

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

COMPLAINT No: CC006000000001233

Mr. Sanjiv Gill

..... Complainant

Versus

M/s. Damodar Suruchi Developers

MahaRERA Registration No. P51800007275

..... Respondent

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

The complainant appeared in person.

Adv .Ashish Venugopal appeared for the respondent

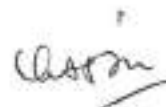
Order

(6th April , 2018)

1. The complainant has filed this complaint seeking directions from this Authority to the respondent to refund the booking amount in respect of booking of a flat bearing No. 705, 7th Floor, B-wing in MahaRERA registered project bearing No. P51800007275 known as "UK Iridium" at Kandivall East, Mumbai. The complainant had booked one studio apartment in respondent's project on 28th May 2017 by paying an amount of Rs. 1 lakh. On 19/9/2017, he has sent an email to the respondent asking for refund of his money due to personal reasons. But, the respondent didn't respond to his email. At the time of booking of the flat, the complainant was not knowing that the booking amount is non refundable. However, he signed the booking form for subvention scheme and the additional amount was payable after issuance of commencement certificate. Hence, he prayed for refund of the booking amount.

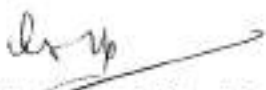
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2. This matter was heard on various occasions and same was finally heard today. During the hearing, the respondent has disputed the claim of the complainant and stated that the present complaint is not maintainable since there is no provision in RERA Act for refund of the booking amount. Further, **the complainant is not an allottee as per the definition of the section 2 (b) of the RERA Act, as he has neither been issued allotment letter nor any agreement for sale has been executed.** However, at the time of the booking of the said flat, the complainant had signed the application form wherein in clause No. 8.1, it is specifically mentioned that prior to the issuance of the allotment letter if the complainant wants to cancel the booking for any reasons, all money paid by him shall stand forfeited. Further, the complainant has cancelled the said booking due to his own personal reasons and not due to the default of the respondent. In view of the said facts, the respondent requested for dismissal of the present complaint.
3. Considering the rival submissions made by both the parties, this Authority feels that the Real Estate (Regulation & Development) Act, has come into effect from 1-5-2017 and the provisions of the said Act, Rules and Regulations are made application from that date. Admittedly, the complainant has booked the flat in the respondent's project after commencement of the RERA Act, 2016. As per the provisions of section 3 of the RERA Act, 2016, which reads as under:
- "3(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act."***
4. However, in the present case admittedly the respondent has registered the project with MahaRERA only on 17-08-2017 and the complainant had



booked the flat on 28-05-2017. It shows that the respondent has acted contrary to the provisions of Section-3 of the RERA Act and accepted the booking from the complainant without prior registration of the project with MahaRERA. Thus the action of booking of the flat by the respondent is void Ab Initio.

5. **There is no provision in the Act to forfeit the booking amount or a part thereof in case the parties do not sign the agreement.** A plain reading of **Clause No. 18 of the Model Form of Agreement**, prescribed in the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017, makes **it clear that if the parties fail to sign the agreement, the entire money paid by the allottees including the booking amount has to be returned to them without any interest.**
6. In view of these facts, this Authority feels that the complainant who has booked the flat after commencement of the RERA Act, 2016 is entitled to get his booking amount refunded without any interest. Hence, this Authority directs the respondent to refund the full booking amount of Rs. 1 Lakh (Rupees one lakh) paid by the complainant within a period of 30 days from the date of this order without any interest.
7. **The promoter is also liable to penalty under Section-59 (1) of RERA Act, 2016 for violating section-3 for booking the flat without first registering the project with MahaRERA. He is, therefore, directed to pay a penalty of Rs. 50,000/- with this Authority.**
8. With the aforesaid directions, the complainant stands disposed of.


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