BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Complaint No. CC12400652

Vaishali Vinayak Gaikwad ... Complainant

Versus

Landmark Heights Private Limited ... Respondent

MahaRERA Project Registration No. P51800024289

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

Ld. Adv. Humera S. appeared for the complainant.

None appeared for the respondent.

FINAL ORDER

(Order Pronounced on Tuesday, 2nd December 2025)

(Matter reserved for orders on 25-09-2025)

(Hearing Through Hybrid Mode)

1. The complainant above named has filed this online complaint before the MahaRERA on 05-11-2024 mainly seeking directions from the MahaRERA, to allow complainant to withdraw from the project; direct the respondent to pay refund along with interest; compensation and legal expenses, as prescribed under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA'), in respect of booking of Flat No. 1402, admeasuring 35.83 sq. mtr. on the 14th habitable floor (hereinafter referred to as "the said flat") in the respondent's registered project known as "**Vraj Bhumi Heights**" bearing MahaRERA registration No. **P51800024289** located at CTS No-169 and 169-1 to 4 of Village, Taluka Andheri, Dist. Mumbai Suburban (hereinafter referred to as the 'said project').

2. This complaint was heard by MahaRERA on several occasions and the same was heard finally on 25-09-2025 as per Circular no. 49 dated 12-09-2025 issued by

MahaRERA for hearing of complaints through Hybrid Mode. Both the parties have been issued prior intimation of this hearing, and they were also informed to file their written submissions if any. On the said dates of hearing, the complainant appeared as per their appearances recorded in the Roznamas and made their respective submissions. The MahaRERA heard the submissions of the complainant as per their appearances and also perused the available record.

3. After hearing the arguments of the complainant, the following Roznamas were recorded in this complaint:–

i) **<u>On 17-07-2025 :</u>**

"The complainant is present. The respondent is absent. The complainant has filed this complaint for refund of an amount of Rs. 15 lakhs, paid for booking of a flat in the project on 23-02-2023. Subsequently, on 04-05-2023, the complainant informed the respondent that the booking may be cancelled. Before the said date, the respondent has shared the draft agreement for sale with the complainant through email dated 23-02-2023. Admittedly, there is only a receipt for the amounts paid and the complainant is relying on the said draft sent by the respondent which has total consideration and other details etc., Since, the respondent has not refunded the amounts paid, the complainant has filed this complaint for refund of the amounts paid along with interest and compensation for delay. Admittedly, the project registration is valid till December 2026, therefore, the respondent is directed to file its reply to the complaint within a period of 4 weeks i.e. by 14-08-2025. Further 4 weeks' time i.e. till 11-09-2025 is granted to the complainant to file a rejoinder to the reply of the respondent. The matter is adjourned to 25-09-2025 for final arguments by both sides."

ii) **<u>On 25-09-2025:</u>**

"The complainant is present. The respondent is absent. Other than in the conciliation proceedings, the respondent has never appeared before the MahaRERA. The respondent has also not filed any reply to the complaint despite directions in the previous hearing held on 17-07-2025. The complainant has contended that the refund of Rs. 15,00,000/- may be paid by the respondent along with interest for

delay. The respondent is granted one week's time i.e. till 02-09-2025 to file its reply along with written submissions. Further one week's time i.e. till 09-10-2025 is granted to the complainant to file rejoinder to the said reply of the respondent along with written submissions, even if the respondent does not file any reply / written submissions. In case the respondent does not file any reply / written submissions, the MahaRERA will be constrained to decide this matter ex-parte against the respondent on merits In view of the above, the matter is reserved for order suitably after 09-10-2025 based on the arguments in the hearing as well as the reply, rejoinder and written submissions filed in the complaint."

4. The complainant has uploaded her written submissions on 11-10-2025. The same is accepted and taken on record. However, the respondent has not filed any reply/written submissions despite directions. Hence, the MahaRERA has perused the available record.

5. It is the case of the complainant that the respondent has proposed construction of a residential building named "Vraj Bhumi Heights," consisting of 21 upper floors and various amenities, and registered the project with MahaRERA under Registration No. P51800024289. The complainant approached the respondent to book a flat in the said project. At the time of booking, it was represented by the respondent that all requisite approvals had been obtained and that there were no impediments affecting commencement or completion of construction. It was further stated that the respondent had free and marketable title to the land and that the project would be completed at the earliest. Relying on these representations, the complainant and her late husband, Mr. Vinayak Gaikwad, agreed to purchase Flat No. 1402, admeasuring 35.83 sq. mtrs. on the 14th habitable floor, for a total consideration of Rs. 78,90,000/-. The complainant thus became an allottee and the respondent a promoter under the provisions of RERA. The complainant submitted that although she paid the booking amount, the respondent neither issued an allotment letter nor executed or registered an Agreement for Sale, despite repeated follow-up and despite receiving more than 10% of the sale consideration, thereby breaching Section 13 of RERA. On 23.02.2023, the respondent forwarded a draft Agreement for Sale via WhatsApp for her review.

