

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

Complaint No.CC005000000022301

Vaibhav Vilas Balwantkar,
R/at 08, Sai Krupa, Gurudwara,
Walhekarwadi Road, Walhekarwadi,
Near Sayali Complex, Pune-411033

.. Complainant

Versus

- 1. Pradeep Mahadev Godse**
- 2. Pankaja Pradeep Godse,**

Nos.1 and 2 R/at Flat No.1,
Bldg. No.B-6, Indraprastha
Housing Society, Hadapsar,
Pune-411 028.

- 3. Mahesh Bhagwanrao Nalawade.**

R/at Mahadevnagar, Manjari Bk.,
Tal. Haveli, District Pune.

.. Respondents

**Coram : Shri W.K. Kanbarkar
Hon'ble Adjudicating Officer**

Appearance :-

Complainant : In person.

Respondent : Mr. Giridhar Taware, A.R.

FINAL ORDER

(30.04.2019)

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1. Present complaint is moved under Section 18 of the Real Estate (Regulation And Development) Act, 2016 (hereinafter referred to as "RERA") seeking relief of withdrawal from the project and for refund of the amounts paid together with interest and compensation, as detailed in the complaint.
2. Facts set out in the complaint in brief are as under :-

Complainant has booked flat No. 103, in 'B' Wing, in the project "Samruddhi Housing" situate at Daund in District Pune vide registered agreement to sale, dated 30.11.2014 and in that regard agreed to pay consideration amount of Rs. 17,00,000/- and respondent/promoter has proposed to deliver actual possession of the said flat within 24 months i.e. on or before 30.11.2016. In pursuance of said agreement, complainant/allottee has made actual payment of Rs.15,30,075/- out of price settled and further borne Rs.85,000/- towards stamp duty charges and Rs.17,000/- towards registration and Rs. 860/- towards process of registration and thereby made total payment of Rs.16,32,935/-, excluding stamp duty of Rs.85,000/- as above.

3. Respondent/developer failed to deliver the actual possession of the booked flat on or before 30.11.2016, without any just cause. Therefore, the present

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complaint with a prayers for withdrawal from the said project and for refund of amounts of Rs.16,32,935/- excluding stamp duty amount of Rs. 85,000/- together with interest and compensation thereon, as detailed in the complaint.

4. Plea of Mr. Girdhar Taware, Manager of Samruddhi Housing and A.R. of the Respondent recorded. Respondent has filed written explanation and thereby resisted the complainant's claim on various grounds. Admitted that Respondent has executed agreement to sale for the said booked flat on 03.11.2014 and consideration price was settled of Rs. 17,00,000/- and further agreed to deliver actual possession of the booked flat within 24 months i.e. on or before 30.11.2016. Respondent denies that complainant has made total payment of Rs. 15,30,075/- out of price settled, but Respondent claims that he has received total payment of Rs. 12,30,000/- towards the settled price and the same is certified by the chartered accountant of the respondent concern and in that regard reflecting in the books of accounts. Respondent has still to receive dues from the complainant of Rs. 4,70,000/- i.e. more than 1/4th consideration from the complainant.
5. Project is almost completed and same is ready for possession, except installation of lifts and work in that

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regard is in process and the same is certified by the architect. Project delayed due to non-payment of consideration amount by the complainant. So also project delayed on another count due to recession in the real estate market and the said reason is beyond control of respondent. Thus the present complaint is not just and proper and the same is not maintainable and liable to be dismissed.

6. On the above controversial contentions, following points arisen for my determination. I have recorded my findings thereon for the reasons given below.

POINTS

FINDINGS

- | | | |
|-----|---|--------------------|
| (1) | Whether the complainant is entitled to withdraw from the said project and refund of amounts paid together with interest and compensation thereon, as sought ? | In the Affirmative |
| (2) | What order ? | As per final order |

REASONS

7. **POINT No. 1** :- Admitted position between the parties that the Respondent/promoter has executed agreement to sale on 30.11.2014 in favour of complainant/allottee and thereby complainant has booked flat No. 103 in B Wing in the project "Samruddhi Housing" situate at Daund, in Pune District and consideration amount was

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settled of Rs. 17,00,000/- and actual possession of the booked flat was to be delivered within 24 months i.e. on or before 30.11.2016.

