

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

COMPLAINT No. CC006000000054987

Mr. Satnam Srivastava and Another

....Complainants

Versus

1. M/s. Sheth Developers Pvt. Ltd.

2. M/s. Lohitka Properties LLP.

....Respondents

MahaRERA Registration No. P51800000735

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

Adv. Akshay Deshmukh appeared for the Complainant.

Adv. Kishor Salunkhe appeared for the respondent No. 1.

None appeared for the Respondent No. 2.

Order

(31st August, 2018)

1. The above complainants have filed the aforesaid complaint seeking directions of this Authority to the respondents to enter into an Agreement for Sale and to hand over possession and also to pay compensation under Section-18 of the Real Estate (Regulation & Development) Act, 2016 in respect of booking of a flat No. 2301/A Wing, adm. 2430 sq.ft. saleable area on 23rd floor of the Building known as 'Splendour' bearing MahaRERA Registration No. P51800000735 at Mulund, Mumbai.

2. The matter was heard finally when both the parties were allowed to file their respective written submissions on record of this Authority. Accordingly, they have filed their submissions on 17-07-2018 and 18-07-2018 ~~respectively~~. The same are taken on record.

3. The complainants have argued that they had booked a 4 BHK flat in the respondent's project known as 'Splendour' for a total consideration amount of Rs.1,18,58,400/-. Initially, they have paid an amount of Rs.1 lakh towards the earnest money in respect of booking of the said flat. Thereafter, the respondent No.1 issued an allotment letter dated 13th August, 2006. In pursuance of the allotment letter, the complainants made subsequent

payment to the respondents. However, on 2nd May, 2008, the respondent No.1 informed them that the project is not getting shape due to various notifications, ordinances passed by the Govt. of Maharashtra and accordingly the complainants were requested to approach their office for cancelling the allotment of the said flat. The complainants stated that in spite of letters requesting the respondent No.1 not to cancel their allotment, the respondent by their letter dt. 2nd June 2009 issued 5 cheques totally amounting to Rs.11, 83,040/- purportedly towards cancellation of the said flat. There was no mention of the cash transaction.

4. After the clearance of the Forest Land issue, the respondent No.1 with one Emami Group jointly launched a Project called 'Montana' on the same land. Hence, the complainants visited the office of respondent No.1 when he was informed about the re-launch of Sheth 'Splendour' as 'Montana' and respondent No.2 is now promoting, marketing and developing the present Project. The complainants therefore requested this Authority to direct the respondents to enter into an Agreement for Sale and hand over possession of the same to the complainants or alternatively, to direct the respondents to refund the amount of Rs. 21,55,040/- with 10.05% interest from 13th August 2006, till actual payment and also for compensation of Rs. 5 lakhs.

5. The respondent No. 1 disputed the claim of the complainants and requested this Authority to dismiss this complaint on the ground of maintainability. The respondents stated that the respondent No.1 had undertaken the old project known as "Splendour" to be developed at Mulund. In the year 2008 the respondent No.1 had to abandon the project due to permissions stuck with the Forest Dept. The respondent No.1 states that the complainant approached him to see a flat in the project named Vasant Oscar. After receiving money, a letter of allotment dated 13th August, 2006, was issued by respondent No.1 allotting a flat No. 2301 in Wing 'A' adm. 2430 sq.ft. saleable area on the 23rd floor of the building known as 'Splendour' at Vasant Oscar, Mulund (W).



6. The respondent No.1 stated that the complainants have not booked any flat in the project known as "Montana" and that they have made false complaint stating that respondent No.1, is constructing the old project i.e. "Splendour" with a new name "Montana". The respondent No.1 further stated that he informed the complainants about discontinuation of the project and issued letter dated 2nd May 2008 to the complainants to collect the refund of the amount and complete the formalities of booking of cancellation. The respondent No.1 also stated that he has refunded the amount of Rs. 11,83,040/- to the complainants vide letter dated 2/6/2009 and paid an amount of Rs.2,39,891/- towards interest to the complainants to keep customer relations.

7. Besides, the respondent No.1 stated that after abandoning the said project, the respondent No.2 decided to develop the said plot afresh. After obtaining necessary permissions from the competent authority, the respondent No.2 started the construction activities as a new project with the name "Montana". The complainants have filed the present complaint for seeking direction for executing agreement for sale in respect of the flat in the current project "Montana". Hence, the relief sought by the complainants is not maintainable.

8. After considering the rival submissions made by both the parties, the MahaRERA feels that admittedly the project known as "Splendour" wherein the complainants have booked a 4 BHK flat could not go ahead due to some technical reasons. Further, the respondent No. 1 has suspended the earlier project and cancelled the booking and offered refund of the amount paid with interest to the complainants. But, the same is not accepted by them.

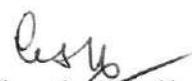
9. Now the respondent No. 2 has registered the project named "Montana". The complainants are seeking relief in the new project being developed by respondent No. 2. However, the complainants have not produced any cogent documentary proof to show that they have been issued any allotment letter for booking of a flat by the respondent No. 2. Moreover, as per the record, it appears that the complainants are not allottees with respect to the project



against which they have filed this complaint. Therefore, their complaint is not maintainable.

10. Since the respondent No. 1 had offered to refund with interest in the year 2009 itself, in compliance of principles of natural justice, the respondent No. 1 is directed to clear the said dues to the complainants within a period of 30 days from the date of this order.

11. With these directions, the complaint stands disposed of.



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