

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

Complaint No.CC0050000000000255

1. Subhodh Shantilal Shah
2. Mrs. Shuti Subodh Shah

.. Complainants

Versus

Marvel Sigma Homes Pvt. Ltd., Pune. .. Respondent

**Coram : Shri S.B.Bhale
Hon'ble Adjudicating Officer**

**FINAL ORDER
28TH MARCH, 2018**

1. The Complainants have filed this complaint under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the **RERA Act**). It is alleged that they had booked the Flat No. 702 having carpet area admeasuring 157.37 sq. Mtrs. in the registered project of the Respondents named as "Marvel Cascad, Building D, Pune" situated at S.No.29, Hissa No. 6/1, 6/2 & 7/3 & S.No.28, Hissa No.3B/1 of village Balewadi, Tal. Haveli, District Pune. Accordingly, they entered into an agreement for purchase of aforesaid apartment from the Respondents under the registered Agreement, dated 12.10.2012. In view of that agreement, the total amount of consideration of booked Flat was Rs. 1,43,32,500/- in terms of that Agreement, the Respondents had agreed to deliver the possession of the same on or before 31.12.2014. Since the project was delayed, the Complainants served the notice to the

Respondents regarding termination of aforesaid agreement and claimed the refund. Despite of legal notice served upon them, the Respondents have failed to refund the amount received. Therefore, the have filed this complaint under Section 18 of the RERA Act.

2. It is contended by the Complainants that they have paid the entire amount of consideration, as agreed under the Agreement to the sum of Rs. 1,43,62,620.31 inclusive of stamp duty, service tax, TDS, extra work, VAT, bank charges, penalty, etc. Therefore, they are entitled to receive the aforesaid amount with interest and compensation under the provisions of RERA Act.
3. On material contents of the complaint of Complainants, my learned predecessor Hon'ble Member and Adjudicating Officer, MahaRERA, Mumbai has recorded the plea of the Respondents through their representative on 10.01.2018. However, the Respondents denied the claim of the Complainants, but failed to file any written submissions in defence or explanation.
3. In the above facts and circumstances of the case, following points arise for determination and I am going to record my findings thereon for the reasons recorded below.

POINTS

FINDINGS

- (1) Whether the Respondents have failed to deliver the possession of the Apartment booked by the Complainants

in the project stated above in terms of
the Agreement ? In the Affirmative

- (2) Whether the complainants are entitled
to claim refund of the amount paid
by them under the agreement to the
Respondents along with interest and
Compensation under the provisions
of RERA Act ? In the Affirmative
- (3) What order ? As per final order.

REASONS

6. Heard Mr. Milin Deshpade, representative of Complainants
whereas Mr. Karthik Dhanshekharan, authorized
representative of Respondents. Perused papers filed on
record.
7. It is argued by and on behalf of the Complainants that
the Complainants have paid the entire consideration of
Rs. 1,43,62,019.31 ps. Inclusive of service tax, VAT,
stamp duty, TDS, etc. As per the agreement, the
possession was to be delivered on or before
31.12.2014. However, since the Respondents failed to
deliver the same as agreed, and as the Complainants
have withdrawn from that project, they are entitled to
refund the amount alleged to have received by the
Respondents with interest + compensation. Further it
is submitted by Mr. Deshpande that the Complainants
are entitled to refund the entire claim to the sum of Rs.
2,19,58,396.16 Inclusive of rent agreed till 31.12.2017,
travelling cost, etc. Mr. Deshpande also invited my

attention towards the statement of accounts, which can be treated as claim statement and marked as Exh."A", and submitted that he has calculated the aforesaid amount by pointing out payment received to the Respondents from time to time. He also invited my attention towards the provisions of Section 72 of the RERA Act and claimed special compensation.

