

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

**Complaint No. CC006000000057721**

Mrs. Fehmida Kazi & Anr.

.... Complainants

**Versus**

M/s. Karm Infrastructure Pvt Ltd.

.... Respondent

Project Registration No. **P51700007680**

**Coram: Dr. Vijay Satbir Singh, Hon'ble Member - I/MahaRERA**

Adv. Om Bhanushali appeared for the complainants.

None appeared for the respondent.

**ORDER**

(21<sup>st</sup> July, 2020)

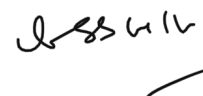
(Through video conferencing)

1. The complainants have filed this complaint seeking directions from MahaRERA to the respondent / promoter to refund of entire amount paid by them to the respondent along with interest and compensation under section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA"), in respect of booking of two flat bearing Nos. 604 and 605, in building No. 7, Wing 'A' in the respondent's project known as "Karm Panchatatva-3" bearing MahaRERA registration No. P51700007680 situated at Shahapur, Dist : Thane.
2. This complaint was heard on 16-7-2019, when it was observed that the complainants are seeking refund along with compensation and hence this complaint was referred to the Ld. Adjudicating Officer, MahaRERA for adjudging the quantum of compensation. However, the Ld Adjudicating Officer, MahaRERA referred back this complaint to MahaRERA for appropriate decision. Hence, this complaint was again heard on 09-01-2020 and 6-03-2020, when the complainants appeared and made their submissions. However, the respondent failed to appear, though it had been duly served with the notices for the hearings. Hence, in

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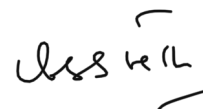
compliance of principles of natural justice, this matter was again kept for hearing on 21<sup>st</sup> July, 2020.

3. Accordingly, this complaint was heard today, as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through video conferencing. Both the parties have been issued prior intimation for this hearing and they have also been informed to submit their written submission if any.
4. It is the case of the complainants that in the year 2016, they have booked the joint flat nos. 604 & 605 in the respondent's project under 140 months EMI Scheme which was floated by the respondent for a total consideration amount of Rs.14,50,000/-. At the time of booking they paid an amount of Rs. 4,25,000/-. Since then the respondent has not developed the project. They further stated that even though they have paid stamp duty and registration charges, VAT etc, the respondent failed to execute the registered agreements for sale with them. The complainants therefore lost faith in the project and hence have filed this complaint seeking refund of the entire money paid by them along with interest and compensation under section 18 of the RERA. The complainants have further clarified that they do not press for compensation as prayed in this complaint.
5. Though the respondent has been duly served with the notices for hearings held before the MahaRERA, it has failed and neglected to appear for the hearings which shows that the respondent is not willing to contest this matter. Hence the MahaRERA has no other alternative but to proceed with the matter ex-parte against the respondent on merits.
6. The MahaRERA has examined the arguments advanced by the complainants as well as the record. In the present case by filing this complaint, the complainants are seeking refund of the amount paid by them for booking of two flats in the



respondent's project. The respondent has issued allotment letters dated 4<sup>th</sup> August, 2017 for allotment of the said flats. However, no agreements for sale have been executed till date. The complainants have relied upon the allotment letters issued by the respondent. The complainants have alleged that they have paid an amount of Rs. 4,25,000/- to the respondent and the said fact remained unchallenged. The complainants have also alleged that the respondent is not developing the said project since the year 2016 and hence they are seeking refund.

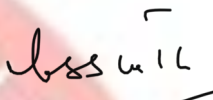
7. In the present case, the MahaRERA has observed that the said booking has been done before the RERA, when the provisions of MOFA were in force. As per the provisions of MOFA, the promoter was not entitled to accept more than 20% amount without first registering the agreement for sale. In the present case, each flat was booked for total consideration amount of Rs. 7,00,000/- out of which approximately an amount of Rs.2 lakhs for each flat have been accepted by the respondent, which comes to more than 20% of the total cost. It shows that the respondent has violated the prevailing provisions of MOFA at that time and even after commencement of RERA, it failed to register the agreement for sale with the complainants and thereby violated the provision of section 13 of the RERA.
8. With regard to the claim of refund along with interest under section 18 of the RERA, the MahaRERA feels that there is no agreement for sale showing any agreed date of possession which has lapsed. Even the allotment letters do not show any date of possession. Hence the claim of interest under provision of section 18 of the RERA cannot be considered.
9. In view of the aforesaid facts and circumstances of this case, in the present case, since the complainants have paid more than 10% amount to the respondent / promoter for booking of their flats, the MahaRERA directs the respondent to execute the registered agreements for sale with the complainants as per the provisions of section 13 of the RERA within a period of 30 days. Failing that the entire amount paid by the complainants be refunded without any interest.



10. The MahaRERA further directs that, in case of the refund of the amount to the complainants, the respondent / promoter is entitled to claim the benefit of “moratorium period” as per the Notification / Order Nos. 13 and 14 dated 2<sup>nd</sup> April, 2020 and 18<sup>th</sup> May, 2020 respectively issued by the MahaRERA and any Notification / Order which may be issued in this regard from time to time.

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



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