. CC006000000196649

Dilip Chavan Complainant

Versus

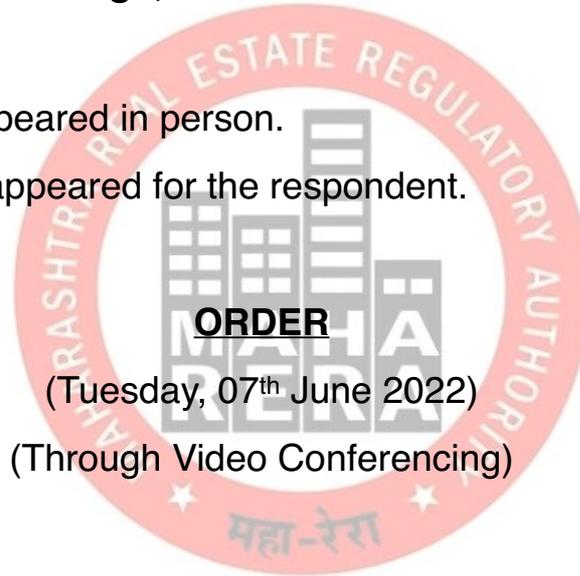
Hubtown Limited Respondent

MahaRERA Project Registration No. P51800002671

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

The complainants appeared in person.

Ld. Adv. Sana Khan appeared for the respondent.



ORDER

(Tuesday, 07th June 2022)

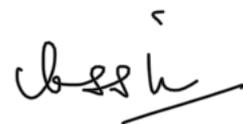
(Through Video Conferencing)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to refund the entire amount paid by him 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 a flat bearing No. 902 (earlier booked flat No. 1702) in the registered project of the respondent known as "**Hubtown Premiere Residences - Beverly**" bearing MahaRERA registration No. **P51800002671** located at Four Bungalows, Versova, Mumbai.

2. This complaint was heard on 16-02-2022 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. After hearing the arguments of both the parties, the following roznama was recorded on 16-02-2022:

“Both the parties are present. Heard the parties. The complaint is seeking refund of the amount paid by him. The learned advocate for the respondent states that there is no registered agreement for sale entered into between the parties showing any agreed date of possession. She has further stated that the allotment letter has already been terminated in the month of September 2018. However, she seeks time to resolve the issue amicably with the complainants. Hence, on request of the respondent, ten days’ time is given to the parties to settle the matter amicably, failing which the parties may file their respective written submissions on record of MahaRERA. The final Order would be passed thereafter. The hearing is concluded. Order is reserved.”

3. However, though the respondent has taken time to settle the matter amicably, the parties could not arrive at any mutually agreeable terms and file consent terms on record of MahaRERA till date. Hence, the MahaRERA has no other alternative but to decide this complaint on merits.

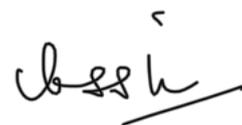


4. MahaRERA heard the submissions made by the parties and also perused the available record. However, it was not possible to decide the matter expeditiously since the office work was severely impacted by Covid 19 pandemic, heavy workload and shortage of staff.

5. It is the case of the complainant that he was offered the flat no. 1704 admeasuring 110 sq. mtrs. (carpet area) for a total consideration of Rs. 3,49,57,400/-. Thereafter, he requested the respondent to modify the allotted flat from 1704 to 902 having carpet area of 64.32 sq. mtrs in the same project which was agreed to by the respondent. Accordingly, on 10-01-2017 the respondent issued a demand notice for payment of holding charges for the said flat no. 902 and he paid a total amount of Rs. 40,63,764/- towards the booking of the said flat and at the relevant time the respondent informed them that the possession of the said flat shall be handed over in 31-12-2018. Thereafter, he requested the respondent to allow him to inspect the draft agreement for sale, approvals/ certificates from MCGM and other documents related to the said project. But instead of giving the inspection of the said documents the respondents issued various emails dated 19-11-2015, 22-11-2015, 20-12-2015, 19-03-2016 and 22-03-2016 directing him to approach its office and execute a holding receipt in lieu of the said flat. Hence, he decided to withdraw and rescind from the booking of the said flat, as the respondent failed to provide him the inspection of the documents as requested. Thereafter, the respondent sent an email on 19-02-2019 stating therein that it is in need of a withdrawal letter from the complainant

