

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

1. COMPLAINT NO. CC006000000068158  
M/S Pinkcity Brokerage Services Pvt. Ltd.  
Badal Naredi (Director)
2. COMPLAINT NO. CC006000000078177  
Sameer Narayan  
Subodh Kumar Gupta
3. COMPLAINT NO. CC006000000068167  
Pranav Goel
4. COMPLAINT NO. CC006000000078173  
Surabhi Gupta and Shalini Gupta
5. COMPLAINT NO. CC006000000078170  
Payal Goel and Santosh Goel
6. COMPLAINT NO. CC006000000078323  
Manu Chandra and Lara Chandra
7. COMPLAINT NO. CC006000000078508  
Madhulika Malhan

... Complainants

Versus

The Bombay Dyeing and Manufacturing Company Limited  
MahaRERA Regn. No. P51900008726

... Respondent

**Corum:** Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainants (1) to (5) were represented by Mr. Ramesh Prabhu, Authorised representative (i/b R. S. Prabhu & Associates).

Complainants (6) were represented by Ms. Ferzana Behramkamdin, Adv. a/w Ms. Shiavni Khanna, Adv. (i/b FZB & Associates).

Complainant (7) was represented by Mr. Abir Patel, Adv. (i/b Wadia Ghandy & Co.).

Respondent was represented by advocates of M/s. Negandhi, Shah & Himayatullah.

**Order**

May 16, 2019



1. The Complainants have booked apartments in the Respondent's project 'ICC' situated at Wadala, Mumbai in 2013 - 2014 via allotment letters. The Complainants stated the Respondent has made false assurances regarding the amenities as annexed in the booking application, and moreover has even made changes to the carpet area and overall layout to the project. Therefore, they prayed that the Respondent be directed to refund the entire amount paid along with interest and compensation as per the provisions of Section 12 of the Real Estate (Regulation and Development) Act, 2016 (herein after referred to as the *said Act*).
2. The learned counsel for the Respondent submitted that the Respondent has been requesting the Complainants to execute and register the agreement for sale and that the project has been developed as per the sanctioned plans and approvals which have been disclosed at the time of registering the incomplete project with MahaRERA, when the Act came into effect. Thereafter, they said, they have not made any changes which may amount to violation of the said Act.
3. The learned counsel for the Respondent submitted that the Respondent has obtained the occupancy certificate (OC) for the said project in March, 2019. Further, he submitted that the Respondent will execute and register the agreement for sale strictly as per the provisions of the said Act and the rules and regulations made thereunder. Further, he submitted the Respondent is willing to clarify any doubts the Complainants may have and that the draft agreement for sale is in compliance with the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations made thereunder.
4. During the course of the hearing, the Complainants submitted that the draft agreement sent by the Respondent is contrary to the provisions of RERA's model form of agreement. Therefore, they prayed that the Respondent be directed to refund the principal amount paid by them as per the provisions of Clause 18 of the Model form of Agreement, as annexed to the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017.
5. The Respondent in his reply has submitted that no agreement for sale has been executed between the parties and therefore, the complainants can place no reliance on Clause 18 of the Model form of Agreement. Further, they submitted that Clause 18 of the Model form of Agreement does not confer an unfettered right to merely cancel an allotment by declining to execute the agreement for sale and that the said clause has been introduced for the protection of the Promoter in the event of an unjustified refusal by the purchaser to enter in to an



agreement for sale. They submitted that Clause 18 of the Model form of Agreement confers upon the Promoter the right to cancel the allotment on refund of the advance amount without interest and that it is not a right which the Respondent in the present matters has yet chosen to exercise. They also submitted that this Hon'ble Authority has no jurisdiction to determine any claims of refund of an advance amount purportedly under Clause 18 of the Model form of Agreement and that the Model form of Agreement is only a draft agreement and the developer is at liberty to amend the same as per Rule 10 of the said Rules.

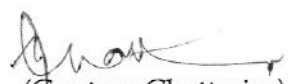
6. Clause 18 of the Model form of Agreement, as annexed to the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 reads as thus:

**18. BINDING EFFECT**

*Forwarding this Agreement to the Allottee by the Promoter does not create a binding obligation on the part of the Promoter or the Allottee until, firstly, the Allottee signs and delivers this Agreement with all the schedules along with the payments due as stipulated in the Payment Plan within 30 (thirty) days from the date of receipt by the Allottee and secondly, appears for registration of the same before the concerned Sub-Registrar as and when intimated by the Promoter. If the Allottee(s) fails to execute and deliver to the Promoter this Agreement within 30 (thirty) days from the date of its receipt by the Allottee and/or appear before the Sub-Registrar for its registration as and when intimated by the Promoter, then the Promoter shall serve a notice to the Allottee for rectifying the default, which if not rectified within 15 (fifteen) days from the date of its receipt by the Allottee, application of the Allottee shall be treated as cancelled and all sums deposited by the Allottee in connection therewith including the booking amount shall be returned to the Allottee without any interest or compensation whatsoever.*

Therefore, since the parties have failed to agree to execute and register the agreement for sale, the Respondent shall treat the allotment as cancelled and refund all amounts paid by the Complainants, without any interest.

7. Consequently, the matters are hereby disposed of.

  
(Gautam Chatterjee)  
Chairperson, MahaRERA