BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Complaint No. CC006000000480134

Vishal Mahakul ... Complainant

Versus

Ambit Builders and Developers ... Respondent

MahaRERA Project Registration No. P51800052265

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

Ld. Adv. Anil Dsouza appeared for the complainant.

Miss. Ankita Prasad appeared for the respondent.

FINAL ORDER

(Order Pronounced on Monday, 25th August 2025)

(Matter reserved for orders on 26-06-2025)

(Through Video Conferencing)

1. The complainant above named has filed this online complaint before the MahaRERA on 23-04-2024 mainly seeking directions from the MahaRERA, to the respondent to refund the entire amount with interest; compensation and cost, as prescribed under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of their flat No. 502, D Wing on 5th residential floor admeasuring 704 Sq. Ft. carpet area in the respondent's registered project known as "**Ambit Vista**" bearing MahaRERA registration No. **P51800052265** located at CTS No. 2046, 2048 of Village Vile Parle East & CTS No. 5 of Village Bandra I ward and F.P. No. 138 & 139 Santacruz TPS-V, Tal. Andheri with CTS No. 2049 of vill. Vile Parle East, Tal. Andheri F.P. No. 137 Santacruz TPS-V, Santacruz East, Mumbai - 400 055, (hereinafter referred to as the 'said project').

2. This complaint was heard by MahaRERA on several occasions and the same was

heard finally on 26-06-2025 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 the said hearings, and they were also informed to file their written submissions if any. On the said dates of hearing, both the parties appeared as per their appearances recorded in the Roznamas and made their respective submissions. The MahaRERA heard the submissions of both the parties as per their appearances and also perused the available record.

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

i) **<u>On 17-04-2025 :</u>**

"Both the parties are present. The complainant has filed this complaint for refund along with interest on the ground that despite paying the booking amount on 28-12-2023, on 2-1-2024, the complainant has indicated to the respondent that he does not wish to go ahead with the said booking. On 20-12-2023, the receipt has been issued for booking. Subsequently, by 28-12-2023, a total amount of Rs. 58,42,224/- has been paid by the complainant. However, due to certain issues in the agreement for sale according to the complainant, he did not wish to go ahead with the said booking. Therefore the complainant wishes to withdraw from the project with a refund along with interest and compensation. However, the respondent has refuted the contention of the complainant and contended that it was always able and willing to refund the amounts as per the forfeiture allowed by the RERA however, the complainant was insistent on negotiating for the interest for delay. The respondent may file a reply to the complaint within a period of four weeks i.e. by 15-5-2025. Further four weeks' time i.e. till 12-6-2025 is granted to the complainants to file rejoinder to the reply of the respondent. The matter is adjourned to a suitable date after 12-6-2025 for final arguments by both sides. Both parties may ensure that the receipt, the booking form and the correspondence between the parties are uploaded as part of the reply and rejoinder. List this matter for next hearing on 26-6-2025."

ii) **<u>On 26-06-2025:</u>**

"Both the parties are present. The arguments of both the parties have already been

recorded in the previous hearing. The respondent has filed a reply and the complainant has filed its rejoinder. Therefore, two weeks' time till 10-7-2025 is granted to both the parties to file their written submissions. According to the complainant, despite paying an amount of nearly Rs. 60 lakhs (total consideration of Rs.2,25,00,000/-) towards the said flat, the agreements for sale could not be signed for various reasons. Therefore, the complainant is praying for refund along with interest and compensation on the ground that the respondent has charged more than 10% and violated section 13 of the RERA. However, the respondent refutes this contention of the complainant and claims that even after the letter for refund was issued on 2-1-2024, the complainant has been negotiating with the respondent on the clauses of the agreement for sale which was not acceptable to the respondent since the agreement for sale was as per the model agreement and was uploaded in the project registration details. The complainant has also pointed out that despite communicating to the respondent that he wishes to withdraw from the project, no amount has so far been refunded. However, the respondent has contended that it is able and willing to refund the amount with a forfeiture of 10% as per the draft agreement. There is no allotment letter and there is only a booking form dated 12-12-2023. Both the parties may ensure that the communication with each other as well as, that the documents with respect to the booking form etc. are uploaded along with the written submissions. In view of the above, the matter is reserved for orders suitably after 10-7-2025 based on the arguments in the hearing and the reply, rejoinder and the written submissions filed in the complaint."

4. Pursuant to directions in the aforesaid hearing, the complainant has filed his written submissions on 11-07-2025 and the respondent has filed its written submissions on 12-07-2025. The same have been accepted and taken on record. Hence, the MahaRERA has perused the available record.

5. It is the case of the complainants that they booked Flat No. 502, Wing D, on the 5th residential floor admeasuring 704 sq. ft. carpet area (as per Section 2(k) of RERA) in the project "Ambit Vista" of the respondent, vide Booking Form dated 20.12.2023, by paying Rs. 5,00,000/-. The total agreed consideration was Rs. 58,42,224/-. The

complainants were thereafter provided with a draft Agreement for Sale which was wholly one-sided and arbitrary. Upon raising objections, the complainants were informed by the respondent's team that no modifications would be permitted. Such coercive and unprofessional conduct compelled the complainants to reconsider their decision, and they accordingly cancelled the booking on 02.01.2024, i.e., within 15 days of the booking form. The said cancellation was duly acknowledged by the CRM team of the respondent on 16.01.2024. The complainants submit that, as per Clause (g) of sub-section (2) of Section 4 of RERA and MahaRERA Order No. 35 of 2022 dated 12.08.2022, they are entitled to a full refund of the booking amount if the cancellation is made within 30 days of booking. The respondent itself has uploaded on the RERA portal a declaration of strict adherence to the Model Allotment Letter, and therefore cannot deny refund. Despite repeated reminders and a legal notice dated 11.03.2024, the respondent has failed to refund the amount. Instead, by reply dated 20.04.2024, the respondent has shown no intent to refund, thereby harassing the complainants. The complainants further state that the respondent has violated Section 11 of RERA by not updating project details on the MahaRERA website. They therefore seek refund of the entire consideration of Rs. 58,42,224/-, along with interest, compensation, and costs, and also pray for interim relief restraining the respondent from creating third-party rights in the said flat.

