

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

1. Complaint No. CC006000000282180

Rupesh Jaikaran Deshbhratar

... Complainant

Versus

Ruparel Infra & Reality Pvt Ltd.

... Respondent

Along with

2. Complaint No. CC006000000374973

1. Rakesh Menon

2. Ms. Monisha Nair

... Complainant

Versus

Ruparel Realty

... Respondents

MahaRERA Project Registration No. P51800013701

Coram: Shri. Mahesh Pathak, Hon'ble Member - I/MahaRERA.

The complainant at Sr. No. 1 appeared in person.

Ld. Adv. Vaibhav Choudhary appeared for the complainant at Sr. No. 2.

Ld. Adv. Dhvani Joshi appeared for the respondent.

ORDER

(Monday, 30th September 2024)

(Through Video Conferencing)

1. The complainants above named have filed these 2 separate online complaints on 28-03-2023 and 27-03-2023 respectively before the MahaRERA mainly seeking directions from MahaRERA to the respondent - promoter for refund of the entire money paid by them , along with interest, and compensation for mental agony as prescribed under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the

booking of their respective flats (as mentioned in the table below) in the respondent - promoter's registered project known as "Ruparel Optima Ph I" bearing MahaRERA registration No. P51800013701 located at Borivali, Mumbai (hereinafter referred to as the said project).

2. These complaints were clubbed together and heard by the MahaRERA on several occasions and the same were heard finally on 04-06-2024 as per the Standard Operating Procedure dated 12-06-2020 issued by the MahaRERA for hearing complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing. On the said dates of hearings, the parties have appeared as per their appearances recorded in the Roznamas and made their respective submissions. The MahaRERA heard the submissions of the parties as per their appearances and also perused the available record.
3. After hearing the argument of both parties, the following Roznama was recorded in these complaints on 04-06-2024.

"Both the parties are present. The respondent has filed its reply to the complaint at Sr. No. 16 (CC006000000282180), however, it has not filed its reply in the complaint at Sr. No. 22 (CC006000000374973). The complainants have filed these complaints for refund as per the allotment letters, the dates of which have been recorded in the previous Roznama. The complainant in Sr. No. 16 (CC006000000282180) has contended that the allotment letter was issued in July 2017, however, as the number of floors were increased in July 2019, he did not make the further payments as he did not want to proceed with the booking. Therefore, the respondent issued a termination letter in July 2019 and forfeited the entire amount as per the clauses of the allotment letter,

according to the respondent. The complainant at Sr. No. 22 (CC006000000374973) has contended that the booking was done in January 2020 but because of Covid-19 pandemic and his worsened financial situation, he informed the respondent in July 2020 of his intention not proceed with the allotment. Therefore, the respondent terminated the allotment in August 2020 and forfeited the entire amount as per the clauses of the allotment letter. In view of the above, the respondent may file its written arguments in Sr. No. 22 within a period of 2 weeks i.e. by 18-06-2024 along with written arguments and is further directed to file its reply along with written arguments in the complaint at Sr. No. 16 by the said date. The complainants may file their written arguments in Sr. No. 16 and rejoinder along with written arguments in Sr. No. 22 within a further period of 1 week i.e. by 25-06-2024. Accordingly, both the matters are reserved for orders suitably after 25-06-2024 based on the arguments of both the sides as well as reply, rejoinder and written arguments filed in the complaints."

4. However, despite specific directions being issued in the hearing held on 04-06-2024, both parties have failed to upload any document/s after the last hearing date i.e. on 04-06-2024. Hence, the MahaRERA has perused the available record.
5. The complainants by filing these 2 separate online complaints have prayed for refund, along with interest and compensation for mental agony. The details of the flats booked by them, dates of agreements for sale, dates of possession, total consideration, and consideration paid are as per the table given below -

Sr. No.	Details of the Flat	Date of	Relief
Complaint No.	Booked	Agreement	
Complainant	Total Consideration	for Sale	

names	Consideration Paid	Date of Possession	
Serial no. 1 CC006000000282180 Rupesh Jaikaran Deshbhratar	Flat No. 1101 on the 11 th Floor, Tower 2, B wing Total consideration - 57,00,000/- (as per the reply of the respondent) Paid- 2,94,975/- (as per receipt)	31-07-2017 (allotment letter) The date of possession is not mentioned	Refund, along with interest, and compensation for mental agony.
Serial no. 2 CC006000000374973 Mr. Rakesh Menon & Ms. Monisha Nair	Flat No. 2304 on the 23rd Floor, Building 2, Total consideration - 54,90,000/- (as per the reply of the respondent) Paid- 2,71,755/- (as per receipt)	20-01-2020 (booking application form) The date of possession is not mentioned	refund along with interest

