

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

COMPLAINT No: CC006000000054950

Mr. Bhuvanesh Shrivastava & Priyali Saxena

..... Complainants

Versus

M/s. Epitome Residency Pvt. Ltd.

..... Respondent

MahaRERA Registration No. P 51800003270

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

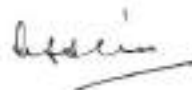
Adv. Shakib Shaikh appeared for the complainants.

Adv. Vibhav Krishna appeared for the respondents.

ORDER

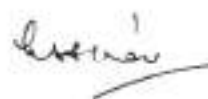
(1st October, 2018)

1. The complainants have filed the present complaint seeking directions of MahaRERA against the respondent to refund the amount paid by them alongwith interest and compensation under section-18 of the RERA Act in respect of booking of their flat No. 4301 on 43rd floor in Wing 'A' of the Project known as '**Imperial Heights**' bearing MahaRERA Registration No. P51800003270 at Goregaon (West), Mumbai.
2. The matter was heard on several occasions when both the parties sought time to settle the matter amicably. However, inspite of several meetings, the parties could not reach any amicable settlement. Hence, the matter is decided on merits. The written submission filed by the complainants is taken on record.
3. It is the case of the complainants that they booked the said flat in the respondent's project for a total consideration amount of Rs.2,03,00,269/- in the month of May, 2016. The respondent has issued an allotment letter dated 25th May, 2016. As per clause No.24 of the said allotment letter, the respondent had promised to hand over possession of the said flat to the complainants by 30th September, 2017. The complainants have paid



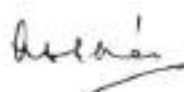
around 80% of total consideration amount by obtaining loan from Indiabulls. Since the respondent did not hand over the possession of the said flat to the complainants, the complainants vide notice dated 5th May, 2018 have cancelled the allotment letter as well as the tripartite loan agreement and asked the respondent to refund the amount paid by them. However, no response has been received from the respondent. Hence the present complaint has been filed.

4. The respondent disputed the claim of the complainants and argued that the present complaint is devoid of merits and therefore, the same is liable to be dismissed. He further argued that the complainants have booked the flat and allotment letter was issued on 25.05.2016 on payment of Rs. 20,09,725/- by them. Thereafter, on 31st May, 2016 a Tripartite Agreement was executed whereby the complainants have opted for a subvention scheme of payment of consideration for a flat by taking loan from Indiabulls Housing Finance Ltd. and had subrogated their rights to receive refund in respect of the flat in favour of the lender. Thereafter, on 10th April, 2017, the complainants have executed an indemnity cum declaration whereby they had informed him that they have certain difficulties and for personal reasons they were not in a position to execute the agreement for sale and therefore, requested the respondent to hold the flat till the same is ready or until they proceed with execution of agreement. Thereafter, on 25th January 2018 the respondent wrote letter to complainants that pre EMI interest from 1st July 2016 till possession shall be payable by complainants at the time of possession to which the complainants replied through e-mail on 10th April, 2018 whereby he terminated the agreement on the basis of delay in handing over possession. The respondent further argued that till date he has paid EMI interest to the lender aggregating Rs.21,02,329/- on the loan availed by the complainants from lender and also brokerage charge of Rs.8,12,011/-
5. The respondent further argued that the complainants have failed to disclose the violation of RERA Act and the present complaint is filed in



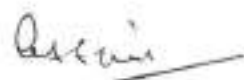
contravention of Declaration cum Indemnity dated 10th April 2016 and tripartite agreement dated 31st May, 2016. Further, the complainants due to their own personal reasons have not executed the agreement for sale and have also not made payment. Further, as per the Tripartite agreement dated 31st May, 2017, the complainants cannot seek refund since the refund shall be made to Indiabulls Housing Finance Ltd. The respondent therefore requested for dismissal of this complaint.

6. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, the complainants have booked a flat for a total consideration amount of Rs. 2,03,00,269/- , out of which the complainants have paid an amount of Rs. 20,09,725/- and rest of the amount has been paid by India Bulls Housing Finance Ltd. in the subvention scheme. The respondent has relied upon the indemnity bond dated 10th April, 2016 signed by the complainants. However, the said document applies only to the issue of non-execution of the registered agreement for sale and the complainants have been restrained from taking any action against the respondent for violation of provision of MOFA Act. It has no relevance with the present complainants in which they have prayed for cancellation of the agreement and refund of their money under section-18 of the RERA Act, 2016.
7. A perusal of the documents in this case making it clear that there was a tripartite agreement between the complainants, respondent and the India Bulls Housing Finance Ltd. In the said agreement the complainants have made payment of some money for the purchase of their flat, whereas the India Bulls Housing Finance Ltd. has paid the remaining amount with the explicit provision that the complainants have no obligation to make any payment towards EMI for the borrowed loan till the possession. However the respondent promoter could not handover the possession of the flat to the complainants within stipulated period. While the Finance Company started levying EMI on borrowed loan amount from the complainants. The complainants had no other option but to cancel the allotment.



Admittedly, all this happened because the possession of the flat could not be given. By the promised date. Therefore, the complainants can not be held responsible for payment of EMI. Had they be given possession in time, they would have started paying EMI according to the tripartite agreement. Now, the complainants are entitled to seek relief under section-18 of the RERA Act, 2016. As the complainants have paid an amount of Rs. 20,09,725/- towards the purchase of their flat, they are entitled to have refund of their money with interest from the date of payment made to the respondent.

8. So far as the amount borrowed from the India Bulls Housing Finance Ltd, under tripartite agreement is concerned, the respondent will have to make payment of the outstanding amount to India Bulls Housing Finance Ltd. in accordance with the provision of tripartite agreement. Since the respondent has already utilized the said money beyond the stipulated date in the agreement, the respondent would have to settle this issue solely with the India Bulls Housing Finance Ltd., The complainants, therefore, can not be held responsible for any lapse in this regard.
9. In view of these facts, the MahaRERA directs the respondent to refund the booking amount paid by the complainants along with applicable interest as prescribed under the provisions of RERA Act, 2016 along with the interest at the rate of MCLR plus 2% under the RERA Act, 2016 and the Rules and Regulations made there under.
10. With the above directions, the complaint stands disposed of.


(Dr. Vijay Satbir Singh)
Member-1/MahaRERA

