

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

COMPLAINT NO: CC006000000055314.

Maya Srivastava

... Complainant.

Versus

Vijay Kamal Properties Pvt Ltd
(Meridian Court 1)

... Respondents.

MahaRERA Regn: P51800007441.

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

Appearance:

Complainants: In person.

Respondents: Adv. Krishna Agarwal.

**FINAL ORDER
17th January 2019.**

The complainant contends that she booked flat nos. 1805, 1806 and 1003 of respondents' registered project 'Meridian Court 1' Tower-B situated at Kandivali (West) on their following representations.

- a. 100 gm gold and possession related documents and receipts would be provided on clearance of first two cheques and thereafter the third cheque would be presented for clearing. However, after clearance of first two cheques, respondents didn't give the complainant 100 gm gold, possession related documents and receipts of earlier two payments.
- b. Respondents unilaterally cancelled the booking of flat no. 1003 without giving any information to the complainant.



c. At the time of booking respondents showed the Clause 75 of the draft agreement and made the complainant to believe that if the draft is not signed within 30 days, the amount would be refunded.

2. However, respondents have failed to keep the promises and they turn to be either false or incorrect statements. Therefore, the complainant claims refund of her amount with interest and/or compensation under Section 12 of RERA.

3. The respondents have pleaded not guilty. They have filed their explanation wherein they have admitted that the complainant booked the above numbered three flats on 01.10.2017 for Rs. 66,00,000/- each through Sai Estate, their selling agent. They also admit that Rs. 7,00,000/- have been received by them from the complainant through Sai Estate. They deny that they offered 100gm gold and agreed to pass receipts and documents of possession on clearing the first two cheques. According to them, Sai Estate offered 100gm gold scheme without their consent. They deny that they unilaterally cancelled the booking of flat no. 1003. Flat no. 1003 is still with them and it is unsold. Sai Estate collected 5% of the flat cost as brokerage from them and therefore, Sai Estate should be added as a party. They deny that they made any false or incorrect statement regarding their project and request to dismiss the complaint.

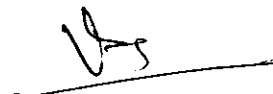
4. Following points arise for determination and their findings are as under:

POINTS

1. Whether the complainant proves that the Respondents falsely represented at the time of booking that 100gm gold and possession related documents, respondents would be provided on clearance of first two cheques and thereafter 3rd cheque would be presented for clearing.?

FINDINGS

Affirmative.

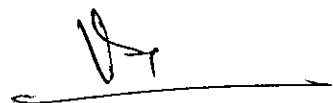


2. Whether the complainant proves that the respondents unilaterally canceled the booking of flat no. 1003 without intimating her? Affirmative.
3. Whether the complainant proves that she was made to believe falsely at the time of booking by showing Clause 75 of the draft agreement providing that 'if draft is not signed within 30 days, the amount would be refunded? Affirmative.
4. Whether the complainant is entitled to get back her amount with interest? Affirmative.

REASONS

5. The respondents have not disputed the fact that Sai Estate were appointed as their selling agent. Therefore, the act and omission of their agent Sai Estate are binding on the respondents as principal. At the outset I want to make it clear that if the respondents have any grievance against their selling agent Sai Estate, they are at liberty to take legal action against them, according to the law, if they deem it fit.

6. The complainant has relied upon the advertisement published by Sai Estate offering 100 gm. gold on booking of the flats. The respondents also have not denied the publication of this advertisement by their agent. However, they contend that Sai Estate did not take their consent for this offer and hence, it is not binding on them. This fact therefore, discloses that the Sai Estate while acting as selling agent for the respondents offered 100 gm. gold on booking of the flat and it has not been given to the complainant even after booking of the flats. Therefore, the representation of Sai Estate/ Agent made on behalf of the respondents regarding the offer of 100 gm. gold in fact, amounts to the respondents' offer which has proved to be false.

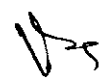


7. The complainant has failed to produce material to show that the respondents promised to provide possession related documents on clearance of first two cheques. She has also grievance regarding the receipts of earlier two payments. The respondents point out to me that the receipts of the two cheques have been passed.

8. The respondents themselves have admitted that flat no. 1003 was booked. The complainant has produced the copy of booking form which clearly shows that the three flats were booked by the complainant and thereafter flat no. 1003 has been struck off. The respondents also submit that the said flat is open for sale and they have not received any payment in respect of the said flat, hence, they treat that it is not booked. From these circumstances, it becomes clear that the booking of flat no. 1003 has been cancelled unilaterally by the respondents.

9. The complainant has pointed out the Clause 75 of the draft agreement wherein it is written that if the draft is not signed within 30 days the amount would be refunded. Mr. Agrawal submits that this stipulation is not binding on the respondents because the agreement is not signed. However, the documentary proof produced by the complainant shows that Clause 75 of the draft agreement was shown to her at the time of booking and the respondents do not act upon it. Hence, it amounts to false statement.

10. Considering all these facts and circumstances of the case, I find that the complainant's case falls under Section 12 of RERA. The complainant wants to withdraw from the project. Hence, she is entitled to get refund of her amount with interest at prescribed rate. The prescribed rate of interest is 2% above the SBI's highest MCLR which is currently 8.55%. She is entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the order.



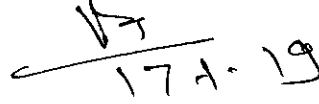
ORDER

The respondents shall refund Rs. 7,00,000/- to the complainant with interest at the rate of 10.55% from 29.11.2017 till the refund, along with Rs. 20,000/- towards the cost of the complaint.

The charge of the aforesaid amount shall be on flat nos. 1805 and 1806 of the project till the satisfaction of the complainant's claim.

Mumbai.

Date: 17.01.2019.



(B. D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.

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ORDER ON THE RECOVERY APPLICATION FILED IN THE COMPLAINT.

The complainant reports non-compliance of the final order dated ~~08-08-2018~~ ^{17.1.2019}. The respondents represented through advocate Shri Krishna Agarwal and he submits that the respondents have some difficulty because they could not operate the account due to pending litigation before NCLT. This reason does not appear to be sufficient.

2. Hence, issue recovery warrant under Section 40(1) of RERA against the respondents.
3. The complainant to produce the statement showing the amount which has become due.

Mumbai.
Date:26.04.2019.


26.4.19

(B.D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.