8. Respondent admits that consideration price of Rs. 17,00,000/- was settled but denies about the receipt of Rs.15,30,075/- out of the settled price. On the contrary, Respondent admits about receipt of Rs.12,30,000/- out of the settled price. Of-course, complainant has come with a stand that out of settled price of Rs. 17,00,000/-, he has paid Rs. 15,30,075/- by different modes and in that regard home loan of S.B.I., Chandkhed Branch, loan of Rs. 13,50,000/- was sanctioned and further loan of Rs. 62,000/- from S.B.I. Home Loan Insurance in total loan of Rs. 14,12,000/- from S.B.I., Chandkhed Branch and S.B.I. Insurance Chandkhed was obtained. According to complainant, out of the said sanctioned bank loan, amount of Rs.11,80,075/- was disbursed to the Respondent/promoter vide S.B.I. A/c. No.499801010033887. Of-course, Mr. Giridhar Taware, A.R. for the Respondent also admits in his arguments that Respondent has received Rs.1180,075/- through S.B.I., Chandkhed out of the sanctioned loan in the name of the complainant. Moreover, complainant has placed on record bank statements in support of the said sanctioned loan amount and about the disbursement of Rs.11,80,075/- in favour of Respondent-Promoter. So

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position is clear that complainant has paid Rs.11,80,075/- through S.B.I., Chandkhed to the Respondent/Promoter.

9. Complainant further claims that he has paid Rs.50,000/- by cheque No.154205, dated 22.07.2014 and in that regard Respondent has issued receipt about such payment of Rs.50,000/-. Moreover, Respondent admits about the receipt of said amount of Rs.50,000/- from the complainant by aforesaid cheque. Complainant has come with a further claim that he has paid by cash Rs.1,50,000/- vide Receipt No.1480 and further paid Rs.1,50,000/- vide Receipt No.1475 issued by the Respondent. Of-course, Respondent has denied about the receipt of any such amount of Rs.3,00,000/-, but on the contrary, raised plea that both receipts Nos.1480 and 1475 are not transpiring in the record of the Respondent, but those receipts must have been issued earlier staff member of the Respondent, who is not in service. Just to mention receipt No.1480, dated 30.10.2014 and receipt No. 1475, dated 20.10.2014 are speaking that the Respondent has received Rs. 1,50,000/- through each of such receipts from the complainant towards the booked flat and both the said receipts are duly stamped by the respondent under the signature of authorized signatory of the respondent. So position of record is further clear that the complainant has also made payment of Rs. 3,00,000/- by such two

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receipts to the Respondent. Accordingly, complainant has made total payment of Rs. 11,80,075/- through S.B.I., Chandkhed and Rs. 50,000/- by aforesaid cheque and further Rs. 3,00,000/- by said two receipts in total Rs. 15,30,075/- in favour of respondent/promoter, out of the settled price of the booked flat. Merely because of amount of Rs.3,00,000/- is not reflecting in the account of Respondent, that itself is not just ground not to accept the payment made by the complainant vide aforesaid two receipts to the Respondent. On the contrary, complainant has clearly established that he has made payment of Rs. 15,30,075/- out of price settled to the Respondent.

10. Complainant further comes with a claim that he has borne Rs.85,000/- towards stamp duty, Rs.17,860/- towards registration and it's process. Mr. Giridhar Taware, A.R. for Respondent clearly admits in his arguments about the said amount borne by complainant of Rs.85,000/- towards the payment of stamp duty and Rs.17,860/- towards registration and it's process. So, complainant has further established that he has made total payment of Rs. 15,30,075/- out of the price settled and further borne Rs.1,02,860/- towards stamp duty and registration charges and it's process, thereby in total Rs.16,32,935/- excluding stamp duty amount of Rs.85,000/-.

