

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

Complaint No. CC006000000078780

Mr. Sameer Arun Pradhan

Mrs. Kshama Sameer Pradhan

.... Complainants

Versus

M/s. Courtyard Real Estate Pvt. Ltd.

(Formerly known as Raghuleela Leasing and
Constructions Pvt. Ltd.)

.... Respondent

Project Registration No. **P51700006312**

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

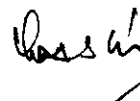
Adv. Tanuj Lodha appeared for the complainant.

Adv. Abir Patel appeared for the respondent.

ORDER

(13th February, 2020)

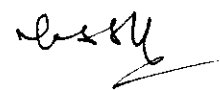
1. The complainants have filed this complaint seeking directions from MahaRERA to the respondent for refund of the entire amount paid by them to the respondent under sections-12 and 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA") with respect to the booking of a flat in the respondent's project known as "**Wadhwa Courtyard**" bearing MahaRERA Registration No. **P51700006312** at Thane.
2. This complaint was referred to the Id. Adjudicating Officer, MahaRERA since the complaint was addressed to Id. Adjudicating officer, MahaRERA and complainants are seeking refund. However, the Id. Adjudicating Officer again referred this matter to MahaRERA for taking the decision. Hence, this complaint was heard finally on 4th February, 2020, when both the parties appeared and argued the matter at length. After hearing the arguments, both the parties were directed to file written submissions within two days.
3. It is the case of the complainants that he has booked the flat No. 64 on the 6th floor, adm. 1171 sq.ft., in the building known as '**Florence**' on 25/09/2015. At the time of booking of the said flat, the respondent had promised to give possession of the said flat on or before 31st December 2018. Based on the said



representation, the complainants have booked the said flat. Thereafter on mutual understanding, the complainants booked another flat No. 73, adm. 1340 sq.ft. carpet area in the building known as 'Rozzane' on 29/03/2016 for a total consideration amount of Rs.2,54,94,250/- and the initial amount paid of Rs.53,20,650/- paid for booking of the earlier flat was adjusted for booking of the new flat. The respondent has issued the allotment letter on 30.3.2016 wherein no date of possession was mentioned. The respondent thereby violated the provisions of section-3 of the MOFA, which amounts to unfair trade practice.

4. Further, the respondent has collected 20% of the flat consideration, but not executed the agreement for sale and thereby violated the provisions of section-4 of the MOFA and even under section-13 of the RERA. Since booking there is no progress in the building and therefore on 25.3.2017, the complainants sought the cancellation and refund of the amount paid by him to the respondent and the respondent had agreed to refund the amount without any deduction. In the event the complainants opted to exit from the project. Thereafter, in the month of October 2017, the respondent again agreed to refund of Rs.45,44,682/- after deduction of service tax amount and brokerage. However, the complainants objected the said deduction. The respondent while registering this project with MahaRERA has disclosed the proposed date of completion of this project as 31.5.2023 and revised as 31.5.2024. The respondent has paid loss to the complainants vide changed statement and misrepresentation with regard to the date of completion of the project hence the complainants are seeking refund under sections-12 and 18 of the RERA.

5. During the hearing, both the parties were directed to file written submissions within a period of two days. Accordingly, the complainants have filed their written submission on record of MahaRERA on 5.2.2020. But, the respondent failed to file the same within the stipulated period granted by MahaRERA and therefore, the MahaRERA has perused the oral submissions of the respondent during the hearing on 4.2.2020, when the respondent has stated that there is no agreement for sale and even no date of possession is mentioned in the allotment letter. Hence there is no violation of section-18 of the RERA.



6. The respondent further stated that it is ready to execute the agreement for sale. However, after deduction of tax amount paid by the complainants, it comes below 20% amount. However, if the complainants are seeking refund of the amount paid by them, then the refund is to be done in accordance with the booking application form / allotment letter issued with respect to the said booking.
7. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, by filing this complaint, the complainants are seeking refund of the amount paid by them to the respondent for violation of sections-12 and 18 of the RERA as the respondent has orally represented that the date of possession would be 31.12.2018 and the possession has not been given. The complainants therefore contended that the respondent has violated the provisions of section-12 of the RERA. In this regard, the MahaRERA has perused the provision of section-12 of the RERA which reads as under:

“12 – Where any person makes an advance or a deposit on the basis of the information contained in the notice, advertisement or prospectus, or on the basis of any model apartment, plot or building as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act.

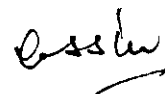
Provided that if the person affected by such an incorrect, false statement contained in the notice, advertisement or prospectus or the model apartment, plot or building as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment alongwith interest at such a rate as may be prescribed and the compensation in the manner provided under this Act.”

8. On perusal of the aforesaid provision of section-12 of the RERA, it clearly provides that when any person makes an advance or deposit on the basis of information contained in the advertisement or prospectus. However, in the present case, it is not the case of the complainants that the respondent has provided the date of possession of their flat in the advertisement/prospectus



and therefore, the provision of section-12 cannot be made applicable. Moreover, the aforesaid provision of section-12 cannot be made applicable retrospectively as the booking was done prior to the commencement of the RERA.

9. With regard to the claim of the complainants under section-18 of the RERA, it will come into effect if there is any agreed date of possession mentioned in the agreement for sale / allotment letter is over and admittedly, in the present case, there is no agreement for sale showing any agreed date of possession nor any date of possession is mentioned in the allotment letter. Therefore, the complainants cannot seek relief from MahaRERA for violation of section-18 of the RERA and the MahaRERA cannot grant any relief as sought by the complainants under the provisions of sections-12 and 18 of the RERA.
10. In the present case, prima facie, it appears that the complainants have paid an amount of Rs.53,20,650/- out of the total consideration of Rs.,2,54,99,250/- which seems to be more than 10% amount and therefore, the only relief the complainants can be given is under section-13 of the RERA.
11. In view of the aforesaid facts, the MahaRERA directs both the parties to execute the registered agreement for sale within a period of two months from the date of this order, failing which the amount paid by the complainants be refunded in accordance with the terms and conditions of the allotment letter / application form.
12. With the above directions, the complaint stands disposed of.



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