

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

COMPLAINT NO: CC005000000000227

Atul Narhar Deshpande.

...Complainant.

V/s

Babasaheb Bhagwan Atkire .

.... Respondent.

MahaRERA Regn. : P52100007249

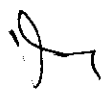
Coram: Hon'ble Shri B.D. KAPADNIS.  
(Member & Adjudicating Officer)

**Final Order.**

21<sup>st</sup> November 2017

The complainant, by this complaint seeks the refund of the amounts paid to the Respondent on account of agreement of sale of flat no. E-6 of Respondent's S.S. Platinum Park Project situated at Pune.

2. The complainant complains that on booking of the above numbered flat, the respondent agreed to deliver its possession on or before 30<sup>th</sup> September 2015 but he failed to deliver the possession till the date of the complaint. Therefore, he seeks the refund of Rs.15,73,298/- with interest and compensation under section 18 of Real Estate (Regulation and Development) Act, 2016. The respondent has pleaded not guilty. The respondent has admitted that the complainant booked the flat as contended by him. However, he contends that he is not at fault for the delay. According to him, Asstt. Director of Town Planning, Pune passed N.A. order of 15.05.2012. He wanted to construct 11 floors in E-Wing for which the environmental clearance certificate was required. Hence, he applied for the same on 06.02.2013. Pending that application, in March 2015 Asstt. Director of Town Planning, Pune was replaced by Pune

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Metropolitan Development Authority (PMRDA) as the sanctioning authority for all projects situated outside the limits of Pune Municipal Corporation. The State Level Expert Appraisal Committee directed him to submit a plan for approval before sanctioning authority i.e. PMRDA. The respondent approached PMRDA which sanctioned only P + 6 floors due to height restrictions. However, the PMRDA finally approved the building plans on 03.12.2016 sanctioning P+11 floors for E-Wing under some conditions. Thereafter he submitted the approved plans to State Level Expert Appraisal Committee, Environment Department, Government of Maharashtra for obtaining necessary environmental clearance which is still awaited. He contends that because of these reasons which were beyond his control, he could not complete the project in time and deliver the possession of the flat to the complainant on the specified date mentioned in the agreement. He further contends that if the complainant wishes to withdraw from the project, he is ready to refund principal amount received from the complainant towards part consideration but requests to grant 6 equal monthly instalments for payment thereof.

3. Does the complainant prove that he is entitled to get his amount back with interest from the respondent on his failure to deliver the possession of flat no. E-6 on or before 30<sup>th</sup> September 2015? , is the only point that arises for consideration. I answer it in affirmative for following reasons.

**Reasons:**

4. Section 18 gives an option to allottee to withdraw from the project and demand his amounts back with interest, if the promoter fails to give the possession of the flat on the date specified in the agreement. In this case, there is no dispute between the parties on the point that the Respondent agreed to deliver the possession of the flat on 30<sup>th</sup> September 2015 but till the date, the project is incomplete and the possession has not

been given. In this situation, the complainant withdraws from the project and claims refund of amount paid by him to the Respondent.

5. The complainant has produced the statement of payments which shows that he paid Rs. 1,62,000/- towards stamp duty and Rs. 30,000/- towards registration fee, Rs. 7,000/- toward legal charges on 13.03.2013. He paid first instalment of Rs.1,00,001/- and Rs. 3,090/- towards service charges on 18.02.2013. He paid the second instalment of Rs.5,50,770/-, 1 % of vat amounting to Rs. 32,540/- and service tax Rs. 17,020/- on 09.03.2013. He paid third instalment of Rs.3,34,962/- and service tax Rs. 10,350/- on 06.04.2013. He paid 4<sup>th</sup> instalment of Rs.3,15,807/- and service tax Rs. 9,758/- on 11.05.2013. Thus, he paid Rs.15,73,398/- to the Respondent. The respondent agrees that he received Rs.15,73,298/- from the complainant. The complainant is entitled to get these amounts with interest at the rate of marginal cost of lending rate of interest of SBI which is currently 8.15 + 2 % from the dates of respective payments. In addition to this, he is also entitled to get Rs.20,000/- towards the cost.

6. So far as causes of delay mentioned by the respondent are concerned, the respondent himself contends that on 15.05.2012 he had only N.A. order. He started to collect the instalments of consideration from the complainant from time to time as mentioned in the above para. When he did not have the approvals of the Competent Authority for making the construction or when he did not have the environmental clearance certificate, he was not entitled to recover any money from the allottee. He was running his own risk and therefore only because some delay is caused for one reason or other for getting approvals, he cannot blame the system as such to seek the exemption from the payment of interest. I have taken the broad view and even after taking the fact into consideration that the competent authorities have not acted as swiftly as they were expected to



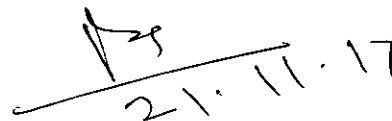
act, the respondent at the most be exempted from the complainant's claim of compensation, with this, I pass the following order.

### ORDER

1. The respondent shall refund the amounts mentioned in Para 5 of this order with interest at the rate of 10.15% p.a. from the date of their payments.
2. The respondent shall pay the complainant Rs. 20,000/- towards the cost of complaint.
3. The charge of these amounts shall be on complainant's booked flat till his claim is satisfied.
4. The complainant shall execute the necessary documents of cancellation of booking of the flat at the Respondent's cost on satisfaction of his claim.

Mumbai.

Date: 21<sup>st</sup> November 2017.



21.11.17

( B.D. Kapadnis)  
Member & Adjudicating Officer,  
MahaRERA, Mumbai.