

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

Complaint No.CC005000000010901

Sunil Shriniwas Dharmadhikari .. Complainant

Versus

Pinnacle Vastunirman Pvt.Ltd. .. Respondent

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

FINAL ORDER

08th MAY, 2018

1. The Complainant has claimed the compensation and interest on the consideration paid by him to the Respondent under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the **RERA**). It is his contention that he had booked Flat No. 404 in the project of Respondent named "Pinnacle Neelanchan" in B Wing under the Agreement, dated 04.03.2015. In terms of this agreement, the Respondent has agreed to hand over possession of the booked flat along with other facilities, if any, as mentioned in the Agreement. Thereafter Respondent is in habit of changing the dates regarding handing over possession of the booked flat, etc. He further contended that under the agreement, he had paid the entire amount of Rs. 33,06,040/- out of the total consideration amount of Rs. 55,75,000/-. Further he contended that Respondent failed to hand over the possession despite of

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assurance given that he will hand over possession of the booked flat on or before December, 2017 vide letter, dated 17th December, 2016. It is his contention that the construction work of the project where he booked the flat is going slow and it will take more than 1.5 years, hence he wants to withdraw from the same claiming the relief of interest ^{and compensation} on the consideration amount paid by him to the Respondent ^{for} under Section 18 of the RERA.

2. The Respondent appeared before this forum. His plea was recorded on 09.04.2018, to which he pleaded not guilty. However, he failed to file any written submission or explanation in his defence.
3. In the above facts and circumstances of the case, following points arise for determination and I am going to record my findings thereon as under..

POINTS

FINDINGS

- (1) Does Complainant prove that the Respondent failed to hand over possession of the booked flat within the time limit prescribed ? .. In the Affirmative
- (2) Whether the complainant is entitled for compensation and interest on the consideration paid by him to the Respondent under Section 18 of the RERA Act ? In the Affirmative
- (3) What order ? As per final order.

2018
5.5.18

REASONS

4. Heard the Complainant in person whereas Mr. Pardeshi, Advocate for Respondent. Perused the papers filed on record.

5. **POINT Nos.1 and 2** :- At the beginning, I would like to point that the Respondent has resisted the claim of Complainant on the ground that the complaint is premature as the date of handing over possession of booked flat to the Complainant is on or before April, 2018 therefore, it is liable to be dismissed. As against this, the Complainant pointed out the copy of the letter, dated 17th December, 2016; wherein the Respondent had agreed to hand over possession of the booked flat to the Complainant on or before December, 2017. Besides this letter, there are many other letters by which the Respondent is oftenly extending the date of handing over the possession or changing the same despite of the agreement. In view of letter referred above, he is the Respondent, who had agreed to hand over possession of the booked flat to the Complainant on or before December, 2017. Further it is the specific allegations of the Complainant that the construction work of the project wherein he booked the flat is very slow and it will not complete atleast within 1.5 years. In such circumstances and considering the date of handing over possession in the letter, dated 17th December 2016, I am of the opinion that there is no substance in the arguments advanced by and on behalf of the Respondent that the complaint of the Complainant is premature. Considering the delay caused in the construction of the project in question, the Complainant

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wants to withdraw from the same and in such circumstance, his claim under Section 18 of the RERA is justified.

6. It is the contention of the Complainant that since the date of agreement he had paid the total amount of Rs. 33,06,050/- out of total consideration of Rs. 55,75,000/-. In support of his claim, the Complainant has filed on record copy of the statement of account showing the payment made by him to the Respondent towards the consideration of the booked flat. The copy of the statement of account of the amount paid and filed on record is marked at Exh. "A". On perusal of this statement, it becomes clear that he has paid the consideration amount of Rs. 33,06,040/- out of total consideration amount of Rs. 55,75,000/-. It is to be noted that the aforesaid amount shown in the statement of account is inclusive of stamp duty and other taxes and cesses. It is to be noted that the Complainant cannot recover any amount paid towards taxes and cesses and so far as the stamp duty amount of Rs. 2,78,800/-, though the Complainant can reimburse the amount under the stamp duty, he cannot get the entire amount spent, but he can reimburse the same in proportionate. Considering this very fact, I feel it just to minus the stamp duty from the consideration amount paid by the Complainant to the Respondent. Minusing the stamp duty amount stated above from the consideration amount paid by him to the Respondent, the actual amount received to the Respondent will come to the sum of Rs. 30,27,240/-. As stated earlier, the Complainant cannot receive reimbursement of total amount expended by him towards the stamp duty. So in such circumstance, it is just to compensate him for the loss

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caused to him in reimbursement. The loss which will be caused to the Complainant towards the reimbursement of stamp duty would be roughly calculated to the sum of Rs. 1,00,000/-. Therefore, the amount of Rs.1,00,000/- can be added in the net amount received to the Complainant i.e. Rs. 30,27,240/- + Rs.1,00,000/- = Rs. 31,27,240/-.

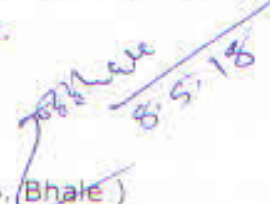
7. In view of the provisions of Section 18(1),(1)(b) ^{2nd} proviso, the remedy available to the Complainant is to get the amount from the Respondent which he has already paid towards the booked flat, as the case may be, with interest at such rate, as may be prescribed in this behalf, including compensation in the manner as provided under this Act. In view of the provisions of Section 18 of the RERA Act, 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. Further in view of the rules framed under the RERA Act, the rate of interest at the rate of MCLR of State Bank of India which is currently 8.05% and it will be added by 2%. Thus the complainant is entitled to receive the entire amount of Rs. 31,27,240/- with simple interest @ 10.05% p.a. till the recovery of the entire amount. It is incumbent to the Respondent to pay the aforesaid amount which is due and payable by him to the Complainant with interest within the 30 days from the date of final order.

8. 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 shall refund the amount of Rs. 31,27,240/- to the complainant with simple interest @10.05% p.a. within 30 days from the date of this order till realisation of the entire amount.
2. The Respondents are also liable to pay compensation of Rs. 10,000/- to the Complainant and Rs. 5,000/- towards cost of this litigation.
3. The charge of the aforesaid amount shall be kept on the Flat booked by the Complainant under the agreement, dated 04.03.2015.
4. On realisation of entire claim, the Complainant shall execute the Deed of Cancellation of Agreement in favour of the Respondents at the Respondents' cost.

Pune
Date :- 08.05.2018


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