

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

COMPLAINT NO. CC006000000000332

Mr. Shatrunjay Singh

.... Complainant.

V/s

Arkade Art Phase 2

.... Respondent.

MahaRERA Reg.No.P51700004092

Complainant: in person.

Respondent: Ms. Smita Sawant, Adv.

CORAM : SHRI B.D.KAPADNIS.


15thNOVEMBER 2017.

FINAL ORDER

The complainant has filed this complaint for getting refund of booking amount paid by him to the Respondent while booking flat No. B 301 in Evoke Arcade of Mira Bhayandar road, Mira road East, Thane.

2. The complainant contends that while booking the above numbered flat, he paid Rs. 95,827/-, but because of demonetization he could not arrange for money to complete the transaction. He informed the Respondent regarding cancellation of his booking and who took a letter of cancellation from him but did not refund the money.

3. The Respondent opposes the Complainant's claim by contending that the Real Estate (Regulation and Development) Act, 2016 is prospective and therefore, the Complainant cannot enforce rights which are accrued to him before 1st May 2017. The Complainant agreed to purchase the apartment for total consideration of Rs.45,85,000/- and paid Rs. 91,750/- by cheque as earnest money. The



Complainant cancelled his booking because of his own financial difficulties, particularly because of the demonetization. Respondent is entitled to retain cancellation charges at the rate of 5% of the agreement value as per terms and conditions mentioned in the booking form. Since the money paid by the Complainant is less than 5% of the consideration of the flat, they are not liable to refund the money.

4. Attempts to bring the parties to the amicable settlement have failed.

5. I have heard the parties and perused the papers.

6. Only point that arises for consideration is, whether there is any provision in Real Estate (Regulation and Development) Act, 2016 (for short, RERA) which empowers the Authority to direct refund of booking amount. In this context on perusal of Section 12 of the Act, I find that the allottee is entitled to get compensation and return of his investment if he sustains any loss or damage because of the incorrect statement of promoter contained in any notice, prospectus etc. Unfortunately, the complainant has not made out any case to bring it within the ambit of section 12. Section 18 of RERA entitles him to get refund of the amount paid by him to the Promoter when the Promoter fails to complete or he is unable to give possession on the date specified in the agreement. Section 19(4) of the Act lays down that, allottee is entitled to claim refund of the amount paid with interest from the promoter if the promoter has failed to comply or he is unable to give possession of the apartment in accordance with the terms of agreement for sale. Except these provisions there are no other express provisions in the law which give jurisdiction to the Authority to grant the relief of refund of the booking amount. However, I humbly feel that if the Promoter is guilty of unfair trade practice or he indulges in fraudulent practice then under Section 7(1)(c) (d) of the Act, MahaRERA gets jurisdiction to revoke the registration of such promoter or permit him to remain on such terms and conditions as the Authority imposes.

7. On this legal background I find that the Complainant simply seeks the refund of the booking amount on unilateral cancellation of booking done by himself. It is not the case of the Complainant that the Respondent wrongfully canceled his booking/agreement as contemplated by Section 11(5) of the Act. The Complainant has not made out any case to bring it within the four corners of Section 7(1) (c) or (d) of the Act.


8. MahaRERA gets jurisdiction to adjudicate the matter only when any provision of RERA or any rule or regulation framed thereunder is violated or contravened as contemplated by section 31 of RERA. Therefore, I find that



MahaRERA does not have jurisdiction to grant any relief in this matter. In the light of above observations, the complaint is dismissed.

Mumbai.

Date: 15th November 2017.


15-11-17
(B.D. Kapadnis)
Member & Adjudicating Officer
MahaRERA, Mumbai.