

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

COMPLAINT NO: CC006000000000665

Smita Chandrashekhar Mhatre. ... Complainant.

Versus

Vijaykamal Properties Pvt. Ltd.
(Ravi Group of Companies)
(Meridian Court 1) ... Respondents.

MahaRERA Regn: -P51800007441


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

Appearance:
Complainant: Adv. S. K. Paranjape.
Respondents: Adv. Krishna Agarwal.

Final Order.
26th March 2018

The complainant has filed this complaint under Section 12, 13 & 18 of the Real Estate (Regulation and Development) Act, 2016 (RERA).

2. The complainant contends that she has booked flat no. 605 in respondents' Era -Vuelta-A project situated at Kandivali (West), Mumbai and the respondents agreed to deliver its possession on or before 31st March 2016. They have failed to deliver the possession as agreed and therefore she claims her amount with interest under Section 18 of the Act. The complainant further alleges that when she booked the flat, name of project was 'Era'. Thereafter the respondents changed its name as "Meridian Court -1", in order to avoid the liability of the original allottees

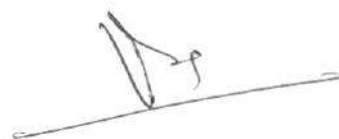


to cheat them. The respondents did not execute the agreement for sale of the said flat even after receiving more than 10% of the total consideration of the flat.

3. The respondents have pleaded not guilty. They have filed their explanation to contend that the complainant's claim under Section 18 of the Act is not maintainable because there is no agreement for sale. Moreover, the Competent Authorities have not issued permission for constructing A, B & C Wings beyond the plinth level. They suffered from lack of money flow to make the construction in time because of demonetization scheme and less response for sale. They have contended that the complainant was orally informed on telephone about change of name of the project in the month of October 2016 itself. The complainant cancelled her booking on 17.11.2016 and therefore her complaint is not maintainable.

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

Points.	Findings.
1. Whether complainant can claim her amount with interest under Section 18 of the Act in the absence of agreement for sale?	Negative.
2. Whether the complainant is entitled to get refund of her amount with interest under Section 12 on account of change of name of the project, its area and date of possession?	Affirmative.
3. Whether the respondents contravened Section 13 by accepting more than 10% of the total consideration without executing the agreement for sale?	Redundant.



REASONS.

5. The complainant complains that the respondents have not executed the agreement for sale. They have issued only the allotment letter. The three Judge Bench of the High Court hold in Hansa V. Gandhi- V/s - Deep Shankar Roy AIR 2013(SC)2853 that the allotment letter cannot be treated as agreement for sale. Section 18 allows the allottee to claim refund of his amount with interest from the promoter, only when promoter either fails to complete the construction of the flat in accordance with the terms and conditions of the agreement for sale or fails to deliver the possession on the date specified therein. Since there is no agreement for sale Section 18 of the Act is not attracted in this case. Hence, the complainant cannot get refund of her amount under this section.

6. The complainant claims refund of her amount with interest under Section 12 of the Act which permits the allottee to claim the amount with interest and compensation when the allottee makes an advance or deposits money depending upon promoter's any false or incorrect statement provided the allottee sustains loss or damage by reasons of incorrect or false statement. Respondents have taken a plea that complainant cancelled the booking in 2016 itself and now no cause of action survives. However, they have failed to prove that the proposal of cancellation was accepted by them and they satisfied her claim of refund of her amount. Therefore, I find no force in this argument.

7. The complainant has produced her allotment letter which shows that the project was known as the 'Era' when she booked the flat. The respondents letter dated 16.10.2017 shows that now it is named as "Meridian Court Tower-1", so this fact has been established.

8. The allotment letter produced by the complainant shows that the area of the flat is 720 sq. ft. whereas the letter of the respondents dated 16.10.2017 shows that its carpet area 416 sq. ft. The complainant has relied

upon old and new brochures to show that the entire scheme has been changed. The respondents have also contended by their letter dated 02/12/2016 that the earlier construction is demolished and new construction as per the revised plan is being proposed. Therefore, I am convinced that there is change in the plan of the project for which no express permission of the complainant has been taken.

9. The complainant's allotment letter is accompanied with payment schedule and the last payment is to be made in the month of March 2016 at the time of execution of conveyance deed. The respondents letter dated 16.11.2017 clearly shows that the respondents are going to start the construction work at the end of 2017. Therefore, I believe the complainant when she contends that at the time of booking in the year 2013, she was promised that the possession would be given by the end of March 2016 and now the construction would start from the end of 2017. So all these facts are sufficient to show that the statements/representation of the respondents regarding name of the project, area of the booked flat, and date of possession on the basis on which the complainant booked the flat proved to be false and incorrect. Therefore, Section 12 applies to her case to claim her amount with interest. I record my finding to this effect.

10. Section 12 of RERA provides that the complainant can claim refund of his amount with interest and/or compensation if the promoter makes false or incorrect statement. It gives the option to allottee to withdraw from the project. In view of this provision, the complainant has exercised her right to withdraw from the project and claims refund of her amount with interest.

11. Section 12 of RERA allows the allottee to collect his amount with simple interest at prescribed rate which is 2% above the MCLR of SBI . The current rate of MCLR of SBI is 8.05%. Thus, the complainant is entitled to get simple interest at the rate of 10.05% on her amount from the date of its receipt by the respondents till its refund.

12. The complainant has filed her statement of payment marked Exh.A, it shows that Rs. 4,95,000/- had been paid by her on 29.08.2013 towards construction and Rs. 5,000/- had been paid towards TDS. On 30.09.2013 she paid Rs. 8,73,576/- towards the consideration of the flat, Rs. 8,824/- towards TDS and Rs. 42,716/- towards service tax. Thus she paid Rs. 14,25,116/- and the respondents by their letter marked Exh 'B' dated 02/12/2016 admit its receipt. Therefore, she is entitled to get these amount from the respondents with interest at the rate of 10.05% from the date of their payments till they are refunded. She is also entitled to recieve Rs. 20,000/- towards the cost of complaint.

13. The complainant complains that the respondents have not executed the agreement for sale even after receiving more than 10% of the consideration. However, now she wants to come out of the project and therefore this issue becomes redundant. Hence, following order.

ORDER

1. The respondents shall pay the complainant the amount mentioned in Para 12 of the order with interest at the rate of 10.05% from the respective dates of payment to the respondents till its refund.
2. The respondents shall pay Rs. 20,000/- to the complainant towards the cost of the complaint.
3. The charge of the aforesaid amount shall be on the flat booked by the complainant till its repayment.


26 3 18

(B.D. KAPADNIS)

Member & Adjudicating Officer,
MahaRERA, Mumbai.

Mumbai.
Date: 26.03.2018.