

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

COMPLAINT NO. CC006000000023493

Mr. Mohammed Javid Akthar Abdul Karim

....Complainant

Versus

Mr. Umesh Gandhi

M/s Poonam Builders & Developers

....Respondent

MahaRERA Registration No.P51800012114

Coram: Hon'ble Dr. Vijay Satbir Singh, Member-1

The complainants appeared in person.

Mr. Sunil Raorane appeared for the respondent.

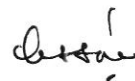
Order

(13th August, 2018)

1. The complainant has filed this complaint seeking directions of MahaRERA to the respondent to handover possession of the flat bearing No. 803, on 8th floor in the building known as "Cosmopolis Phase 1" at Andheri, Mumbai bearing MahaRERA Registration No. P51800012114.
2. The complainant has stated that he had booked a flat in the respondent's project in the year 2012 for a total consideration amount of Rs.62,40,000/- and out of which he has already paid an amount of Rs. 7,80,000/- to the respondent. However, till date the respondent has not given possession of the said flat to the complainant. Hence this complaint is filed.

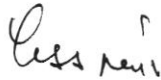


3. However, the respondent filed reply on record of MahaRERA and disputed the claim of the complainant. He stated that the present complaint has suppressed facts and hence the same be dismissed. He further stated that MahaRERA has no jurisdiction to entertain this complainant since the building in which the complainant booked the flat has not been registered with MahaRERA due to the technical reason of CRZ issue. Moreover he made application to the respondent on 7-04-2015 for cancellation of the booking of his flat. Accordingly, the respondent offered him refund of Rs. 7,55, 898/- with compensation of Rs. 2,89,131/- aggregating to Rs. 10,45,029/- and issued cheques to that effect. However, twice the complainant misplaced the said cheques and therefore, on request of the complainant, the respondent has shown his willingness to make the said payment through RTGS. The respondent stated that he is ready and willing to refund an amount of Rs. 9,84,983/- to the complainant by deducting TDS amount.
4. The MahaRERA has examined the arguments of both the parties. In the present case, the complainant is seeking possession of his flat which has booked in the year 2012. Admittedly, there is no registered agreement for sale executed between the complainant and the respondent. Further, the complainant has neither submitted an allotment letter nor an agreement for sale by which he is entitled to get possession of the said flat in the respondent's project. The letter of allotment submitted by the complainant is provisional whereby the complainant was agreed to make further payment as per Annexure-A attached with the letter of allotment. The complainant has made a total payment of Rs. 7,80,000/-. The respondent has submitted various letters showing that the complainant has accepted the termination and requested the respondent to issue refund. The said letter has not been denied by the



complainant by submitting substantial proofs on record of MahaRERA. Moreover, the complainant has himself cancelled the said allotment vide his letter dated 7-04-2015 addressed to the respondent.

5. Considering the aforesaid facts and circumstances of this case, the MahaRERA feels that the complainant is not entitled to seek possession of the said flat since there is no agreement for sale. Since the respondent has agreed to refund the booking amount along with compensation to the complainant, the MahaRERA feels that nothing survives in this complaint.
6. In view of these facts, the MahaRERA directs the respondent to refund the amount to the complainant within a period of 15 days from the date of this order.
7. With these directions, the complaint stands disposed of.


(Dr. Vijay Satbir Singh)
Member-I, MahaRERA