

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO: CC006000000001159

Vaibhav Singh

... Complainant.

Versus

Radius & Deserve Builders LLP
(Anantya 1 A)

... Respondents.

MahaRERA Regn: P51800005533

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

Complainant: In person.

Respondent: Adv. Mr. Vaibhav Krishna.

Final Order
7th March 2018.

The complainant claims his amount with interest and/or compensation under Section 12 of The Real Estate (Development and Regulation) Act, 2016 from the respondents as the respondents changed the date of the completion of the project from 2022 to 2024 and increased the carpet area of his flat bearing no. 2205, Tower-8 of respondents' registered project Anantya located on R.C. Marg, Chembur, Mumbai.

2. The complainant booked the flat on 10.04.2016 by submitting booking form on 03.09.2016. The respondents confirmed the booking and acknowledged the receipt of Rs.10,27,692/-. The cheque of the complainant for further payment was dishonoured and therefore, on 05.12.2016, the respondents by sending letter to the complainant asked to pay delayed charges at the rate of 18% and demanded Rs. 10,792/- which they subsequently reduced to Rs. 6,229/- on 09.12.2016. On 06.01.2017 respondents demanded Rs. 9,849/- towards the payment of MVT which the complainant disputed. On 06.09.2017 the complainant mailed to the respondents disclosing his intention to cancel the booking and on very same day the respondents informed him that on cancellation 10% of the agreement value shall be forfeited. The respondents by their letters dated 21.09.2017 and 29.09.2017 asked the complainant to deposit Rs. 3,16,000/-



towards stamp duty and registration charges but the complainant by his letter dated 30.09.2017 stated that due to change in delivery date and increased carpet area and price of the flat, he was no longer interested in their project. Therefore, on 03.10.2017, the respondents reminded him that on cancellation of booking, there would be forfeiture of 10% of agreement value.

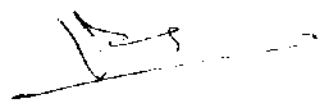
3. Pending the complaint several attempts have been made to bring settlement between the parties and in that attempt the respondents served draft of the agreement on the complainant but the complainant refused to sign the same by contending that it was not in accordance with the model form of agreement prescribed by RERA Rules and some other terms and conditions thereof were not agreeable to him. Therefore, on lapse of 45 days complainant claims that he is entitled to get back his amount as per clause 18 of the Model Form of Agreement for sale.

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

Points	Findings
1. Whether the complaint is maintainable under Section 12 of RERA?	Affirmative.
2. Whether the complainant is entitled to get his amount with interest?	Affirmative.

REASONS

5. The facts are re-produced to make it clear that the complainant booked the flat no. 2205 in Tower-8 of the respondents' project on 10.04.2016 and its consideration was Rs. 49,49,000/-. It is also not in dispute that on 09.03.2016, the respondents have confirmed the booking and by their letter dated 5.12.2016 they have acknowledged the receipt of Rs.2,50,000/- at the time of booking on 10.04.2016, Rs. 2,44,900/- on 4.5.2016, Rs. 4,89,951/- on 27.6.2016 total Rs 10,27,692. The respondents themselves have mentioned while registering their project that initially they intended to complete the project in the year 2020 and now they are going to complete it in the year 2024. So these facts relied by the complainant have been admitted by the respondents themselves. It is also not in dispute that at the time of booking the respondents represented the complainant that the carpet area of the flat was 221 sq.ft. whereas while registering the project they have demonstrated that it is 225 sq.ft. and therefore, they have been claiming Rs. 50,24,600/- in the place of Rs. 49,49,000/- initial price of the flat. So on the backdrop it is necessary to look at Section 12 of RERA.



6. Section 12 of RERA provides that where any person makes an advance or deposits on the basis of information contained in the notice, advertisement, prospectus as the case may be and if any loss or damage by reason of any incorrect, false statements included therein is caused to such a person, if he intends to withdraw from the proposed project, he is entitled to get return of his entire investment along with interest at the prescribed rate.

7. The facts referred to above clearly indicate that at the time of booking price of the flat was Rs. 49,49,000/- for 221 sq.ft. and the possession was to be delivered by the end of 2020. Now the respondents have been claiming Rs. 50,24,600/- and they have increased the area of the flat to 225 sq. ft. They have extended date of possession from 2020 to 2024. So these representations of the respondents regarding price, area and date of delivery of possession of a flat made at the time of booking in the year 2016 proved to be incorrect in the year 2017 when they have registered their project with this Authority. Following the spirit of law laid down by Section 12, I find that the facts of the case attract Section 12 and therefore, I record my finding to this effect. In these circumstances, the complainant is entitled to get back his amount with interest, the rate prescribed by the rules framed under the Act. The prescribed rate of interest is, 2 % above the SBI's current highest marginal cost of lending rate which is currently 8.05%. Therefore, the complainant is entitled to get refund of Rs.10,27,692/- with simple interest at the rate of 10.05% from the dates of its payment to the respondents as mentioned above, till the same is fully refunded. He is entitled to get Rs. 20,000/- towards the cost of his complaint.

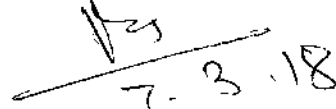
8. Since the case squarely comes under Section 12, the other points raised by the respondents in their reply become irrelevant, so far as forfeiture of 10% of the agreed value of the flat, prematurity of the complaint etc. Though, the respondents have relied upon the case of Premchand -v/s- India Bull Real Estate Ltd. decided by this Authority holding that Section 18 was not applicable to the said case as the complainant of that case failed to produce documents or make any contention in the complaint showing the agreed date of possession. This ratio is not applicable to the facts of the case on hand, hence, the following order.

ORDER

1. Respondents shall pay the complainant Rs.10,27,692/- with simple interest @ 10.05% from the date of its receipt as mentioned in para 2 of this order till its repayment.



2. The respondents shall pay the complainant Rs. 20,000/- towards the cost of the complaint.
3. The respondents shall pay the above mentioned amount within 30 days from this order as per Rule 19 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects and Real Estate Agents, Rates of Interest and Disclosure on Website) Rules, 2017.
4. The charge of the aforesaid amount shall be on the flat booked by the complainant till its repayment.


(B.D. Kapadnis)

Member & Adjudicating Officer
MahaRERA, Mumbai.

Mumbai.

Date: 07.03.2018