

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

COMPLAINT NO: CC006000000057452

Mansi Manohar Mundada

... Complainant.

Versus

Mahesh Patel

... Respondents.

(Sai Kanishk Phase I)

MahaRERA Regn: P51700006847.

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

Appearance:

Complainant: Adv. Viraj Kadam.

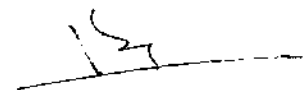
Respondent: Adv. Rohan Mane.

FINAL ORDER

15th March 2019.

The complainant contends that she booked flat no. 703 & 704, B3/Celosia of the registered project 'Sai Kanishk Phase I' situated at Thane. She paid the respondents Rs. 14,00,000/- towards the part consideration but at the time of registration of the flats, the respondents increased the value of the flats which she did not agree. Ultimately, parties arrived at settlement whereby the respondents agreed to refund Rs. 12,20,000/- and issued three post-dated cheques. However, the cheques bounced and hence, the complaint is filed.

2. The plea under Section 7 of RERA for indulging into unfair practice has been recorded. The respondents have pleaded not guilty. They have filed their reply to contend that the complainant is money lender. She has paid the respondents Rs. 14,00,000/- by way of loan and not for booking the flats. The complainant requested the respondents to issue the demand letter to obtain home loan in her name and therefore, said letter was issued.



The respondents have re-paid Rs. 9,00,000/- by depositing them in complainant's another account 'Tri Star Line Pvt. Ltd.' on 24.01.2018. Rs. 50,000/- have been deposited in the account of Jsmovers under the instructions of the complainant. They have deposited Rs. 80,000/- in the account of Jsmovers under the complainant's instruction. They are ready to pay the balance amount of Rs. 3,70,000/-.

3. Following points arise for determination and my findings thereon as under:

POINTS

1. Whether the respondents have indulged in unfair practice by not honouring the cheques worth Rs. 12,20,000/- for refunding the complainant's amount on cancellation of the flats?

FINDINGS

Affirmative.

REASONS

4. The respondents have taken the stand that the complainant is money lender who lend Rs. 14,00,000/-. It is the contention of the complainant that she has paid Rs. 14,00,000/- to the respondents, in the context of booking of flat nos.703 & 704 of B-3 building. In order to substantiate her contention, she has produced receipt numbers 539 to 542 issued by the respondents in her name on 19.05.2018. Since the payment has been made by RTGS, the respondents cannot deny the receipt of the amount mentioned therein. The total amount paid is Rs. 14,00,000/-. The receipts clearly show that Rs. 7,00,000/- have been paid against flat no. 703 and Rs. 7,00,000/- have been paid against flat no. 704. In addition to this, the complainant has produced demand letters dated 19.05.2018 issued by the respondents separately in respect of the two flats wherein they have acknowledged the receipt of Rs. 7,00,000/- against each flat. They have also mentioned the total value of the flat and the amount demanded. Therefore, these documents are more than sufficient to show that Rs. 14,00,000/- have been paid by the



complaint for booking flat nos. 703 and 704. I do not accept the contention of the respondents that the complainant is money lender and the transaction is that of money lending.

5. It appears that the complainant has taken the decision to withdraw from the project and therefore, the booking has been cancelled with the consent of the parties. The complainant has produced the photostat copies of three cheques. The cheque of Rs. 5,00,000/- was payable on 18.08.2018 and the two cheques namely of Rs. 5,00,000/- and Rs. 2,20,000/- were payable on 19.09.2018. These cheques have bounced because the respondents stopped their payment. This fact is cleared by the letter of Cosmos Cooperative Bank. Therefore, it is established by the complainant with documentary proof that Rs. 12,20,000/- were agreed to be refunded by the respondents on cancellation of the booking of the flats. They issued the three cheques which they have not honoured. This amounts the fraudulent act/unfair practice within Section 7 of RERA. Hence, I find it necessary to direct the respondents under Section 7 (3) of RERA to refund the said amount with interest at prescribed rate which is 2% above SBI's highest MCLR It is 8.55% at present and to pay Rs. 20,000/- towards the cost of the complaint. Hence, the order.


ORDER

The respondents shall pay the complainant Rs. 12,20,000/- with interest at the rate 10.55% per annum from the dates on which the amount was due till their payment.

The respondents shall pay the complainant Rs. 20,000/- towards the cost of the complaint.

Mumbai.

Date: 15.03.2019.


15.3.19
(B. D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.