6. It is the case of the complainants at serial nos. 1 and 2, that they have purchased the said flats in the respondent registered project for which they had paid substantial amounts to the respondent as mentioned in the table at para-no. 5 above. The complainant at serial no. 1 alleged that the respondent was supposed to construct the building of 22 floors. However, till 2019, nothing happened by virtue of demolition of the slum area. Moreover, the respondent continuously raised the demand for registration and outstanding payments. Furthermore, the

said complainant was astonished that the respondent had updated on the MahaRERA website that the building would be of 42 floors rather than 22 floors. However, the same was not intimated to the said complainant. In the meantime, the respondent terminated the said flat booking along with forfeiting the monies paid by the complainant at serial no. 1 towards the said flat. Hence, being aggrieved by the said action on the part of the respondents the complainant prayed for refund, along with interest, and compensation for mental agony in the present proceeding.

7. Additionally, the complainants at serial no. 2 have submitted that in the month of March 2020, a nationwide lockdown was announced to curtail the spread of the global Covid-19 pandemic due to which they faced several financial hardships. Hence, they were forced to cancel the said booking. However, the complainants informed the respondent of their inability to raise a home loan and make further payments towards the said purchase vide email dated 24/07/2020. Thereafter, they requested the respondent to cancel the said booking and refund the booking amount. However, the complainants were astonished as they received an email dated 13/10/2020 from the respondent informing them that all the amounts paid by them would be forfeited. The said forfeiture is illegal, as they have not entered into any registered agreement for purchase of said flat. Hence being aggrieved by the said action of the respondent, the complainants sent a legal notice dated 24-09-2021 which was duly received by the respondent (demanding the booking amount) but despite receiving the said notice the respondent failed to revert to the same nor it refunded the booking amount. Hence, being aggrieved by the said action on the part of the respondents the complainant prayed for a refund along with interest.

8. The respondent has filed its reply at serial nos. 1 and 2 on record of MahaRERA on 20-03-2024 and 04-06-2024 respectively. The respondent has refuted the contentions of the complainant by filing its reply. It stated that the said flats were allotted to the complainants vide booking application form and cost sheet dated 30-04-2017 (sr. no. 1) and 20-01-2020 (Sr. no. 2) with allotment letter dated 31-07-2017 (Sr. no. 1) and dated 29-02-2020 (sr. no. 2) for the terms and conditions contained therein. However, both the complainants failed to adhere to the said terms and conditions mentioned in the said allotment letters. Both the complainants are defaulters in making the said payment as per the terms and conditions. It is pertinent to note that in sr. no. 1, the complainant's contention for increase in the number of floors is denied by the respondent, as the termination has been done due to non-payment of consideration as per the said allotment letter. Also, the same is filed after 4 years from the date of termination. Hence, on this ground, the present complaint is not maintainable. Moreover, sr. no 1 of clause 10 of the said allotment letter expressly reserves the right of the respondent to amend the plan, raise additional floors, construct adjoining structure, etc. and further provides that the allotment shall stand terminated if the complainant does not agree to the said terms. The complainant has failed to prove violation of the legal or contractual obligations. Despite, repeated demands/reminders in sr. nos. 1 and 2, both the complainants have failed to pay the consideration amount as per the said allotment letters/cost sheet. The complainants have only paid a certain amount, thereafter they have not paid as per the said schedule. Further, in sr. no. 1, on 08-01-2018 vide its letter, the respondent has issued a written demand to the complainant for registration of the agreement for sale for the said flat and in accordance with the letter of allotment. The respondent also raised a demand letter dated 25-08-2018, calling upon the complainant to pay outstanding taxes i.e. MVAT for an amount of Rs. 2,822/- due and payable on or before 31-08-2018. Several reminders were

given with respect to the same and also a reminder was given for stamp duty and registration charges increase by 1% as per the government norms. However, the complainant failed to pay outstanding amount and all the pending dues as per the said contract between them. Therefore, the respondent vide its termination letters. Moreover, as per clause 3 in sr. no. 1 of the said allotment letter, the complainant's failure to make timely payments justifies the forfeiture of the amount paid. Additionally, the complainant is not entitled to refund due to their violation of the agreed terms and conditions by delaying payments for approximately two years before filing the complaint. Notably, on request of the complainant, the respondent, by letter dated 14-12-2018 granted the complainant permission to mortgage the said flat and secure financial assistance. The complainants have also failed to produce any proof as and when requested by the respondent. Further, the complainants have failed to file the present complaints within the limitation period. Therefore, the respondent prayed for dismissal of these complaints with costs.

