

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

Complaint No. CC005000000022458

Mr. Kedar Shah

.... Complainant

Versus

M/s. Dreamworld Landmark LLP

..... Respondent

Project Registration No. P52100000985

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

Complainant appeared in person.

Adv. Abhijeet Mangade appeared for the respondent.

ORDER

(2nd January, 2020)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to refund the amount paid by him under Section-18 of the Real estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA") in respect of booking of a flat in the respondent's project known as "**Godrej Greens**" bearing MahaRERA registration No. P52100000985 situated at Pune.
2. This complaint was heard by MahaRERA and the same was transferred to the Ld. Adjudicating Officer, MahaRERA on 1st March, 2019. However, the matter is again transferred to MahaRERA by the Adjudicating Officer for re-hearing and the final decision.
3. Accordingly, this matter was heard finally today when both the parties appeared and made their submissions. It is the case of the complainant that, he had booked the said flat for Rs. 34,98,150/-. Initially, the booking for the said flat was done on 14/04/2017 and an allotment letter was issued on 03/11/2017. At the time of booking, the complainant had paid an amount of Rs. 3,79,950/-. However, due to financial issues / difficulties, he decided to cancel the said booking and before execution of agreement for sale, he

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sought cancellation of the said booking in the year 2018 and refund of the entire amount. However, till date the respondent has not accepted the same and money is not refunded to the complainant. Hence, the complainant has filed this complaint seeking reliefs as prayed for in his complaint.

4. The respondent filed its reply and disputed the complainant and requested for dismissal of this complaint on the ground that, the complaint is based on false and frivolous ground and therefore, the same is dismissed. The respondent further stated that, as per clause No. E and F of the application form / allotment letter signed by both the parties, the booking amount paid by the complainant stands forfeited if the complainant / allottee fails to execute the agreement for sale within the stipulated period. The complainant has signed the said application form after reading the terms and conditions mentioned in the same. Therefore, the complainant cannot claim refund of the amount by filing this complaint.
5. The respondent further stated that, the complainant is trying to avoid his contractual obligation by raising issue of medical reason and sought cancellation which is nothing but concoct story. Even the grounds sought by the complainant for cancellation of the said booking are also not maintainable. The respondent sought details of the hospital report to verify the actual facts. The said facts have been suppressed by the complainant while filing this complaint. Further, the complainant has booked the said flat on 14/04/2017 for a total consideration amount of Rs. 34,98,150/- and has paid an amount of Rs. 1,00,000/- towards the token money and thereafter, he made subsequent payment. Thereafter, through E-mail dated 09/11/2017, the complainant was called upon to execute the agreement for sale.
6. However, he has not come for execution of agreement and therefore, again on 13/01/2018 pre-termination letter was sent to the customer. The respondent has shared draft agreement for sale on 12/05/2018 by giving



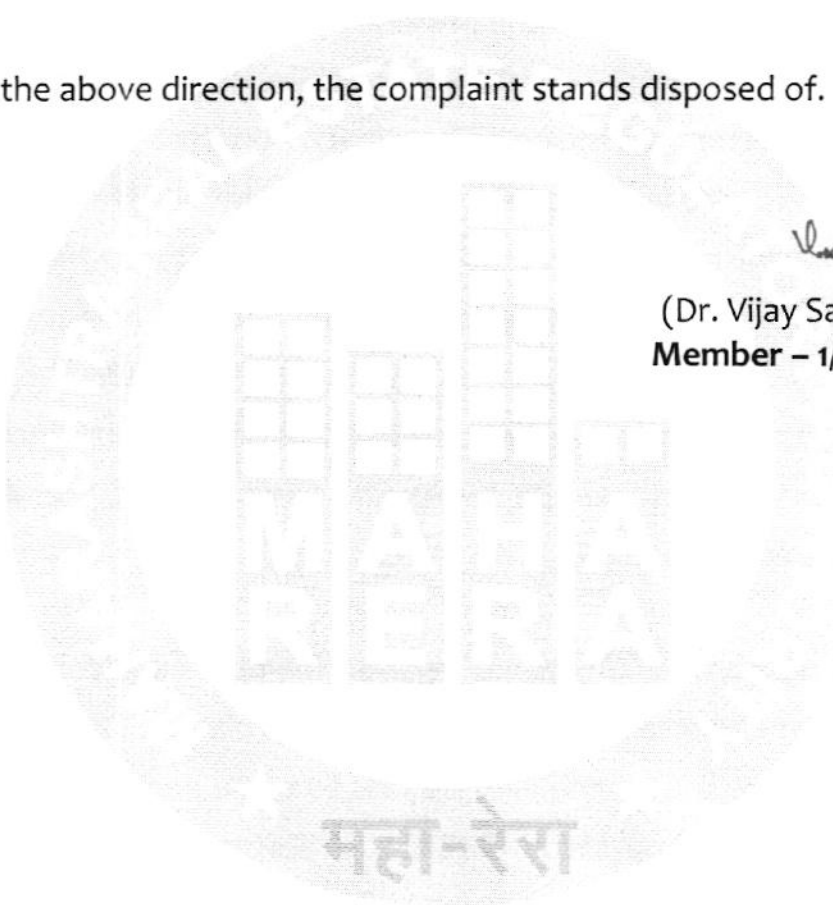
details of payment of stamp duty and registration charges. The complainant has sent the e-mail for cancellation of the booking on 29/05/2018 which has been replied by the respondent. The respondent stated that, it has sent the e-mail dated 19/06/2018 informing the complainant about the procedure of cancellation in terms of application form / allotment letter. Hence, it prayed MahaRERA for dismissal of this complaint.


7. The MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case, the complainant has booked the said flat in the month of April 2017 by signing booking / application form. The allotment letter was issued on 03/11/2017. Admittedly, there is no agreement for sale entered into between the complainant and the respondent and the complainant has paid an amount of Rs. 3,79,950/- to the respondent. The complainant has sought cancellation of the said booking through e-mail dated 29/05/2018 on medical emergencies in his family. The respondent has alleged that, it is not liable to refund the said amount since, the same has been forfeited as per the terms and conditions of the allotment letter/ booking application.
8. In this regard, MahaRERA has perused the terms and conditions of the said the allotment letter/ booking application. In clause of E and F of the same, it is mentioned that, if the allottee fails to come and execute the agreement for sale within 30 days from date of such allotment letter, then the promoter shall be fully entitled after giving sufficient notice to the applicant / allottee to cancel the allotment / booking and to forfeit the earnest money/booking amount.
9. In the present case, prima facie, it appears that, draft agreement has already been sent to the complainant on 12/05/2018. However, the complainant failed to come and execute the agreement for sale. Therefore, the respondent was required to issue notice for cancellation of the said allotment. However, no such notice was given by the respondent. The draft

agreement for sale sent to the complainant is a RERA complied agreement prescribed under the rules. As per clause No. 18 of the said draft agreement, since the complainant has refused to sign draft agreement for sale the respondent is liable to refund the amount paid by complainant without any interest.

10. In the light of these facts, the respondent is directed to refund the amount paid by the complainant without any interest and compensation.

11. With the above direction, the complaint stands disposed of.




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