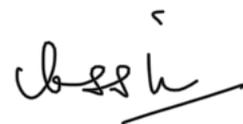
and vide another email forwarded a copy of the format of the withdrawal request. On 31-05-2019 he sent further emails requesting for a full refund from the respondent but it chose not to reply to the same. The complainant stated that the respondent has failed to comply with the statutory obligation as envisaged under the provisions of section 18 of the RERA despite clear and unambiguous communication from him to withdraw from the project. Therefore, the complainant is entitled to a refund of an amount of Rs. 40,63,764/- being the refund of the earnest money paid by him in lieu of flat no. 902 of the project alongwith interest @ 21% p.a. till realization.

6. The respondent on the other hand has refuted the claim of the complainant and filed its reply stating that the complainant had initially booked a flat no. 1704, however due to lack of funds he requested to allow him to change the flat to which the respondent agreed and hence through a broker he changed the booking and thereafter booked the flat no. 902 in the said project for a total consideration of Rs.1,96,41,200/-. In order to confirm the same, the respondent had addressed a Holding Receipt dated 10-01- 2017 to him which stipulated that: ***“Please note that unless a proper and duly stamped agreement for sale is executed and registered between ourselves, no contract shall come into existence between ourselves in respect of the said flat and you have no right, title, interest or claim whatsoever in respect of the said flat.”*** However, the complainant failed to execute an agreement for sale. Further the holding receipt was devoid of any date of possession but was merely a communication confirming booking of



the complainant for the said flat. However, since the agreement for sale was not executed, he cannot approach the MahaRERA and seek remedy under section 18 of the RERA.

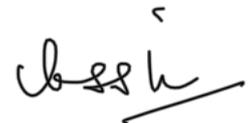
7. He further stated that after issuing numerous reminders, it had no choice but to terminate the "Holding Receipt" dated 10-01-2017 and due to default in payment and non-execution of the agreement for sale, it issued termination letter dated 9-09-2018 by which the allotment of the complainant stood terminated. Thereafter the complainant addressed an email dated 31-05-2019 and stated that he had addressed withdrawal request and that he wanted refund without giving any reason for the withdrawal. It is stated that the complainant is not eligible to claim any relief whatsoever.
8. The MahaRERA has examined the submissions made by both the parties and also perused the available record. The complainant in this case has approached MahaRERA mainly seeking refund of the entire amount of Rs. 40, 63,764/- along with interest alleging that the date of possession agreed by the respondent at the time of booking i.e. 31-12-2018 has already been lapsed. He further alleged that the respondent has failed to provide the details sought by him such as draft agreement for sale and all required permissions issued by the competent authority. The said claim has been denied by the respondent mainly stating that the booking done by the complainant has already been cancelled and terminated due to non-payment of outstanding dues and non-execution of agreement for sale on 09-09-2018.



9. Admittedly, there is no registered agreements for sale signed by and between the parties nor any allotment letter has been issued in favour of the complainant showing any agreed date of possession, which has been lapsed. Moreover, no date of possession is mentioned in the holding receipt dated 10-01-2017 duly issued in favour of the complainant. Hence, the claim of the complainant for refund of the entire amount paid by him along with interest under section 18 of the RERA is devoid of merits and same cannot be considered by MahaRERA.
10. However, in the present case, the MahaRERA has noticed that the said booking was done under the provisions of MOFA, whereby the respondent has issued Holding Letter in favour of the complainant, wherein certain terms and conditions have been duly stipulated. Admittedly, in total the complainant has paid an amount of Rs. 40, 63,764/- which inclusive of other charges. Further, as per the said letter, the respondent raised the demand for further payment and also called upon the complainant to execute the registered agreement for sale. However, it seems that the same was not executed by the complainant, since he was seeking certain documents. Finally, the respondent issued termination letter and cancelled the said booking vide its email dated 09-09-2018.
11. As far as the contention raised by the complainant about not providing draft agreement for sale and relevant permissions granted by the competent authority, the MahaRERA has noticed that the

