

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

Complaint No. CC006000000161235

Mr. Sidharth Sharma & Mrs Sadhna Sharma

..... Complainants

Versus

M/s. Lotus Logistic & Developers Pvt Ltd.

..... Respondent

Project Registration No. **P51800006403**

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

Adv. Parminder Singh appeared for the complainants.

Adv. Preeti Dhar appeared for the respondent.

ORDER

(20th January, 2020)

1. The complainants have filed this complaint seeking directions from the MahaRERA to the respondent to refund the amount paid by them along with interest as per the provisions of section-18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA") in respect of booking of a flat bearing No. 906, on the 9th floor, in Wing-B in the respondent's project known as "**Unity by Lotus**" bearing MahaRERA registration No. P51800006403 at Andheri, Mumbai.
2. This complaint was heard on several occasions and the same was heard finally today. During the hearing, both the parties appeared through their respective advocates and made their submissions. The respondent also filed reply on record.
3. It is the case of the complainants that originally the said flat was booked by Mr. Sidharth Sharma's father and thereafter, the same got transferred in their names. The said flat was booked for a total consideration amount of Rs.2,29,00,000/-. They have paid Rs. 99,62,346/- (almost 45%) of the total sale



consideration and the respondent, at the time of booking had promised to deliver the possession with occupancy certificate on or before December, 2018. However, the respondent has failed to deliver the possession of the said flat till date and also failed to register the agreement for sale which signed in the year 2018 despite receiving 45% amount from them and also continuous follow up with the respondent. Hence, they have lost faith in the respondent as they are demanding and threatening for more money without any explanation for the delay in completion of the project. Therefore, the complainants have filed this complaint seeking refund with interest as per the provision of section -18 of the RERA.


4. The respondent has disputed the claim of the complainants by raising various defenses through the reply filed on record. The respondent has stated that the present complaint is premature as on date as the date of possession mentioned in the agreement for sale duly signed by the complainants themselves is September, 2020, which is not yet over. However, the complainants have suppressed this material facts from MahaRERA and has not come with clean hands. Further, they were always ready and willing to register the agreement for sale duly signed by them. But, there is default on the part of the complainants to come forward and get the said agreement registered. The respondent therefore prayed for dismissal of this complaint.
5. The MahaRERA has examined the arguments advanced by the parties as well as the records. In the present case, it appears that, the complainants are seeking refund of the amount paid by them to the respondent towards the purchase of a flat in the respondent's project. There is no allotment letter issued by the respondent in favour of the complainants. Moreover, there is an agreement for sale signed by the parties showing the agreed date of possession as September, 2020. However, the same is not registered.

In this regard, the MahaRERA is of the view that as per the provision of section-18(1) of the RERA, the promoter is liable to refund the amount to the



allottee on demand, if the agreed date of possession mentioned in the agreement for sale gets lapsed. However, in the present case, there is no allotment letter issued by the respondent and the date of possession mentioned in the agreement for sale duly signed by both the parties in the year 2018 is not over.

6. However, the MahaRERA has observed that the said booking is done under the provisions of MOFA, when, the promoter was not entitled to accept more than 20% amount without first registering the agreement for sale with the allottees. However, in this case, it seems that the respondent has violated the said provision of the MOFA.
7. However, now, since the project is registered with the MahaRERA, as per the provision of section-13 of the RERA, the respondent is liable to execute the registered agreement for sale with the complainants since they have paid more than 10% amount to the respondent.
8. In view of the aforesaid facts of this case, the MahaRERA directs the respondent to register the agreement for sale with the complainants within a period of 30 days from the date of this order, failing which the money paid by the complainants be refunded within a period of next 30 days without any interest.
9. With the above directions, the complaint stands disposed of.


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