

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI

Complaint No.CC006000000100513

Mr. Rajnarayan Vishwakarma

....Complainant

Versus

M/s. Karm Infrastructures Private Limited

....Respondent

Project Registration No. P51700009304

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

Adv. Shyam Mohite appeared for the complainant.

None appeared for the respondent.

ORDER

(10th August 2020)

(Through Video Conferencing)

1. The above named complainant has filed the present complaint seeking direction from the MahaRERA to the respondent to refund the amount paid by him to the respondent along with interest and compensation as per the provisions of section 18 of The Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "the RERA") with respect to booking of a flat bearing no. 305, admeasuring 162.97 sq. ft., in Wing 'B' of building no.4 in the project being developed by the respondent known as "Karm Panchtatva-1" bearing MahaRERA registration no. P51700009304, situated at Taluka Shahapur, Dist. Thane.
2. The aforesaid complaint was heard and a final order was passed by the MahaRERA on 13th November, 2019 whereby the complaint was disposed of on the basis of the statement made by both the parties that they would settle the matter amicably and would file consent terms on record within a period of 15 days failing which liberty was granted to the complainant to approach MahaRERA.

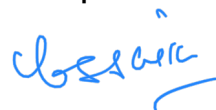


3. Thereafter, pursuant to the liberty granted by MahaRERA, the complainant filed an application on the record of MahaRERA on 18th December, -2019 stating that after the order dated 13th November, 2019 the parties could not settle the matter amicably and hence sought re-hearing in this complaint.
4. In view of the said application and the liberty granted by MahaRERA, this complaint was heard finally today as per the Standard Operating Procedure dated 12th June 2020 issued by MahaRERA for hearing of complaints through video conferencing. Both the parties have been issued prior intimation of the hearing. Accordingly, the complainant appeared and made his submissions. The respondent however, failed to appear for the hearing even though notice of hearing was duly served upon it. Hence the MahaRERA heard the arguments of the complainant.
5. It is the case of the complainant that he purchased the said flat in the respondent's project vide a registered agreement for sale dated 22-06-2018 for a total consideration of Rs. 6,30,000/- out of which the complainant has paid an amount of Rs. 3,13,320/- towards the same. As per the agreement for sale, the respondent was liable to handover possession of the said flat to the complainant on or before 31-12-2018. However, the respondent failed to do so. The complainant has not received the possession of the flat till date. Due to the delay, the complainant had sought for refund of the amount paid by him along with interest and compensation. However, till date, he has only received refund of Rs. 30,000/- from the respondent. The complainant therefore is seeking refund of the balance amount along with interest and compensation under section 18 of the RERA. However, during the course of hearing, the complainant submitted that he is not pressing for compensation



under section 18 of the RERA as sought in the prayers and accordingly, he has uploaded a precipe, through his advocate mentioning the said fact on record of the MahaRERA.

6. In the present case, the respondent though has been issued notice of the hearing to be conducted today, it neither appeared nor filed any reply on record. It shows that the respondent is not willing to contest this complaint. Hence the MahaRERA has no other alternative but to proceed with this case ex-parte on merits.
7. After going through the record, it is clear that the order dated 13th November, 2019 was passed on the basis of the statement made by both the parties. However, no amicable settlement has been arrived at between the parties and the order passed by the MahaRERA could not be complied with by both the parties. Hence, the complainant approached MahaRERA seeking re-hearing in this complaint on merits. In this case, since the order passed by the MahaRERA dated 13th November, 2019 has not been complied with, the MahaRERA has no other option but to accept the request of the complainant by reviewing the said order dated 13th November, 2019 and to pass the order on merits.
8. The MahaRERA has examined the arguments advanced by the complainant as well as the record. In the present case, admittedly, the complainant is an allottee in the project being developed by the respondent and has paid around 50% towards the consideration of the said flat. The parties have also entered into a registered agreement for sale. According to clause No. 5(iii) of the said agreement, the respondent was liable to handover the possession of the said flat to the complainant on or before 31-12-2018. However, possession was not handed over to the complainant. Hence after a period of one

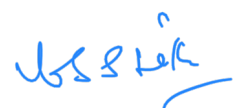


year, the complainant sent cancellation request to the respondent on 5th December, 2019. The respondent has refunded an amount of Rs. 30,000/- to the complainant out of total amount of Rs. 3,13,320/- paid by him. It implies that the respondent has accepted the cancellation request made by the complainant. However, till date the respondent has not paid the balance amount to the complainant. Hence the present complaint has been filed seeking refund along with interest under section 18 of the RERA.

9. In this regard, it is necessary to peruse the provision of section 18 (1) of the RERA , which reads as under:

“ 18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act…….”.

10. As per the aforesaid explicit provision of section 18 of the RERA, the allottee is entitled to claim refund with interest and compensation, if the promoter fails to deliver the possession of the flat on the agreed date of possession mentioned in the agreement. In the present case,



the respondent agreed to handover possession of the said flat to the complainants by 31st December, 2018, which has already lapsed. The MahaRERA therefore feels that the respondent has violated the aforesaid provision of section 18 (1) of the RERA, and hence is liable to refund the entire amount paid by the complainant along with interest as prescribed under the RERA and the Rules made there under.

11. In view of the aforesaid facts, the following order is passed:

- a) The order dated 13th November, 2019 is hereby recalled;
- b) The respondent is directed to refund the entire balance amount paid by the complainant with interest at the rate prescribed i.e. MCLR plus 2% under section 18 of the RERA Act, 2016 and the Rules and Regulations made there under from the date of payment till the final payment is made to the complainant;
- c) With regard to the payment of interest to the complainant, the MahaRERA further directs that the respondent promoter is entitled to claim the benefit of “moratorium period” as per the Notifications / Orders Nos. 13 and 14 dated 2nd April, 2020 and 18th May, 2020 issued by the MahaRERA and the Notification/ Order which may be issued in this regard from time to time.

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

(Dr Vijay Satbir Singh)
Member - 1/MahaRERA