6. The respondent, by reply dated 22.05.2025, submits that the complainants booked the said flat for a total consideration of Rs. 2,25,28,000/- and executed a Booking Form dated 20.12.2023, paying Rs. 5,00,000/-. The respondent denies allegations of inadequate response and states that the complainants were always informed of construction progress, which is duly reflected on the MahaRERA portal, with possession expected by December 2025. Full CC has also been obtained from the SRA. It is contended that the draft Agreement for Sale was duly approved by MahaRERA pursuant to Order No. 60 of 2024 and could not be unilaterally modified at the complainants' insistence. The complainants, while asking for cancellation on 02.01.2024, continued to correspond with the respondent till March 2024 seeking corrections in the agreement, which belies their claim of cancellation within 30 days.

Thus, the complainants have approached the Authority with unclean hands. The respondent further submits that during conciliation proceedings, it offered to refund the amount subject to 2% deduction as permissible, but the complainants unreasonably rejected the same. The project is duly registered since 09.08.2023, and except for the complainants, no other allottee has raised any grievance. It is therefore prayed that the complaint be dismissed with compensatory costs.

7. The complainant, by rejoinder dated 11.06.2025, denied the respondent's contentions and submitted that a total sum of Rs. 58,42,224/- has been paid, comprising Rs. 5,00,000/- as booking amount, Rs. 39,60,544/- towards consideration, and Rs. 13,81,680/- towards stamp duty. The booking was cancelled on 02.01.2024, and the cancellation was acknowledged on 16.01.2024. Hence, as per Section 4(2)(g) of RERA and MahaRERA Order No. 35 of 2022, they are entitled to a full refund without deduction. It is further submitted that the respondent has previously been penalised for violations in the same project under Order No. 593/2023, contrary to its claim of no complaints. Accordingly, the complainants reiterate their entitlement to refund, interest, and costs.

8. The complainants filed written submissions on 11.07.2025, reiterating their complaint.

9. The respondent filed written submissions on 12.07.2025, reiterating its reply.

10. The MahaRERA has examined the rival submissions of both parties and perused the available record. The complainant, claiming to be an allottee in the respondent's registered project, has filed the present complaint under Section 31 of the RERA, primarily seeking refund of the entire amount of Rs. 58,42,224/- paid by him towards booking of the said flat. It is the case of the complainant that the booking was made on 20.12.2023 and cancellation was sought within 15 days thereof, i.e., on 02.01.2024, on the ground that the respondent had violated the provisions of Section 13 of RERA. The complainant has further contended that the terms and conditions in the draft

agreement for sale were arbitrary and unacceptable. He has, therefore, claimed that the respondent has failed to refund the booking amount in terms of MahaRERA Order No. 35 of 2022 dated 12.08.2022, and accordingly prayed for grant of the reliefs sought in the complaint.

11. The respondent–promoter, while assailing the claims of the complainant, has nevertheless expressed willingness to refund the said amount as per MahaRERA Order No. 35 of 2022 dated 12.08.2022, subject to permissible forfeiture. However, it has specifically refuted the complainant's claim for interest on the refund.

12. Be that as it may, the record indicates that the complainant had booked the said flat for a total consideration of Rs. 2,25,00,000/-, out of which he has paid an amount of Rs. 58,42,224/-, which constitutes approximately 23% of the total consideration. The booking was made on 20.12.2023, and cancellation was sought on 02.01.2024, i.e., within 15 days, citing alleged defaults on the part of the respondent under Sections 13 and 18 of RERA.

13. However, the complainant has not demonstrated any breach of the provisions of Sections 13 or 18 of RERA by the respondent so as to warrant refund of the booking amount along with interest. Moreso, no legally sustainable ground has been shown by the complainant to justify such refund along with interest. The cancellation sought appears to be based on the complainant's own assumptions rather than on any contravention of RERA provisions by the respondent. Hence, there arises no question of granting refund with interest or compensation as claimed by the complainant.

14. In this regard, it is pertinent to note that MahaRERA has issued Order No. 35 of 2022 dated 12.08.2022, prescribing the format of the allotment letter and permitting the promoter to forfeit a specified percentage of the amount paid in the event of cancellation by an allottee. Pursuant thereto, a settled principle has been laid down by the MahaRERA governing the cancellations prior to execution of the agreement

for sale. Therefore, any cancellation of booking by the complainant must be dealt with strictly in terms of the said MahaRERA Order No. 35 of 2022.

15. In the present case, it is an admitted fact that the complainant has sought cancellation within 15 days from the date of booking. Hence, the MahaRERA is of the considered view that, as per the aforesaid MahaRERA Order No. 35 of 2022, no forfeiture is permissible in such a case. The respondent is therefore liable to refund the entire amount paid by the complainant towards the consideration of the said flat.

16. 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.

c) The respondent is directed to refund the entire money paid by the complainant towards the consideration of the said flat without any forfeiture/interest, (excluding the statutory dues paid to the government/ brokerage if any) within a period of 45 days from the date of this order.

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

(Mahesh Pathak)

Member – 1/MahaRERA