

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000001449

Uday Bhatu Wagh

... Complainant

Versus

Bhoomi & Arkade Associates
MahaRERA Regn.No. P99000007415

... Respondent

Corum:

Shri Gautam Chatterjee, Chairperson, MahaRERA

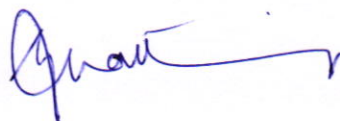
Complainant was himself present.

Respondent was represented by Mr. Abir Patel, Adv., (i/b Wadia Gandhi & Co.).


Order

January 18, 2018

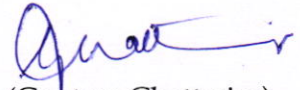
1. The Complainant had entered into a registered agreement for sale (*hereinafter referred to as the said agreement*) dated December 8, 2014 to purchase an apartment bearing No. 401- C, in the Respondent's project 'Acropolis 1' situated at Virar, Thane. The date of possession as stipulated by the said agreement was 31st March 2017. Since the Respondent failed to handover possession of the said apartment within the stipulated time, the Complainant informed the Respondent to cancel his allotment and refund his monies as per clause 10 of the said agreement. But, the Respondent has failed to do the same and therefore, the Complainant has filed this complaint.
2. The advocate for the Respondent stated that the Respondent is willing to refund the said amounts as per clause 10 of the agreement for sale, after the applicable deductions as stipulated under clause 6 of the said agreement which stipulates that the Respondent shall have the right to forfeit the earnest money paid by the Complainant and refund the amounts paid after deducting the statutory amounts such as stamp duty, service tax, VAT etc. Further, he argued that since the said apartment is mortgaged with HDFC Ltd., the Respondent will re-pay the money first to the financial institution and the balance, if any, to the Complainant.



3. The Complainant argued that the termination of the agreement is due to delay on part of the Respondent. Therefore, the deductions under clause 6 of the agreement should not be done and his entire money along with interest as stipulated in clause 10 of the agreement should be refunded by the Respondent to the Complainant.
4. Since the Complainant had already invoked the termination clause of their agreement, it was explained to the parties that the complaint is being taken up in MahaRERA under the provision of Section 7 of the Act wherein the Respondent should not indulge in any unfair practice. It was explained to the Respondent that since the Complainant was facing a financial problem due to which HDFC Ltd. wanted to auction his apartment, the Respondent should not forfeit the earnest amount as stipulated under clause 6. Respondent agreed to the same. Though the Complainant kept on insisting on not deducting the statutory amounts too, the parties agreed to discuss and arrive at a refund amount which is mutually agreeable to them.
5. In the course of the multiple hearings, it was observed that there was a considerable difference in the total amount to be refunded, as arrived at by the Respondent and the Complainant. Moreover, while the Respondent said that the amount due to HDFC Ltd. has to be paid directly to them, the Complainant insisted that the total refund amount should be refunded to him. When the parties failed to arrive at a settlement, it was decided that the case has to be disposed of by directing the Respondent to refund the amount in accordance with clause 10, read with clause 6, of the agreement, by stipulating a time period. This was mentioned to the parties during the hearing on 12th January, 2018.
6. Thereafter, on 14th January, 2018 the Complainant issued an authority letter to the Respondent to do the final repayment settlement with HDFC Ltd. as per their tripartite agreement. Since, the difference in stand between the parties, with regard to the mode of refund (directly to the financial institution or to the Complainant) had been resolved, with an effort to bring the parties together once again so that the differences between the parties, regarding the amount to be refunded, could be removed; another date of hearing was fixed for 18th January and both the parties were requested to attend the same. However, while the Respondent appeared, the Complainant not only failed to appreciate this effort of MahaRERA to bring about conciliation but by attributing motives, abstained from the hearing. The Complainant through e-mail wanted immediate issuance of MahaRERA order.



7. In view of the above facts, the matter is hereby disposed of by directing the Respondent to refund the amount, within 30 days of this order, in accordance with the provisions contained the agreement for sale, without forfeiture of the earnest money, as has been agreed by the Respondent.



(Gautam Chatterjee)
Chairperson, MahaRERA