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11. Admitted position between the parties that possession of the booked flat was to be delivered within 24 months from the date of agreement i.e. on or before 30.11.2016. On the other hand, respondent has come with a plea that on account of recession in the real estate market and agreed amount was not fully paid by the complainant and therefore, the construction work of project was delayed. Respondent also comes with a stand that as on today work of the project is practically completed except installation of lifts and in that regard placed on record report of architect. In this context, proper to mention that the complainant has made sumptuous payment of Rs.15,30,075/- out of the agreed price and also borne Rs.1,02,860/- towards stamp duty, registration and it's process and thereby complainant has made total payment of Rs. 16,32,935/-. In spite of such position, on behalf of Respondent raised plea that agreed sumptuous amount was not paid by complainant towards booked flat are not just and proper and such plea is not acceptable under law. Moreover, as per the aforesaid agreement, possession of the booked flat was to be delivered within 24 months from the date of agreement i.e. on or before 30.11.2016 by completing in all respects after obtaining completion certificate, but the said obligation is not discharged by the respondent. On the contrary, the Respondent has come with a stand that by this time project is practically except installation of lifts is

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completed and same is in process. It is not the case of respondent that project is completed fully in all respects and completion certificate in that regard is obtained. Moreover, one more stand taken by the complainant that as per agreement, the construction whatever took place towards the booked flat is in not in accordance with the agreement and/or assurances given by the respondent/promoter. So, the plea/stand taken by the respondent that project is ready practically and the present complaint is not maintainable at law is also not just and proper. On the contrary, the complainant is not hope about taking of possession of the booked flat in accordance with the agreement and assurances given by the respondent.

12. Under such circumstances, complainant is entitled to withdraw from the project "Samruddhi Housing" situate at Daund and further entitled to refund of amounts of Rs. 15,47,935/- excluding stamp duty of Rs. 85,000/- and complainant is further entitled to receive stamp duty amount appropriately and in case failure to get such amount appropriately, then the respondent shall pay the said amount of stamp duty to the complainant in accordance with law. Further the complainant is entitled to refund of Rs.15,47,935/- together with interest @ State Bank of India's Highest Marginal Cost of Lending Rate + 2% above. Stamp duty of Rs. 85,000/- is refundable to the complainant/allottee

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according to the provisions of Stamp Act and in case failure to get said refund of stamp duty amount, Respondent/developer/promoter shall be liable to pay the stamp duty amount fully to the complainant appropriately. The Complainant is also entitled to Rs. 30,000/- as cost of this complaint. I therefore, answer Point No.1 in the affirmative and proceed to pass following order.

ORDER

- (1) The Complainant is entitled to withdraw from the project of the Respondents viz. "Samruddhi Housing" situate at Daund, Tal. Daund, District Pune.
- (2) The Respondent/Promoter shall refund an amount of Rs. 15,47,935/- excluding stamp duty of Rs. 85,000/-, to the Complainant together with Interest @ State Bank of India's Highest Marginal Cost Lending Rate + 2% since date of payments time to time till realization of the entire amount.
- (3) Amount of stamp duty Rs. 85,000/- is refundable to the Complainant as per the provisions of Stamp Duty Act and in case complainant is not receiving refund of stamp

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duty amount as per the provisions of Stamp Act, the Respondent/developer/promoter shall be liable to pay the stamp duty amount fully to the complainant appropriately in accordance with law.

- (4) The Respondent shall also pay cost of Rs.30,000/- towards this proceedings to the Complainant.
- (5) The Respondents shall pay the aforesaid amounts within 30 days from the date of this order.
- (6) The Complainant shall execute cancellation deed of the agreement, dated 30.11.2014 at the cost of the Respondents.

Pune
Dated :-30/04/2019

~~W.K.~~ 30-4-2019
(W.K.Kanbarkar)
Adjudicating Officer,
MahaRERA, Pune