8. As against this, Mr. Karthik Dhanshekharan, the authorized representative of the Respondents denied all the aforesaid amounts except receipt of consideration amount of Rs. 1,43,62,620.31. However, he admitted the amount paid towards the service tax, VAT, TDS, etc. excluding amount of stamp duty of Rs. 7,51,625/-. Further he submitted that the Complainants are entitled to reimburse the amount of stamp duty.
9. From the arguments advanced on behalf of both the parties, and on perusal of the claim statement Exh.A, I can say that the interest or compensation has to be calculated under the provisions of RERA Act. In view of the provisions of Section 18(1b), "if the allottee wants to withdraw from the project, without prejudice to any other remedy available to return the amount received by the promoter in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act." On perusal of the claim statement Exh.A, it will be seen that the rate of interest calculated by the

Complainants is contrary to the provisions of RERA Act and the Rules made thereunder. Further in view of the provisions of Section 72 of the RERA Act, while adjudicating the quantum of compensation or interest, as the case may be, under Section 71, the adjudicating officer shall have due regard to the following factors, namely :-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (4) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

Even provisions of Section 71(3), the adjudicating officer may direct to pay such compensation or interest, as the case may be, as he thinks fit. In short, while reading the provisions of Section 71, 72 and Section 18 of the RERA Act, together with, it can be said that the compensation also includes the interest and vis-a-vis.

10. In this particular case, as stated above, the interest calculated by the Complainant vide Exh.A is not in accordance with the provisions of RERA and Rules framed thereunder. So they cannot claim such interest. Furthermore, as argued by Mr. Dhansekaran, the Complainant can reimburse the amount paid towards the stamp duty. However, it is a fact that the claim of

reimbursement of stamp duty will be in proportionate. The Complainant cannot get the reimburse of the entire amount. Under such circumstances, therefore, whatever loss which can be caused to the Complainant will have to be compensated by the Respondent. Considering the provisions of Section 18 of the RERA and the prescribed rules, it will be proper to calculated the amount of interest and compensation as under.

11. On perusal of the claim statement Exh A, it ca be seen that the Respondent has received the entire amount of Rs. 1,43,62,019.31 including service tax, VAT, TDS, extra work, and stamp duty. The amount of stamp duty and registration charges are worth Rs. 7,51,625/-. By deducting the aforesaid amount towards the stamp duty, the net amount received to the Respondent will be to the sum of Rs. 1,36,10,394/-. As stated earlier, the amount of Rs. 2,00,000/- will be included in the amount of Rs. 1,36,10,394/- as a compensation towards the loss of reimbursement of stamp duty. Thus the entire amount which the Complainants are entitled to receive from the Respondent is to the sum of Rs. 1,38,10,394/-. In addition, the Complainant is entitled to receive the cost of litigation of Rs. 5,000/- and Rs. 20,000/- towards compensation. Thus the total amount which the Respondents are liable to pay to the Complainants is Rs. 1,38,35,394/-. In view of the prescribed rules and the provisions of RERA, the rate of interest payable by the promoter to he Complainant-allottee shall be the State Bank of India's highest Marginal Cost Lending Rate (MCLR) + 2% above and in

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22.31

case if the aforesaid rate is not in use, it would be replaced by such bench mark Lending Rate which the State Bank of India may fix from time to time for lending to the general public. However, in view of the rules framed under the RERA, the rate of interest @ MCLR of State Bank of India, which is currently 8.05% + 2%. Thus the Complainants are entitled to receive the aforesaid amount with simple interest @ 10.05% p.a. Further the Respondents are directed to pay the aforesaid amount which is due and payable by them to the Complainant be returned along with the interest within the period of 30 days from the date of this order.

12. For these reasons and express provisions of the RERA Act, I am going to allow the complaint of the complainant while recording affirmative findings against Point Nos.1 and 2. Hence the order.

ORDER

1. The Respondents jointly and severally shall refund an amount of Rs. 1,38,10,394/- to the complainants with simple interest @10.05% p.a. within 30 days from the date of this order.
2. The Respondents jointly and severally shall also pay compensation of Rs. 20,000/- to the Complainants.

3. The charge of the aforesaid amount shall be on the Flat booked by the Complainants with the Respondents till the realisation of their claim.
4. On realisation of their claim, the Complainants shall execute the Deed of Cancellation of Agreement in favour of the Respondents at the Respondents' cost.
5. The Respondents shall pay cost of Rs. 5,000/- to the Complainants.

Pune
Date :- 28.03.2018

(S. B. Bhale)
Adjudicating Officer,
MahaRERA, Pune

28/3/18