9. The complainant at serial no.1 has uploaded his rejoinder on the record of MahaRERA on 11-05-2024 stating that in July 2019, due to some medical complexities his spouse was hospitalized, hence, he was not able to address his grievances. Further, he stated that throughout this span of four years, he endeavored to obtain reimbursement from the respondent through various channels. Despite initiating direct conciliation proceedings, there was no reciprocation from the respondent. Furthermore, a legal notice was dispatched to the respondent, however, the respondent failed to revert to the legal notice. Further, he explained the sequences email correspondence during the conciliation process. He stated that during the initial conciliation hearing held on 22-09-2023, the respondent requested proof of email communications, which was promptly provided to it. The respondent indicated that it would review the

communications and provide a solution following its management's perspective. However, during the subsequent conciliation hearing held on 05-10-2023, the respondent outrightly refused to conciliate the matter and redirected the case to regular for hearings, indicating a clear intention to prolong the proceedings. This conduct of the respondent shows that the respondent aims to delay resolution, hindering his ability to promptly retrieve his rightfully earned funds and attain justice. The complainant further mentions clause 10 of the allotment letter which describes carrying out amendments in the plan, however, he has stated that the respondent cannot keep him in the dark about the increase of many floors which will cause loss to the allottee's trust as the sudden amendment made it doubtful about the possession of the flat on the given time. Furthermore, he stated that as per the demand raised by the respondent, the payments were made. Furthermore, he submitted that the respondent's representative mentioned the subvention scheme which was to be availed from the bank selected by the respondent. Hence by agreeing to that, the complainant requested the sanction letter for the loan from the bank chosen by the respondent which was provided only on 16-01-2019. The sanction letter and the increase in the number of floors were subjects of discussion between the complainant and the respondent. However, amidst these discussions, the respondent terminated the flat booking and forfeited the entire amount. Hence, he prayed to allow the said complaint.

10. The complainants at serial no.2 uploaded written arguments on the record of MahaRERA on 03-06-2024 reiterating the facts already mentioned in the complaint.
11. The MahaRERA has examined the rival submission made by all the parties concerned and also perused the available record. In the present case, the

complainants herein by filing these complainants under section 31 of the RERA have approached the MahaRERA mainly seeking refund of the entire money paid by them (details as mentioned in the aforesaid para-no. 5) to the respondent along with interest and compensation under the provisions of the RERA.

12. The complainant at sr. no. 1 has alleged the non co--operation of the respondent in conciliating the matter with him before the Conciliation Forum and also for change of plan without his consent (by increasing the floors of the building). The complainants at sr. no. 2 have mainly cited the personal financial issues. On these grounds both these complainants have sought refund of the entire money paid by it along with interest and compensation under the provisions of the RERA.

13. The respondent promoter has assailed the aforesaid claims agitated by the complainants in their online complaints and has contended that the complainants are the defaulters and have failed to pay the outstanding dues as per the agreed terms of the said bookings and have also failed to come forward for execution of registered agreements for sale. Due to such default on the part of these complainants, it has terminated the said allotments done in favor of the complainants and has forfeited the entire money paid by them as per the terms and conditions of the allotment letters issued to these complainants. Hence, it has prayed for dismissal of these complaints.

14. From the aforesaid submissions made by both the parties it is amply clear that there is no agreement for sale duly signed by the parties herein showing any agreed dates of possession. Admittedly, there are allotment letters duly issued on 31-07-2017 and 29-02-2020 respectively, in favour of these complainant,

Moreover, the said booking was done in the year 2017 and 2020 by signing the booking application forms. By virtue of the said booking, the said complainants have paid an amount of Rs.2,94,975/- and Rs. 2,71,755/- (respectively) out of the total consideration amount of Rs. 57,00,000/- (in both the matters), which is not more than 5% of the total consideration value of the said flats. Admittedly, no specific date of possession is mentioned in the said booking application forms signed by both the parties, which has ever lapsed. Hence, in this case, the MahaRERA prima facie feels that there is no violation of section 18 of the RERA by the respondent due to which the prayer of the complainants for refund along with interest and compensation could be considered favorably by the MahaRERA under section 18 of the RERA.

15. Furthermore, the complainants have not cited any facts for violation of section 12 of the RERA by the respondent, whereby the respondent has given any false notice or advertisement based on which they have booked the said flats and suffered from any loss. Hence, the claim of refund along with interest is devoid of merits under section 12 of the RERA.
16. Admittedly, the complainants at sr. no. 2 have sought cancellation of their booking due to their own financial difficulties during the Covid-19 pandemic. The said fact was informed to the respondent by the said complainants through an email when the respondent has raised demands for further payments. The said fact has not been denied by the said complainants; however, they have just objected to the forfeiture clause mentioned in the said allotment letter merely contending that the same is a unilateral clause and the same cannot be acted upon.
17. In this regard, it is pertinent to note that as far as the complaint at sr. no. 2 is

concerned, admittedly, the complainants have failed to make the further payments towards the said booking due to their own personal difficulties. Thereby they have violated the provisions of section 19(6) of the RERA. Hence, they cannot be permitted to seek refund of the entire amount paid by them along with interest by citing such reasons.

