

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

Complaint No. CC006000000209501

Ananda Ajabrao Alone

.... Complainant

Versus

Mr. Ankit Wadhwa, Wadhwa Builders and Developers

.... Respondent

MahaRERA Project Registration No. P51700010114

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

Complainant appeared in-person.

None appeared for the respondent.

ORDER

(Monday, 29th January 2024)

(Through Video Conferencing)

1. The complainant above named has filed this online complaint before the MahaRERA on 26/12/2021 mainly seeking directions from MahaRERA to the respondent to refund the booking amount 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 said project in the respondent's registered project known as "**WADHWA REGALIA PHASE-II**" bearing MahaRERA registration No. **P51700010114** located at Katemanivli, Thane.
2. The complaint was heard on several occasions i.e., on 10/01/2022, 06/07/2023 and last heard on 03/10/2023, and as per the Standard Operating Procedure

dated 12/06/2020 issued by MahaRERA for hearing of complaint through Video Conferencing. Accordingly, the complainant appeared and made his respective submissions. However, the respondent remained absent despite notice.

3. After hearing the arguments of the complainant during the hearing held on 3-10-2023, the following Roznama was recorded in this complaint –

"The complainant is present. The respondent is absent.

In fact the respondent has never appeared before the MahaRERA except in the first hearing and has also not filed any reply to the complaint. The arguments of the complainant have been recorded in the previous hearing. However, it is pointed out that the date of possession of December 2019 as mentioned in the previous hearings is not visible and is not mentioned in any of the uploaded documents and the complainant has only uploaded the copies of the payment receipts etc. The respondent is directed to file its reply to the complaint along with its written arguments within a period of one week i.e. by 10-10-2023 as a last chance. The complainant may file a rejoinder along with his written arguments within a further period of one week ie. by 17-10-2023, even if the respondent does not file any reply.

In view of the above, this matter is reserved for orders suitably after 17-10-2023 based on the arguments of the complainant in the hearing as well as reply, rejoinder and written arguments filed in the complaint and the documents uploaded in the complaint. In case the respondent does not file any reply or written arguments, the MahaRERA would be constrained to decide the matter ex-parte against the respondent on merits."

4. In the present case, despite the aforesaid directions given by the MahaRERA, the respondent has not uploaded any reply, written submission to this

complaint on record of MahaRERA. However, the complainant has uploaded several documents before 03/10/2023 on record of MahaRERA i.e. synopsis, complaint copy and annexures. The MahaRERA has perused the available record.

5. It is the case of the complainant that he came across an advertisement and brochure of the respondent's high rise buildings project. Accordingly, he booked a flat bearing flat no. 1502 for a total consideration amount of Rs. 68,80,000/- and has paid a total consideration amount of Rs.6,82,500/- out of total consideration amount of Rs. 68,80,000/-. The complainant contended that salesperson of the respondent promised that possession of the will be delivered by December 2019. However, the project is stalled. Hence, the complainant on 01/09/2021 send a legal notice through his advocate to the respondent for refund of the money which was duly received by the respondent. Moreover, the complainant several times visited the office of the respondent and the project site to check the progress of the construction of the building, but there was no progress on site. Hence, the complainant is seeking for a refund along with interest and compensation along with costs.
6. The MahaRERA has noticed that the complainant has filed this online complaint before MahaRERA on 26/12/2021. However, till date the respondent has not bothered to file its reply/written submissions/ written arguments to this complaint, though the said complaint is visible to the respondent in its project login on MahaRERA website. Further, as per the Standard Operating Procedure dated 12/06/2020 issued by MahaRERA for hearing of the complaint in online form, the respondent was liable to upload its reply in a digital form in this complaint within a period of one week i.e. by 10/10/2023. However, the respondent till date have not complied with the said directions. Furthermore, though the notices for the virtual hearings were

held before the MahaRERA dated 10/01/2022, 06/07/2023 and 03/10/2023 were duly served on the respondent, however, it has neither appeared nor filed any reply to this complaint. This shows that the respondent is not willing to contest this complaint. Hence, the MahaRERA has no other alternative but to proceed with the matter ex-parte against the respondent on merits.

7. The MahaRERA has examined the rival submissions made by the complainant and also perused the available record. In the present case the complainant claiming to be an allottee of this project has approached the MahaRERA mainly seeking refund of the booking amount of Rs. 6,82,500/- paid by him to the respondent along with interest/ compensation on account of delay. The complainant has mainly contended that the respondent at the time of the said booking has agreed to handover possession of the said flat to him on or before 31-12-2019.
8. The respondent had neither objected the claim of complainant in this complaint nor has denied the same by filing any reply/ written submission on record of MahaRERA. Hence, all submission made by the complainant in this complaint remain unchallenged. Hence, the MahaRERA has perused the available record.
9. In the present case, the complainant has booked the said flat prior to commencement of the RERA under MOFA regime. The said flat was booked for a total consideration amount of Rs. 68,80,000/- out of which he has paid an amount of Rs. 6,82,500/-, which comes to less than 10% of the total consideration value of the said flat. Furthermore, the complainant has not pleaded any fact in this online complaint that the respondent has raised any further demand to make balance payment. Hence, it appears that there is no violation of section 4 of the prevailing provisions of MOFA under which the

said booking was done and also of section 13 of the RERA since this project is registered under the provisions of the RERA.

10. However, in the present case, the complainant although has alleged that the respondent has agreed to handover possession of the said flat to him on or before 31-12-2019, however he has failed to submit any cogent documentary proof on record of MahaRERA to show that the respondent has ever promised him the date of possession as 31-12-2019. Admittedly, in this case, the complainant has also not submitted any allotment letter duly issued by the respondent for the said booking done by the complainant showing any agreed date of possession. Hence, in absence of any allotment letter or agreement for sale signed between the parties, the MahaRERA has to peruse the date of completion of this project with the MahaRERA by the respondent. In the present case, the respondent has registered this project with the MahaRERA by filing application dated 31-07-2017 and while registering this project with the MahaRERA, the respondent has shown the date of completion of this project as 31-12-2025. Hence, the MahaRERA prima facie is of the view that there is no violation of section 18 of the RERA by the respondent as alleged by the complainant. Hence, the claim of the complainant towards refund of the booking amount along with interest and compensation is devoid of any merits. Hence, the same stands rejected.
11. Moreso, the complainant has not pleaded any case for any false information/notice given by the respondent due to which he has suffered from any loss. Hence, his claim of refund along with interest and compensation has no legal substance under section 12 of the RERA.
12. Hence, in absence of any registered agreement for sale or allotment letter/ booking application form, since the complainant is seeking refund of the

booking amount, the MahaRERA is of the view that the same can be granted to the complainant as per MahaRERA Order No. 35 dated 12-08-2022.

13. 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 (even in this case there is no specific cancellation policy stipulated as the complainant has neither submitted any allotment letter nor has submitted any booking application form). 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. Furthermore, since this project is registered with the MahaRERA, the said MahaRERA Order can be made applicable while deciding such case on merits.
14. In view of these facts, the following order is passed:
- a) The complaint is partly allowed.
 - b) The claim of interest/compensation sought by the complainant along with the entire refund amount stands rejected in view of the observations made in aforesaid para nos.10 and 11.
 - 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.
15. With these directions, the present complaint stands disposed of.

Pathak

(Mahesh Pathak)

Member - 1/MahaRERA

