

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.**

COMPLAINT NO: CC0060000000044169.

Vijay Shiwa Dhuri

... Complainant.

Versus

S.S.V. Developers & Builders
Sai Estate Consultants Chembur Pvt. Ltd.
(Lareina Residency)

... Respondents.

MahaRERA Regn: P51800007086

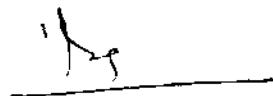
Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

Appearance:

Complainant: Adv. Komal Khandharkar.
Respondent No.-1 : In person.
Respondent No. 2 : Adv. Dr. Chaturvedi.

FINAL ORDER
14th September 2018.

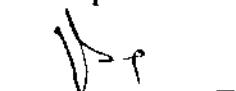
The complainant contends in this complaint filed under Section 12 of the Real Estate (Regulation and Development) Act, 2016 (RERA) that the respondent no. 1 engaged respondent no. 2 as their marketing agent/broker for selling the flats of their registered project 'Lareina Residency' situated at Vikhroli, Mumbai. The complainant approached the respondent no. 2 for purchasing the flat no. 1204 having carpet area of 670 sq.ft. and booked it for Rs. 1,10,09,700/- inclusive of taxes, stamp duty, registration etc. He paid respondent no. 1 Rs. 40,00,000/- on assurance of the respondent no. 2. However, respondents did not issue the receipt thereof immediately. Hence, he pursued the matter with respondent no. 2 and ultimately the respondent no. 1 issued the receipt of the said money dated 02.11.2017 mentioning the payment was against flat no. 1404 of the 1



same project. The complainant contends that the flat no. 1404 was not booked by him and it is of lesser area. Moreover, the said flat was sold to Ms. Heena P. Dani earlier and it has been hypothecated to DHFL for the outstanding loan of amount of Rs. 65,64,518/- . Thus, the respondents made false statement regarding the sale of flat no. 1204 and caused him monetary loss. Therefore, he withdraws from the project and claims refund of his amount with interest.

2. The respondent no. 1 have filed their reply wherein they admit that the respondent no. 2 were engaged by them as their Estate Broker. They contended that the booking of flat no. 1204 by the respondent no. 2 is not taken in their presence. According to them, they sent the inventory of unsold flats wherein they did not mention flat no. 1204. They specifically mentioned flat no. 1404 was for re-sale and it was booked by Ms. Dani to whom the respondent no. 1 were liable to refund money. It is the grievance of the respondent no. 1 that they asked the respondent no. 2 to take the booking at the rate of Rs. 1700/- per sq.ft. + additional cost Rs. 3,00,000/- for terrace construction cost, GST. However, the respondent no. 2 took the booking of the complainant by reducing the rate by Rs. 2000/- per sq.ft. and agreed to sell it free of terrace cost, GST, Stamp duty and registration charges. Not only that, the respondent no. 2 collected 14% charges amounting to Rs. 14,00,000/- from the respondent no. 1 as the brokerage/marketing charges regarding this transaction. Therefore, the respondent no. 1 took the matter to this Authority against the respondent no. 2 but they have been directed to file criminal case against the respondent no. 2. The respondent no. 1 prays for taking action against the respondent no. 2 for their misdeed.

3. The respondent no. 2 have filed the reply to contend that the respondent no. 1 engaged them for selling the units of their registered project 'Lareina Residency'. They sent inventory of the flats to be sold. The complainant on booking of the flat paid money in the name of respondent 2



no. 1 and they have been collected by respondent no. 1 themselves. The respondent no. 1 wants to get away from their liability, therefore they request to relieve them from the liability.

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

POINTS

FINDINGS

1. Whether the complainant paid Rs.40,00,000/- of booking flat no. 1204 of having carpet area of 670 sq.ft. of respondent no. 1's registered project Lareina Residency'? Affirmative.
2. Whether the respondent no. 1 issued the payment receipt mentioning flat no 1404? Affirmative.
3. Whether the complainant is entitled to get refund of his amount with interest because of the false statement of the respondents, under Section 12 of RERA? Affirmative.

REASONS

5. There is no dispute between the respondents that the respondent no. 1 is the promoter in respect of 'Lareina Residency' project and they engaged the respondent no. 2 for selling their flats.

6. It is also not in dispute that the complainant approached the respondent no. 2 and booked the flat. In order to prove that he booked the flat no. 1204 reliance has been placed on the copy of the booking form which clearly mentions that it is in respect of flat no. 1204. Moreover, the respondents have not ventured to deny this fact that the complainant booked flat no. 1204 for Rs. 1,10,09,700/-. It is also not in dispute that this price was inclusive of GST, registration charges, stamp duty.

7. The complainant has produced the receipt issued by the respondent no. 1 wherein the respondent no. 1 has acknowledged the receipt of Rs.



40,00,000/- However, it is mentioned therein that it is in respect of flat no. 1404 measuring 615 sq.ft. and the payment is received considering that the previous customer cancelled the booking. Therefore, the receipt of Rs. 40,00,000/- by respondent No.1 is proved by complainant.

8. The respondents have not disputed the fact that flat no 1204 is larger in area than flat no. 1404.

9. The relation between respondent no. 1 and respondent no. 2 is that of master and agent/servant. Respondent no. 1 is bound by the acts or omissions of respondent no. 2. These facts therefore lead me to hold that the respondent no. 1 through respondent no. 2 made the false statement while accepting the booking of the complainant that it was relating to flat no. 1204 measuring 670 sq.ft. Therefore, the complainant is entitled to get back his amount under Section 12 of RERA with interest at the prescribed rate. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 8.5%.

10. The respondent no. 1 contends that they never asked the respondent no. 2 that the flat no. 1204 was open for sale. However, both the respondents have produced the documents in their favour. The respondent no. 1 has also grievance that the respondent no. 2 has collected 14% of the total value of the flat from him towards the brokerage. I find that it is not necessary for me to enter into their dispute because the respondent no. 1 has contended before me that the said matter was already brought by them before the Authority and it has been already considered. It is internal matter of the respondents and complainant is not concerned with it. He cannot be made to suffer for the internal dispute of the respondents.

11. Both the respondents agreed in principle that the complaint should get back his money. However, it is the contention of the respondent no. 1 that 14% of the total consideration is collected by respondent no. 2, they are not liable to pay the same. However, the receipt produced by the complainant clearly shows that the entire amount of Rs. 40,00,000/- had

been paid by the complainant in the name of the respondent no. 1 and the respondent no. 1 have acknowledged the receipt thereof because the said amount had been deposited in their bank account. Thereafter the brokerage has been paid by the respondent no.1 to respondent no.2. If respondent no.1 has committed any mistake the complainant cannot be made to suffer for it. In these circumstances, the respondent no. 1 cannot escape from their liability of refunding the complainant amount with interest. The respondent no. 1 is at liberty to take suitable steps against the respondent no.2 to indemnify themselves under the law, if they so desire.

12. The complainant is also entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the following order.

ORDER

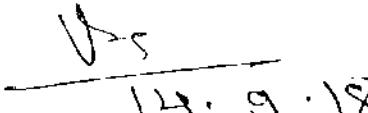
The respondent no. 1 shall refund Rs. 40,00,000/- to the complainant with simple interest at the rate of 10.5% from the date of receipt of the said amount till they are refunded.

The respondent no. 1 shall pay the complainant Rs. 20,000/- towards the cost of the complaint.

The charges of the aforesaid amount shall be on the flat nos. 1204 and 1404 of the registered project 'Lareina Residency' till the satisfaction of the complainant's claim.

Mumbai.

Date: 14.09.2018.


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