18. As far as the complaint at sr.no. 1 is concerned, as stated above, the said complainant has failed to prove any violation of sections 12 and 18 of the RERA by the respondent (as stated hereinabove). However, it appears that the said complainant has alleged violation of section 14 of the RERA by the respondent promoter. He has contended that the respondent has changed the plan without obtaining his consent as provided under section 14 (2) of the RERA. However, on bare perusal of the online complaint filed by the said complainant, it appears that the said complainant has not submitted any iota of evidence on record of MahaRERA to substantiate his contentions about violation of section 14(2) of the RERA. Hence, the MahaRERA is not inclined to accept the violation of section 14(2) of the RERA by the respondent as alleged by the complainant. Moreso, there is no explicit provision under section 14(2) of the RERA, which permits the allottee to seek refund in case of any violation of the said provisions of the RERA.

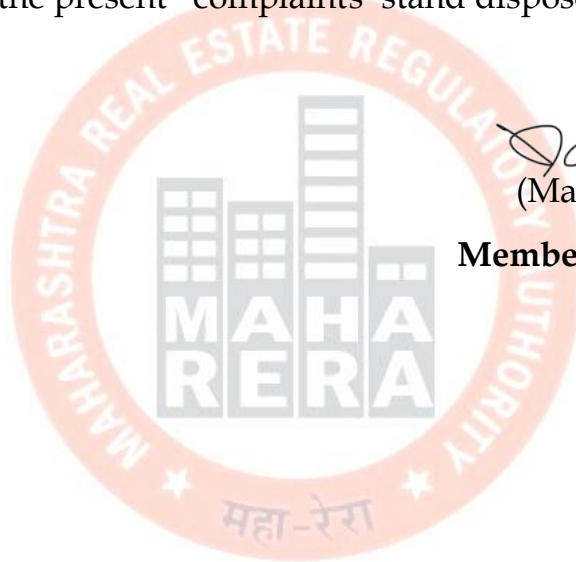
19. In addition to this, it is pertinent to note that the respondent on account of the non-payment of outstanding dues has issued termination notices to these complainants on 12-07-2019 (in sr. no. 1) and on 13-10-2020 (in sr. no.2) and has already cancelled the said bookings done by the complainants. However, while cancelling the said booking, it seems that the respondent has forfeited the entire 5% booking money paid by these complainants towards the said booking by virtue of the cancellation clause mentioned in the said allotment

letters.

20. In this regard, it is pertinent to note that the MahaRERA has recently issued an Order No. 35 /2022 dated 12-08-2022 with respect to the prescribed format of allotment letter, which permits the promoter to forfeit 2% amount in case of any cancellation done by the allottee. Although the aforesaid MahaRERA order is issued recently, however, earlier there was no prescribed format of allotment letter issued by the MahaRERA. Now the settled principle for cancellation of the booking (before the execution of agreement for sale is executed) has been prescribed by the MahaRERA by way of such order, the entire forfeiture of the amount by the respondent (5% of the total consideration amount) is not in consonance with the said circular dated 12-08-2022 issued by MahaRERA but since this project is registered with MahaRERA, the said MahaRERA Order can be made applicable while deciding such cases on merits. Hence, in case of cancellation by the complainants allottees, the refund shall be processed by the respondent as per the said MahaRERA order no. 35 of 2022 dated 12-08-2022.
21. Further, as per the webpage information uploaded by the respondent on the MahaRERA website, the respondent has not uploaded any deviation report to the said Order No. 35 dated 12-08-2022 issued by the MahaRERA.
22. In view of the above, since this project is registered with the MahaRERA, the said MahaRERA Order can be made applicable while deciding such cases on merits.
23. In view of these facts, the following order is passed:
- a) These complaints are partly allowed.

- b) The claim of interest sought by the complainants along with the entire refund amount stands rejected in view of the observations made in aforesaid para nos.14,15 and 18.
- c) The respondent is directed to refund the money paid by the complainants towards the consideration of the said flats without any interest, after deducting 2% of the total consideration (value) of the said flat (excluding the statutory dues paid to the government/brokerage if any) within a period of 45 days from the date of this order.

24. With these directions, the present complaints stand disposed of.



Mahesh Pathak
(Mahesh Pathak)

Member - 1/MahaRERA