

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

Complaint No.CC006000000100252

Mr. Ganesh Gupta

.... Complainant

Versus

M/s. Goodwill Properties Pvt. Ltd.

M/s. Edelweiss Global Wealth Management Ltd.

.... Respondent

Project Registration No. **P51900001665**

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

Adv. Kavin K. Bookseller appeared for the complainant.

Adv. Kamini Pansare appeared for the respondent.

ORDER

(10th February, 2020)

1. The complainant has filed this complaint seeking refund of the amount paid by him to the respondents alongwith interest and compensation under section-18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA") with respect to the booking of a flat in the respondents' project known as "**Lifescapes Aquino**" bearing MahaRERA registration No. **P51900001665** at Prabhadevi, Mumbai.
2. This complaint was heard finally on 3rd February, 2020, when both the parties sought time to settle the matter amicably and accordingly the parties were directed to settle the matter within a period of one week and file consent terms. However, no settlement has been taken place between the parties within the stipulated period granted. Hence, the matter is decided on merits.
3. It is the case of the complainant, that he had booked the said flat for a total consideration amount of Rs. 7,20,60,000/- by signing the booking application form dated 30/06/2016. At the time of booking, he had paid an amount of Rs. 51,75,000/-. However, the respondents have not executed the registered agreement for sale with him. While booking of the said flat, the respondent No, 1 had agreed to handover possession of the flat within a period of one

and a half year. However, there was no progress in the construction of the said project. Hence, the complainant sent an e-mail to the respondent-promoter and requested for cancellation of the said flat.

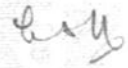
4. Accordingly, the respondent No. 1-promoter agreed to refund of the payment made by the complainant after forfeiture of Rs. 13,26,999/-. The complainant has objected to the forfeiture of money. However, no action was taken by the respondent-promoter and therefore, the complainant sent a letter dated 12/12/2018 to the respondent for cancellation of the said booking and refund of the entire amount. However, till date no action has been taken by the respondent. Hence, the complainant stated that the respondents are harassing the complainant, despite cancellation of the said flat and has not refunded the amount. The respondents have cheated the government by not depositing the taxes amount collected from the complainant. Hence, the complainant has filed this complaint under Section-18 and 19 of the RERA.
5. The present complaint has been filed against the respondent No. 1-promoter and respondent No. 2 who is a real estate agent. The respondent No.1 on the other hand, has filed its reply and disputed the claim of the complainant on the ground that booking application provides for forfeiture of booking amount and therefore, the said amount was forfeited. The respondent No.1 therefore stated that, there is no violation of sections-18 and 19 of the RERA as alleged by the complainants.
6. It further stated that it is diligently putting genuine efforts in carrying out the construction work of the project and ready to complete the project as per the revised completion date mentioned in the MahaRERA and as on date, 61% construction work has completed in the project. The respondent No.1 further stated that as per the terms and conditions prescribed in the booking application signed by the complainants, it has clearly agreed that the

amount therein is not refundable and therefore, the claim of the complainants for refund is not maintainable.

7. The respondent No.2 is the real estate agent, who has also filed reply on record of MahaRERA and stated that the MahaRERA has no jurisdiction to entertain the present complaint against the respondent No.2 as it is not real estate agent, registered under the RERA as real estate agent. Further, the complainant had paid the booking amount to respondent No.1 and it has not received any money from the respondent No.1. Moreover, there is no agreement executed between the complainant and respondent No.2 and hence, no relief can be granted against it.
8. MahaRERA has examined the arguments advanced by both the parties as well as record. In the present case, the complainant is seeking refund of the booking amount under sections-18 & 19 of the RERA. The complainant has alleged that there is no progress in the construction work and hence, he sought cancellation of the said booking. Admittedly, there is no allotment letter issued in favour of the complainant or any registered agreement for sale has been executed between the complainant and respondent No.1.
9. In this regard, the MahaRERA feels that the provision of sections-18 & 19 of the RERA will come into effect, if there is an agreement for sale entered into between the allottee and the promoter. However, in the present case, there is no agreement for sale. Hence the MahaRERA feels that there is no violation of sections-18 & 19 of the RERA as alleged by the complainant.
10. Moreover, the MahaRERA also feels that there is no provision under RERA to grant refund of the booking amount and therefore, in absence of the agreement for sale the parties are governed under the booking application form.

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11. In the present case, the MahaRERA has also observed that the complainant has booked the said flat for a total consideration amount of Rs.7,20,65,000/- and paid the amount of Rs.51,75,000/- and therefore, no relief under section-13 can be given as the amount paid by the complainant is less than 10%.
12. In view of the aforesaid facts, MahaRERA does not find any merit in the complaint. Further, the said booking was done prior to the year 2016, i.e. before the provisions of RERA came into effect and the complainant has not made out any case to grant relief since there is no false promises given by the respondent No.1.
13. In view of the above, the MahaRERA directs the respondent to refund the amount as per the booking application form signed by the complainant. The relief sought by the complainant against the respondent No.2 stands rejected.
14. Accordingly, the complaint stands disposed of.


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