

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

**Complaint No.CC005000000022205**

**Zarine Watson,**  
R/at : Orva Apartments, 1B,  
Almeida Park, Bandra (W),  
Mumbai-400050.

.. Complainant

**Versus**

**Marvel Dwellings Pvt. Ltd.**  
Office at 301-302, Jewel Towers,  
Lane No.5, Koregaon Park,  
Pune-411 001.

.. Respondent

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

**Appearance :-**

**Complainant : In person**  
**Respondent : Adv. Mane-Deshmukh**

**FINAL ORDER  
( 20<sup>th</sup> March, 2019 )**

1. It is the case of Complainant that she had booked a flat bearing No. 603, 6<sup>th</sup> floor in Building 'A' of "Marvel Ribera" complex located at Ghorpadi, Pune as described in the agreement, dated 07.11.2015. In terms of that agreement, the Respondents had agreed to hand over possession of booked flat on or before 30.06.2017. The total consideration of the booked flat was Rs. 4,66,75,000/-. On the date of

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agreement or prior to that, entire amount paid to the Respondents is Rs.5,44,57,132/-. The receipts of the amount paid to the Respondents stated above are on record at page No.50 to 56. The aforesaid payment is inclusive of stamp duty, taxes, etc. As the Respondents failed to hand over possession of the booked flat on or before 30.06.2017, the Complainant sent a letter, dated 21.02.2018 and thereafter notices dated 15.05.2018 and 22.06.2018. However, Respondents gave no response to the aforesaid letter and notices sent. As the possession is much delayed, the Complainant intends to withdraw from the project. Therefore, by this complaint, the Complainant has claimed refund of entire amount paid by her to the Respondents with interest and compensation under the provisions of the Real Estate (Regulation & Development) Act, 2016 ( hereinafter referred to as "RERA"), as he intends to withdraw from the same.

2. Plea of the Respondents was recorded on 18.02.2019 through representative. The Respondents denied the allegations made in the complaint. Further Respondents also filed on record written explanation to resist the complaint on 18.03.2019.

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3. It is the case of the Respondents that the Complainant has not come before this forum with clean hands. The agreement dated 07.11.2015 is registered under the provisions of Maharashtra Ownership Flats Act. As the agreement is under the provisions of aforesaid Act, the provisions of RERA cannot be made applicable to this complaint. Complainant is not the allottee under the

provisions of RERA. The MOFA Act is not repealed as yet. In view of the clause No.48 of the said agreement, only the Civil Court has jurisdiction to entertain the complaint and not any other forum. The Respondents are ready to hand over possession of booked flat to the Complainant as per the revised date of possession mentioned on RERA site in respect of the project. Further it is contended that the amount paid towards service tax, VAT, stamp duty, etc. shall not be treated as the amount received to the Respondents. The Respondents are entitled to the protection under Section 32 of RERA. If all allottees like complainant are withdrawing from the project, the entire project will be hampered. Therefore, the complaint is liable to be dismissed.

4. In the above facts and circumstances, following points arise for my determination and I am going to record my findings thereon for the reasons stated below.

#### POINTS

#### FINDINGS

- |     |  |                     |
|-----|--|---------------------|
| (1) | Whether the Complainant is entitled to refund of the entire amount paid by her to the Respondents towards booked flat, with interest and compensation, under the provisions of RERA.    ..    .. | In the Affirmative  |
| (2) | What order ? ..    ..    ..    ..  | As per final order. |

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### REASONS

5. Heard Adv. Mr. Manoj More for the Complainant, whereas Mr. Amit Patil, Adv. for Respondents. Perused the papers filed on record. At the beginning I would like to make it clear that the project wherein the Complainant has booked the flat under the agreement, dated 07.11.2015 can be treated as "ongoing project" in view of the proviso of Section 3 of the RERA. Admittedly, the Respondents had also registered this project with MahaRERA. Having regard to these facts and apart from the terms and conditions incorporated in the agreement, dated 07.11.2015, the complaint is governed under the provisions of Section 18 of RERA. By any terms incorporated in the agreement itself by both the parties, cannot oust or vest the legal jurisdiction. It is to the Enactment concern to vest the jurisdiction to entertain any complaint or dispute in between the parties. RERA being the special Enactment and Section 79 of same has barred the jurisdiction of Civil Court. For the facts noted above, this forum has the legal jurisdiction to entertain this complaint.