During this period, the complainant's husband was undergoing serious medical treatment involving substantial expenses. By February 2023, being under severe financial strain, the complainant realized she would be unable to make further payments. Accordingly, she prepared a letter dated 15.02.2023 expressing her intention to cancel the booking and seeking a refund. She could not immediately dispatch the letter due to her husband's medical condition, and he unfortunately passed away on 27.03.2023. The complainant stated that the respondent, considering her circumstances, assured her that the entire amount paid would be refunded. However, despite over a year of continuous follow-up, the respondent failed to process the cancellation or refund. The complainant therefore issued a legal notice dated 12.07.2024 seeking refund of the amount paid. The notice returned with the remark "Door Locked." She also emailed the notice on 16.08.2024, but no response was received. A further cancellation letter dated 13.08.2024 was also ignored. Left with no alternative, the complainant filed the present complaint seeking permission to withdraw from the project; refund of Rs. 15,00,000/- with interest under Section 18 of RERA; and compensation and legal costs.

6. The complainant has filed her written submissions reiterating what has stated in her complaint.

7. The respondent although has appeared for the hearing, it has failed to file any reply to this complaint despite directions. Hence, the MahaRERA has no other alternative but to decide this complaint ex-parte against the respondent on its own merits.

8. The MahaRERA has examined the submissions made by the complainant and has also perused the available record. The complainant, claiming to be an allottee in the said project registered by the respondent, has filed this complaint under Section 31 of the RERA seeking a refund of Rs. 15,00,000/- paid by her towards the booking of the said flat, along with interest and compensation under the provisions of the RERA. The complainant has contended that the respondent failed to sign and execute the registered agreement for sale and thereby violated the provisions of Section 13 of the

RERA. Hence, she has sought cancellation of the said booking and a refund of the entire amount paid by her along with compensation.

9. The respondent as stated herein above, although has appeared for the hearing has failed to file any reply to this complaint despite directions. Hence, all these claims and contentions raised by the complainant remain undisputed and unchallenged.

10. Be that as it may, in the present case, upon perusal of the submissions made by the complainant and record, the following observations are noteworthy: -

i) Admittedly, the complainant has booked the said flat in August 2022 and paid an amount of Rs. 15,00,000/- out of the total consideration amount of Rs. 78,90,000/-, which constitutes approximately 22% of the total consideration value of the said flat.

ii) The complainant has claimed that she sought cancellation of the said booking on 15-02-2023 and subsequently sent a legal notice seeking cancellation of the said booking on 12-07-2024 due to personal reasons. Although the complainant has alleged that the respondent failed to execute the registered agreement for sale, she has admitted that, prior to filing the present complaint, the respondent had shared the draft agreement for sale, a copy of which has also been placed on record before MahaRERA along with the complaint. Therefore, MahaRERA finds no substance in the allegation regarding violation of Section 13 of the RERA by the respondent.

iii) Admittedly, there is neither an allotment letter nor a registered agreement for sale duly executed between the parties indicating any agreed date of possession that has lapsed. The complainant has also failed to demonstrate any violation of Section 18 of the RERA that would entitle her to a refund along with interest and compensation.

iv) Furthermore, the complainant has not established any violation of Section 12 of the RERA by the respondent. There is no evidence to show that the respondent provided false information or made any

misrepresentation causing loss to the complainant. Therefore, the claim for refund along with interest and compensation is devoid of merit under Section 12 of the RERA.

v) In the present case, as stated hereinabove, the cancellation of the said booking was sought by the complainant due to her own personal reasons, mainly the demise of her husband, and not due to any default on the part of the respondent. Also, the complainant is admittedly seeking cancellation of the booking prior to the execution of the registered agreement for sale. In this regard, it is pertinent to note that MahaRERA has issued Order No. 35/2022 dated 12-08-2022 prescribing the format of the allotment letter, which permits the promoter to forfeit 2% of the consideration amount in the event of cancellation by the allottee. Although the order was issued in 2022 and earlier no prescribed format of allotment letter existed, the said order now settles the principles governing cancellation of booking prior to the execution of the agreement for sale.

vi) Hence, in the absence of any violation of the provisions of the RERA, if the complainant still seeks cancellation of the booking, she is entitled to do so only in accordance with the MahaRERA Order No. 35/2022 dated 12-08-2022. Since the project is registered with MahaRERA, the said order is applicable while deciding such cases on merits. Moreover, the respondent has not uploaded any deviation report to the said MahaRERA order on the MahaRERA website.

11. In view of these facts, the following order is passed:

a) This complaint is partly allowed.

b) The claim of interest sought by the complainant along with the refund amount stands rejected for want of merits as stipulated in the aforesaid para-no.10 (ii) to (iv).

c) The respondent is directed to refund the money paid by the complainants 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.

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

MAHESH DINKAR PATHAK
Digitally signed by MAHESH DINKAR PATHAK
Date: 2025.12.02 13:35:55 +05'30'

(Mahesh Pathak)

Member – 1/MahaRERA