

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

COMPLAINT NO: CC0060000000044423.

Dalvi Mohd. Sharif

... Complainant.

Versus

Mr. Hemant Parikh
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. Godfrey W. Pimenta.

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. 1705 and booked it for Rs, 1,00,00,000/- inclusive of taxes, stamp duty, registration etc. He paid respondent no.1 Rs. 65,00,000/- on assurance of the respondent no. 2 that the flat was free for sale. However, later on it transpired that its first transaction was not cancelled. Thus, the respondents made him to pay money by representing that the said flat was free for sale 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. 1705 by the respondent no. 2 is not taken in their presence. According to them, they sent the inventory of unsold flats wherein they specifically mentioned that flat no. 1705 was for re-sale and it was booked by Mr. Kalpesh Shah 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 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.65,00,000/- of booking flat no. 1705 of respondent no. 1's registered project Lareina Residency by contending that it was open for sale? Affirmative.
2. 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. There is no dispute between the parties that the complainant booked the flat nos. 1704 and 1705. The respondent no. 1 has executed the agreement for sale of flat no. 1704. The complaint relates to the flat no. 1705. According to the respondent no. 1, they are unable to execute the agreement for sale of the said flat in favour of the complainant because the amount of the first purchaser is yet to be paid by the respondents and the agreement for sale executed in his favour has not been cancelled. The respondent no. 1 refers to Saidham SRA Sahakari Griha Nirman Sanstha (Ltd.)- v/s- M/s. S. S. Developers & Builders (AT 0060000000000243) wherein the Hon'ble Appellate Tribunal has restrained respondent no. 1 creating third party interest in respect of the subject project. To conclude, the respondent no. 1 show their inability to execute the agreement for sale of flat no. 1705 in complainant's favour.
7. The respondents have produced documents to show that Rs. 65,00,000/- paid by the complainant in respondent no.1's name had been deposited in their account.



8. 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. The respondent no. 1 have contended that the respondent no. 2 have played mischief and they are ready to execute the agreement for sale of flat no. 1905 instead of flat no. 1705. Since the respondents are not able to sell flat no. 1705, 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%.

9. The respondent no. 1 contend that they informed the respondent no. 2 that the flat no. 1705 was a re-sale flat but the fact remains that the earlier transaction of it entered with Mr. Shah has not been cancelled. 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 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 him to suffer for the internal dispute of the respondents.

10. Both the respondents agreed in principle that the complaint should get back his money. 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 entire amount of Rs. 65,00,000/- 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/mischief 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.

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

ORDER

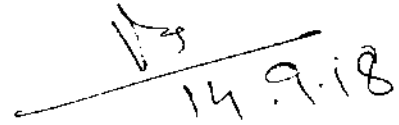
The respondent no. 1 shall refund Rs. 65,00,000/- to the complainant with simple interest at the rate of 10.5% from the date of receipt of the said amount till they are refunded.

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. 1705 and 1905 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.