

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

Complaint No.CC006000000171535

Mr. Mayur C Shikhare

..Complainant

Versus

M/s. Shree Siddhivinyak Classic Construction Pvt. Ltd. ..Respondent

MahaRERA Project Registration No. **P51800020602**

Coram: Dr. Vijay Satbir Singh, Hon'ble Member - 1/MahaRERA

Complainant present in person.

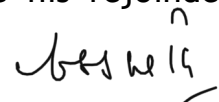
Adv. Alvina Castelino appeared for the respondent.

ORDER

(10th November, 2020)

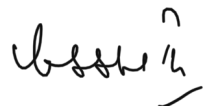
(Through Video Conferencing)

1. The complainant has filed this complaint seeking refund of the booking amount paid by him to the respondent along with bank processing fees paid by him under section 12 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') with respect of booking of flat no. 1601 in the respondent's registered project known as "Ruparel Pride" bearing MahaRERA registration No. P51800020602 at Kurla, Mumbai.
2. This complaint was heard on several occasions and the same was heard finally 02/11/2020 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 submit their written submissions, if any. Accordingly both the parties appeared for the hearing and made their oral as well as written submissions. On the said date of hearing, the MahaRERA heard the arguments of both the parties and thereafter, one week's time was granted to the complainant to file his rejoinder on



record of MahaRERA as per SOP dated 12/06/2020. Accordingly, the complainant filed rejoinder on record of MahaRERA on 8-11-2020. The same is taken on record.

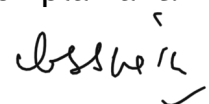
3. It is the case of the complainant that he has booked the said flat on 4th May 2019 for total consideration amount of Rs. 1 crore. At the time of booking he paid an amount of Rs. 2,03,445/-. The said booking was done on the basis of advertisement published by the respondent on 4-05-2019 which indicated that Rs. 1 Lakh is to be paid at the time of booking and rest of the amount is to be paid at the time of fit out possession. The complainant further stated that generally the promoter publishes the advertisement only when it has bank subvention scheme. However, in the present case the respondent does not have any subvention scheme with any bank even till date and based on that misrepresentation by the respondent that he has to pay Rs. 1 Lakh at the time of booking and rest on fit out, he booked the said flat relying upon the said advertisement. Subsequently, he came to know that there is no subvention scheme with the respondent and therefore on 1st August 2019 he cancelled the said booking and sought refund for violation under section 12 of the RERA. The complainant further stated that from July, 2019, the Nation Housing Bank has banned all such subvention schemes since July, 2019. The bank cannot offer such subvention scheme and a private arrangement between purchaser and builder without the consent of the bank will leave the purchaser at the mercy of the builder. Hence the respondent cannot compel him to go for private subvention scheme. The Complainant further stated that if today the respondent claims that there was no misrepresentation in the advertisement, then in such a case he has already fulfilled the criteria since booking amount of Rs. 2,03,445/- is already paid on 4th May, 2019 and hence he is eligible for the flat in the respondent's project and the balance amount is to be



paid only at the time of fit-outs. The respondent has filed its reply on record of MahaRERA wherein it has not stated anything about the advertisement or any subvention scheme. Hence, the complainant is seeking refund of the amount under section 12 of the RERA.

4. The respondent on the other hand has disputed the claim of the complainant and stated that there is no misrepresentation as alleged by the complainant. The respondent further stated that the complainant booked the said flat before it registered the project with MahaRERA. It has published the said advertisement in the newspaper as alleged by the complainant. However, the complainant has not availed the said scheme for which the advertisement is issued. Further the said scheme is still there and the other allottees have availed the same. Hence the complainant cannot say that it has ever given misleading information in the said advertisement.

5. The respondent further stated that at the time of said booking, the complainant willingly signed booking application form and also the cost sheet was attached to the said application and same is produced on record of MahaRERA. Thereafter, on 14th June 2019 the complainant was called upon to pay the stamp duty and registration charges to get the agreement for sale registered. Thereafter, several emails were exchanged between the respondent and the complainants. However, because of the complainant's ineligibility the loan could not get sanctioned. The respondent further stated that there was a subvention scheme. Therefore, the complainant cannot blame the respondent for his own default. Further in this project the complainant is the only allottee who has approached MahaRERA. It has further stated that it is still ready to go ahead with the booking done by the complainant. If the



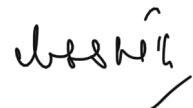
complainant is not willing to go ahead he has to accept the terms and conditions of the booking application form duly signed by him whereby the entire amount paid by the complainant stands forfeited, since due to his own reason he wants to cancel the said booking. Hence the respondent prayed for dismissal of this complaint.

6. The MahaRERA has examined the submissions made by both the parties and also perused the record. In the present case, the complainant has approached MahaRERA seeking refund of the booking amount paid by him for violation of section 12 of the RERA. The complainant has alleged that he had booked the said flat by believing the information published by the respondent that Rs.1 lakh at the time of booking and rest on fit out possession. The complainant has contended that no such scheme was available with the respondent still it gave false information by publishing the said advertisement. Hence he is entitled to seek refund along with interest and compensation under section 12 of the RERA.

7. In this regard the provision of section 12 has to be perused. The same reads as under:

12. Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

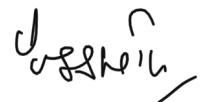
Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends



to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.”.

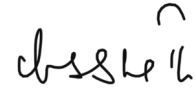
8. The aforesaid provision of section 12 provides that the allottee is entitled to seek refund of the entire amount along with interest and compensation if the allottee makes any deposit on the basis of the information contained in the notice / advertisement and he sustains any loss or damages due to such false information. However, in the present case, the complainant has alleged that based on the advertisement published by the respondent on 4-05-2019, he booked the said flat in the scheme given by the respondent “pay Rs. 1 lakh at the time of booking and rest on fit out”. The complainant alleged that this information published by the respondent was misleading and no such scheme was available with it. The said fact is denied by the respondent stating that the complainant has not booked the said flat in the said scheme.

9. In this regard, the MahaRERA has perused the booking application form signed by the complainant along with cost sheet duly signed by him. From the said documents, it prima facie appears that if the complainant wanted to book the said flat as per the scheme published by the respondent for payment of Rs. 1 lakh then the complainant should not have at the time of booking, paid an amount of Rs. 2,03,445/-. This act of complainant itself shows that he has not availed scheme declared by the respondent in the advertisement published on 4-05-2019. Hence he cannot blame the respondent, if he wants to cancel the said booking due to other reasons. The MahaRERA therefore feels that there is no violation



of section 12 of the RERA as alleged by the complainant. Hence his claim towards refund of the entire booking amount cannot be accepted.

10. With these observations the complaint stands dismissed for want of merits.



(Dr. Vijay Satbir Singh)
Member - 1/MahaRERA