present project being ongoing on the date of commencement of RERA, has been registered with MahaRERA on 28-07-2017 under the provisions of section 3 of the RERA. While registering this project with MahaRERA, the respondent has uploaded the draft agreement for sale and all requisite permissions obtained by it from competent authority as mandated under section 4 of the RERA and the relevant Rules made thereunder. Hence, being prudent allottee, the complainant should have gone into the same and should have taken appropriate action at that time. Moreover, though the complainant has alleged that he has sought inspection of documents from the respondent through various letter issued in the year 2015, the said booking of flat no. 902 was confirmed only by issuing holding letter dated 10-01-2017. Hence, the earlier correspondence made by the complainant have no relevance. Hence, the MahaRERA does not find any substance in the said contention raised by the complainant being justified reasons of cancellation and refund along with interest.

12. In addition, to this, the MahaRERA has noticed that the complainant has booked the said flat in the year 2017 and paid the amount to the respondent. Thereafter, the said booking was cancelled on 09-09-2018. However, the same seems to have been reinstated subsequently by the respondent by issuing the demand letter dated 27-12-2018. It shows that the termination of said booking has not attained its finality.
13. In the present case, the complainant is seeking cancellation of the said booking without citing any justified reasons. Hence, the claim of

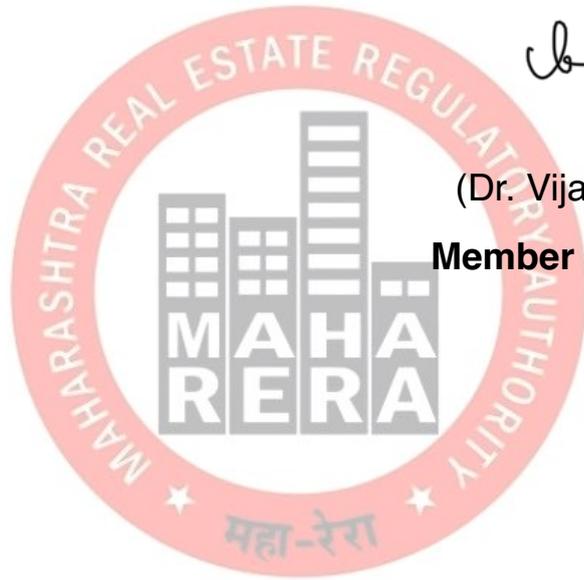


refund along with interest sought by the complainant cannot be considered favourable by MahaRERA under the provisions of RERA.

14. Therefore, if the complainant is seeking cancellation of the said booking the respondent is entitled to take action in accordance with the terms and conditions of the holding receipt dated 10-01-2017 signed by both the parties. However, clause no. 5 of the said holding receipt speaks about entire forfeiture of the holding money does not seem to be proper after commencement of RERA and the apex court has in number of cases held that such forfeiture clause is not legal. Hence, the MahaRERA feels that the respondent promoter is not permitted to act upon such clause which is unreasonable. However, since the respondent promoter has carried out further constructions in the complainants flat even after non-payment by the complainant by utilizing the money paid by the complainant, may be allowed to forfeit the 10% of the total amount paid by the complainant towards the administrative charges towards the loss incurred by it due to payment of further dues by the complainant allottee.
15. In view of these facts and circumstances of this case, since the complainant has chosen to exit from the project, the respondent promoter is directed to refund the amount if any paid by complainant allottee by deducting the 10% of the total amount paid by the complainant towards the consideration of the said flat within a period of 3 months from the date of this order without any interest.
16. Needless to state here that the respondent is not liable to refund the

amount paid by the complainant towards taxes and brokerage charges. amount booking amount paid by the complainant.

17. With the above directions, the complaint stands disposed of.
18. The certified copy of this order will be digitally signed by the concerned legal assistant of the MahaRERA. It is permitted to forward the parties a copy of this order by e-mail.



Vijay Satbir Singh

(Dr. Vijay Satbir Singh)

Member – 1/MahaRERA