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6. As mentioned in the complaint, the payment made by the Complainant to the Respondent to the sum of Rs.5,44,57,132/-, the receipts are filed on record on page No.50 to 56 in proof. The Respondents have also not denied the aforesaid payment, except disputing the payment of Rs. 5,33,000/- towards brokerage. In fact, the agent concern who received the brokerage amount, is not a party to this complaint. Therefore, I feel it proper to minus the aforesaid amount paid towards the brokerage from the payment made i.e. Rs.5,44,57,132/-. After deducting the said

amount, it will come to the sum of Rs. 5,39,27,132/-. That amount is inclusive of stamp duty, taxes and all other cesses. As argued by Mr. Manoj More, Adv. for Complainant and even the documentary proof like receipts filed on record, it becomes clear that the entire payment is made one day before the registration of agreement. Had it been the fact that, the Respondents had handed over possession of the booked flat in terms of the agreement, there was no question of claiming the refund of amount, if any, towards stamp duty and all the other taxes and cesses. Admittedly, possession is much delayed in spite of receiving the entire amount at the time of agreement itself. Even after receiving the aforesaid amount, the Respondents did not care even to response to the letter, dated 21.02.2018 sent by the Complainant and subsequent notices dated 15.05.2018 and 22.06.2018. The aforesaid act and conduct of the Respondents is sufficient to justify the claim of Complainant for refund of entire amount with interest and compensation.

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7. As observed in the aforesaid para, the question is what will be the amount of refund with interest and compensation due and payable to the Complainant by the Respondents? Deducting the brokerage charges as referred earlier from the amount paid till date Rs.5,44,57,132/-, the actual amount alleged to have received to the Respondents is Rs. 5,39,27,132/-. The amount spent by the Complainant towards stamp duty is Rs. 28,00,500/-. As the Complainant intends to withdraw from the project, she can claim the refund towards the amount spent on stamp duty. However, that refund will be in proportionate and not the full. The



Complainant will not receive the amount more than Rs. 18,50,000/- towards the refund of stamp duty. Thus she will suffer the loss of about Rs. 10,00,000/- or more than Rs.9,00,000/-. That loss can be compensated by directing the Respondents to pay the compensation of amount of Rs. 14,00,000/-. If the amount spent by the Complainant towards stamp duty of Rs. 28,00,500/- is deducted from the amount of Rs. 5,39,27,132/-, it will come to the sum of Rs. 5,11,26,632/-. If the amount of compensation of Rs.14,00,000/- is added in the said amount, it will come to the sum of Rs. 5,25,26,632/-. Thus this will be the amount of refund with compensation, which the Complainant will be entitled to receive from the Respondents with interest under the provisions of RERA.

8. It is necessary to make it clear that in view of the provisions of the Section 48 of the Maharashtra Stamp (Amendment) Act, 2015, the Complainant can claim the refund of the amount spent towards the stamp duty within the period of five years since the date of agreement, dated 07.11.2015. If the Respondents fail to get cancelled the aforesaid agreement within five years from the date of agreement i.e. on or before 06.11.2020 after making the entire payment as ordered with interest, the Complainant will be deprived from claiming the refund of stamp duty. In case of such failure, the claim of Complainant to recover the balance stamp duty amount Rs.9,50,500/-. Therefore, in such event, it will be just to direct the Respondents to pay the aforesaid amount of Rs.9,50,500/- to the Complainant in addition to the amount shown above as due and payable with interest.

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9. In view of the provisions of the Maharashtra Rules, the Complainant is entitled to receive the interest at State Bank of India's highest Marginal Cost Lending Rate i.e. 8.70% + 2% above = 10.70% p.a. The Complainant is therefore, entitled to receive the interest on the amount of Rs.16,89,283/, which is due and payable towards the refund of amount paid by him to the Respondents. The Complainant is also entitled to receive cost of this complaint from the Respondents. I therefore, answer Point No.1 in the affirmative and proceed to pass following order.

### **ORDER**

- (i) The Respondents are directed to pay to the amount of Rs. 5,25,26,632/- to the Complainant, which is due and payable, with simple interest @ 10.70% p.a. since the date of amount received by them on time to time from the Complainant.
- (ii) The Respondents are directed to pay the amount which is due and payable as ordered within 30 days from the date of this order and continue to pay with interest as ordered till the realization of the entire amount.
- (iii) The charge of the due and payable amount as ordered be kept on the booked flat No.603, 6<sup>th</sup> floor, Building 'A' in the project of the Respondents named "Marvel Ribera" situated at

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Ghorpadi, Pune, and as described in the agreement, dated 07.11.2015.

- (iv) The Respondents are directed to pay Rs.50,000/- to the Complainant towards cost of this litigation.
- (v) The Complainant is directed to execute the deed of cancellation of agreement, dated 07.11.2015 in favour of the Respondents, at the cost of Respondents after realization of refund of entire amount, as ordered.
- (vi) In case of failure of the Respondents to fulfil the order of refund together with interest as ordered above in clause (i) on or before 06.11.2020 i.e. expiry of period of five years from the date of agreement, the Respondent is directed to pay Rs.9,50,500/- to the Complainant as balance refund of the stamp duty, in addition to the amount of refund.

Pune  
Date :-20.03.2019

*S.B. Bhale*  
20.3.19  
(S.B. Bhale)  
Adjudicating Officer,  
MahaRERA, Pune