

**BEFORE THE
MAHARSHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI**

COMPLAINT NO. CC006000000056955

Vanora Josephina Vaz

..Complainant

Vs.

Omkar Ventures Pvt. Ltd.

..Respondent.

MahaRERA Regn. No. P51800017369

CORAM: Hon'ble Shri Madhav Kulkarni.

APPEARANCE :

Complainant :

Respondent :

ORDER

(Dated 20.05.2019)

1. The complainant who had booked a flat with the respondent/promoter, seeks withdrawal from the project and refund of the amount paid, with interest and compensation, as respondent has not provided the flat under Subvention Scheme.
2. The complainant has alleged that she filled an Expression of Interest Form on 25.08.2018 in the project of the respondent Sereno by paying Rs.54,000/-. She was called to attend pre-launch on 07.09.2018. The flat worth Rs.95.46 lakhs were offered. The stamp duty and other taxes were to be borne by the complainant, taking total consideration for Rs.1,09,35,080/-. The complainant paid Rs.5,00,000/- and signed allotment letter which was a blank form. After a month, she was told that she is ineligible for Subvention scheme. The respondent neither

provided ~~with~~[✓] allotment letter nor has provided flat under the Subvention scheme. Hence, she has filed this complaint.

3. The complaint came up before Hon'ble Member on 11.01.2018 and came to be transferred to Adjudicating Officer. The matter came up before me on 21.02.2019 and was adjourned to 19.03.2019 for recording plea ~~for both the parties~~[✓]. The respondent filed written explanation on 19.03.2019. The matter was adjourned to 23.04.2019 for arguments. As I am working at Mumbai and Pune Offices in alternative weeks, this matter is being decided now.
4. The respondent has alleged that the complainant is not an allottee. The complainant had booked the flat by paying Rs.5 lakhs in Subvention scheme out of total consideration of Rs.95.46 lakhs in the project of the respondent Serena-B, at Jogeshwari (East), Mumbai. The Application money of Rs.54,000/- on 25.08.2018 and Rs.5 lakhs on 07.09.2018 were received. As per RERA website, date of delivery of possession of the flat is 31.03.2023. Therefore, complaint is pre-mature. The application form was filed on 07.09.2018. By a letter dated 04.10.2018 the complainant informed that she was not able to obtain sufficient amount of housing loan and desired to cancel the booking and asked for refund of the booking amount. As per the condition No. 8 in the application form, if the applicant cancels the booking or fails to pay the balance, the amount paid stands forfeited. The complainant is therefore, not entitled for refund of the amount. The complaint deserves to be dismissed.
5. On the basis of rival contentions of the parties, following points arise for my determination. I have noted my findings against them for the reasons stated below:

[✓]
20.5.19

| POINTS | FINDINGS |
|--|---------------------|
| 1 Has the respondent failed to deliver possession of the flat to the complainant as per the agreement, without there being circumstances beyond his control? | Negative |
| 2 Is the complainant is entitled to the reliefs claimed? | Negative |
| 3 What Order? | As per final Order. |

REASONS

6. **As to Point No.1 and 2** – As stated earlier, the complaint is lacking necessary details like when flat was booked by the complainant. It is alleged that flat was booked on 25.08.2018 by signing the Expression of Interest Form. This fact is not denied by the respondent. A copy of the application form is placed on record by the respondent. The first page of the application shows that this is a scheme of Subvention. The amount of Rs.5.54,000/- was paid by the complainant. The complainant booked flat No.C-502 in the project Serena for a total consideration of Rs.95.46 lakhs.
7. Admittedly no agreement for sale has been executed. There is nothing in the complaint as to the date on which possession was promised. Grievance of the complainant is that she cannot take benefit of the Subvention scheme. She therefore, want to withdraw from the project. As per the clause 8 of the booking form, if the applicant wishes to withdraw or fails to pay the balance as applicable, the amount paid by the applicant shall stand forfeited. No doubt this is the condition which is forcibly imposed by the respondent. However, I am not required to go into the legality of that condition. Section 18 is for awarding refund of the money with interest and compensation, only if

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promoter fails to deliver possession as per agreement. Here, there is no terms for delivery of possession agreed by the parties. Hence, present claim filed was required to be filed in the court of competent jurisdiction. I therefore, answer point nos. 1 and 2 in negative and proceed to pass following Order.

ORDER

1. The complaint stands dismissed
2. No Order as to costs.

Mumbai

Date : 20.05.2019

MD 20-5-2019
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA