

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

**Complaint No.CC005000000000363**

**Shakuntala Omprakash Zanvar .. Complainant**

**Versus**

**1. Vishwajeet Jhavar  
2. Nitin D. Nyati**

**.. Respondents**

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

**FINAL ORDER  
26<sup>TH</sup> MARCH, 2018**

1. The Complainant initially filed this complaint for compensation on account of delay in giving possession and delay for not giving the amenities which are agreed by the parties as per the agreement of purchasing the apartment from the proposed project "Marvel Izara" situated at Survey No. 4, Hissa No.2/1A and Survey No.21, Hissa No.4B/2/15 of village Undri, Tal. Haveli, District Pune. However, subsequently she conveyed her clear intention to withdraw from the project on the aforesaid grounds and claiming the interest and compensation under Section 18 of the Real Estate (Regulation and Development) Act, 2016 ( hereinafter referred to as the **RERA Act**).
2. On perusal of the papers, it seems that my learned predecessor Member and Adjudicating Officer, MahaRERA, Mumbai had recorded the plea of the Respondent Nos.1 and

*26/3/18*

2 on 10.01.2018. Both the Respondents pleaded not guilty and claimed to be tried. After recording the plea, it seems that Respondent No.1 had not filed any written submission or explanation, however the Respondent No.2 Shri Nitin Dwarkadas Nyati has filed written explanation on 09.02.2018.

3. The sum and substance of the complaint is that the complainant entered into an Agreement with the Respondents and booked a Flat bearing No. 503 in "A3" building at "Marvel Izara" in the year 2015. In terms of that Agreement, the Respondents were to hand over the possession of the said Flat on or before, June, 2017. She had already made the payment of amount under agreement to the Respondent to the extent of 70%. Despite of making the aforesaid amount and repeated requests, the Respondents failed to comply with the terms of the Agreement and therefore, she has filed this complaint and made her intention to withdraw from the said project.
4. The sum and substance of the written explanation of Respondent No.2 is that he is the land holder of certain land out of Survey No.4 and 21 situated at village Undri, Tal. Haveli, District Pune, whereon the project "Marvel Izara Phase No.1" is being implemented by the Respondent No.1. It is further alleged that there was Development Agreement between Respondent No.1 and Respondent No.2 in the year 2011. In view of the terms and conditions of that agreement, the entire liability remains with Respondent No.1 to complete the project and sell out the apartments, etc. and therefore, in view of that agreement, Respondent No.2

26.3.18



is nowhere concern with the apartment booked by the Complainant. Hence the complaint against Respondent No.2 is liable to be dismissed.

5. On the above facts and circumstances of this case, following points arise for determination and I am going to record my findings thereon as under.

#### POINTS

#### FINDINGS

- |     |  |                        |
|-----|--|------------------------|
| (1) | Whether the Respondents have failed To deliver the possession of the Apartment booked by the Complainant in the project stated above in terms of the Agreement ? .. .. . | ..In the Affirmative   |
| (2) | Whether the complainant is entitled To claim refund of the amount paid by her under the agreement to the Respondents under Section 18 of the RERA Act ? .. .. .          | .. In the Affirmative  |
| (3) | What order ? .. .. .   | .. As per final order. |

#### REASONS

6. In support of her claim, the Complainant has filed on record the statement of accounts regarding the amount paid by her to the Respondents against the Apartment booked by her in the project in question. For the sake of identification, the statement of accounts is marked as Exh. "A" and it will be the part and parcel of this proceeding in the form of evidence. In fact, the aforesaid statement of accounts is not disputed by both the Respondents though the Respondent

No.2 is claiming that he has not received that amount and no way he is promoter, so he shall not be fastened with the liability to pay that amount jointly and severally. The learned Advocate Mr. Temkar for the Respondent No.2 also argued in the same fashion denying the liability of Respondent No.2 to pay the compensation to the complainant under Section 18 of the RERA Act.

7. The statement of account referred above marked at Exh. "A" is the proof of evidence regarding the payment of amount made by the complainant to the Respondents from time to time against the booked apartment i.e. Flat No. 503 in "A3" bldg. There is no any otherwise reason to disbelieve the same in absence of contrary evidence. Therefore, I must rely on the same. On relying the statement of account, I can say that the complainant had paid the entire amount of Rs. 82,65,579/- (Rs. Eighty Two Lakhs, Sixty Five Thousand, Five Hundred & Seventy Nine only) towards the flat booked in the proposed project.
8. In order to consider the plea of the Respondent No.2, I must point out the definition of "promoter" as defined in Section 2(zk)(ii) of the RERA Act.

*"promoter" means :- a person who develops land into a project, whether or not the person constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or"*

2/6/24  
24.3.18



Further, Explanation of Section 2 makes it clear that;

*"For the purpose of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder."*

9. On the aforesaid definition and explanation, I can opine that the Complainant has nothing to do with the internal disputes of promoters and land owners regarding the development of the project agreed by them. Consequently, both the promoters and land owners shall be deemed to be the promoters and shall be jointly liable as such for the functions and de-functions specified. Thus the Respondent No.2 cannot escape from his liability pointing out the breach of agreement alleged to have been made by the Respondent No.1 while developing his land.

10. <sup>10/11/2018</sup> As the plea of the Respondents have been recorded under Section 18 of the RERA Act, which they have already been denied, they cannot point out the material pleadings of the complaint made by the complainant pointing out that the initial complaint was not under Section 18 of the RERA Act. Thus the fact remains that the Respondents have failed to deliver possession of

the apartment booked by the complainant within the time limit prescribed as per the agreement. It is also proved that against the booking of flat, she had made the payment to the sum of Rs. 82,65,579/- (Rs. Eighty Two Lakhs, Sixty Five Thousand, Five Hundred & Seventy Nine only) to the Respondents. In view of the provisions of Section 18 of the RERA Act, the promoters are liable to pay the amount stated above received by them to the complainant with interest. In view of the provisions and rules made thereunder, the respondents are liable to return the amount received from the allottee i.e. complainant in respect of allotment of the flat with interest at the standard rate. The rate of interest payable by the promoters i.e. Respondents to the allottee shall be the State Bank of India's highest marginal cost of Lending Rate + 2%. In case the State Bank of India's marginal cost of Lending 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. The rules framed under the RERA Act, the prescribed interest at the rate of MCLR of State Bank of India which is currently 8.05% + 2%. Thus the complainant or allottee is entitled to get the simple interest on the amount which is due and payable by the Respondents i.e. @ 10.05% p.a. Further the entire amount received by the Respondents shall be returned to the allottee with interest within the time period of 30 days from the date of this order along with applicable interest and compensation which becomes due and payable to the allottee.


24/12/2018

11. 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 the amount mentioned in the statement of accounts marked at Exh."A" to the complainant with simple interest @10.05% p.a. within 30 days from the date of this order.
2. The charge of the aforesaid amount shall be on the Flat booked by the Complainant with the Respondents till the realisation of her claim.
3. On realisation of her claim, the Complainant shall execute the Deed of Cancellation of Agreement in favour of the Respondents at the Respondents' cost.
4. No order as to costs.

Pune  
Date :- 26.03.2018

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