THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI
COMPLAINT NO. **CC006000000023955**

Clement Tobias Aaron ... Complainant

VERSUS

Caroa Properties LLp ... Respondents
(Woods Tower -3)
MahaRERA Regn: - P 52000001298

Coram ... Shri B.D. Kapadnis
Hon'ble Member & Adjudicating Officer

Complainant: Advocate ~~Urali Bodaji~~ Bhagwati Raghani
Respondents: Advocate ~~Bhagwati Raghavi~~ Urali Badaji

15.10.18

Final Order
24th September 2018

The Complainant seeks refund of his amount paid to the respondents towards booking Flat No. 305, G Wing in respondents' registered project Woods Tower -3, in Godrej City Panvel Phase –I, under Section 12 of Regal Estate (Regulation & Development) Act, 2016 (RERA).

2. The complainant contends that on 17th January 2015, he paid Rs.4 lakhs to the respondents on the basis of their statement contained in the expression of interest saying that "Plan are expected to be approved by the concerned Authority on or before 30th June, 2015". This statement proved to be either false or incorrect in view of the respondents' letter dated 31st August, 2017 containing that they received the sale permission for Godrej City on 22nd October 2017, pursuant to the receipt of the building plan approved from CIDCO on 14th March, 2017. He sustained loss/damages and therefore withdraws from the project and claims refund of his amount with interest.

A corrected as 39 of RERA.

15 10 18

3. The respondents have pleaded not guilty. They have filed their reply to contend that complainant, his wife and daughter applied for reservation of the flat measuring 78.3 sq.mtrs. after reading and understanding the project details, floor plans and price sheet of the unit. The expression of interest stipulated that the respondents expected to get the approvals from the concerned Planning Authority on or before 30th June 2015 and if they are not approved on or before 30th June 2015, the complainant had the option to seek the refund of the initial reservation price. The complainant made the payments on 21.02.2015 and 22/06/2015. The approvals were to be taken from NAINA, CIDCO and MSRDC. The respondents went on informing the complainant about the progress of the project particularly that of the approvals. The respondents by sending email dated 31st August 2017 informed the complainant that they received sale permission for the project on 22.08.2017 pursuant to the approval of the Bldg. Plan from the CIDCO on 14th March, 2017. The respondents asked the complainant to deposit the amount of stamp duty and the registration fee for agreement for sale which was planned in the mid of January 2018. The last reminder for the same was send on 12.03.2018. Thereafter the complainant sent the email dated 31st January 2018 stating that he would be unable to pay for the booked flat and requested to allot a smaller one.

4. The respondents offered a smaller flat of 68.632 sq. mtrs. but the complainant by his letter dated 09.03.18 stated that the alternate flat was not acceptable to him and they would like to cancel the reservation. Therefore, the respondents contend that the complainant cancelled the booking not because of false statement or the project is delayed but he was unable to make the payment of the agreed price. It is mentioned in para 6 (n) and 6 (o) of the application form that in case of cancellation, the developer shall be entitled to forfeit all amount received from the applicant subject to maximum of Earnest Money plus overdue interest and the term of EMD would mean 20% of the total sale consideration. Hence, respondents request to dismiss the complaint.

5. Following points arise for determination. I record my findings thereon as under:

Points	Findings
1) Whether the complainant booked the flat relying on the expression of interest dated 07.01.2015 saying that the plans were expected to be approved by the concerned Authority on 30.06.2015 which proved to be Either false or incorrect statement?	Affirmative
2) Whether the complainant is entitled to get refund of his amount with interest?	Affirmative

REASONS.

6. The respondents have not disputed the fact that the expression of interest dated 07.01.2015 contained "Plans are expected to be approved by the concerned authorities on or before 30th June, 2015". They have also not disputed the fact that by their email dated 31.08.17 they informed the complainant that they received the permission for sale on 22.10.2017 pursuant to the receipt of building plan approval from CIDCO on 14th March 2017. Thus, the earlier statement contained in the express of interest regarding approval of the plan by 30th June 2015 proves to be either false or incorrect statement. It appears that while booking the flat, the complainant relied upon the said statement.

7. The learned Advocates of the parties have taken me through correspondence of the parties. The correspondence discloses the fact that the respondents were keeping the complainant informed about the progress of their proposal of plans approval. It is also a fact that the respondents have received the sale permission for the project on 22.8.2017 pursuant to the receipt of the building approval from CIDCO on 14th March 2017. It is also a fact disclosed by the complainant during the course of hearing that because of the GST it was not possible for him to make the arrangement of the funds for

purchasing the booked flat and therefore he requested the respondents for providing alternate flat of smaller size which they offered. However, the complainant did not like it and by sending email dated 9th March 2018 he sought refund of his amount.

8. It is a fact that in paragraph 6 (n) & 6(o) of the application form there is a stipulation regarding forfeiture of the earnest money which is 20% of the total consideration of the flat.

9. After taking into consideration all the facts and circumstances of the case referred to above, it appears that the complainant is a bonafide purchaser who relied upon the respondents' representation that the approvals would be obtained by 30th June 2015 but they are delayed by two years. It also appears that even thereafter the complainant was interested to book a smaller flat because of his financial problem but ultimately, he has decided to seek refund of his money.

10. My judicial mind dictates me in the facts and circumstances of the case to direct the respondents to refund the entire amount of the complainant with interest not from the date of the payment but from 9th March, 2018 when the complainant has decided to cancel the booking and sought refund. Hence, the order.

ORDER

1. The respondent shall refund the complainant amount of Rs.13,14,380/- with interest @ 10.5% from 10th March 2018 till their refund.
2. The charge of the aforesaid amount shall be on the booked flat till the satisfaction of the complainant's claim.
3. No order as to the cost.

24-9-18

(B.D. KAPADNIS)
Member & Adjudicating Officer,
MahaRERA, Mumbai.

Mumbai
Date: 24.09.2018