

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY, PUNE

Complaint No.CC005000000011923

1. **Himanshu B. Rajure,**
2. **Shobha B. Rajure**

Both R/at Flat No. 4,
Ganeshkrupa Apartment,
39-A, Shaniwar Peth,
Pune-411 009.

.. **Complainants**

Versus

Vishwakarma Developers,
Having partners -

- a. Paresh Arun Shah.
- b. Anup Satish Shah.
- c. Sunil Agarwal.
- d. Sandeep Rambniwas Agarwal.
- e. Nitin Madanlal Kondiya.
- f. Aditya Vinod Kondiya.
- g. Ravindra Jagdishprasad Agarwal.

Office at Bungalow No.14,
64, Mandar Co-op. Society Ltd.,
CTS No.3371, Parvati, Pune-411 09.

.. **Respondents**

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

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Appearance :-**Complainant : Adv. Kapil Agarwal****Respondent : Adv. V.S. Kokate****FINAL ORDER**

(28.03.2019)

1. Present complaint is for refund of amount together with interest, compensation and cost as per Section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter called as "RERA Act"). Complaint speaks that they have booked two flats bearing Nos. 220 and 221 in the project of the Respondents known as "Prakruti Towers", situate at village Shirwal, Tal. Khandala, District Satara for the total consideration of Rs. 20,08,937/- and Rs. 19,04,847/- respectively. Accordingly, the Complainants entered into two separate agreements, dated 26.11.2015. It is the case of the Complainants that the Respondents promised to provide one open parking and one covered parking. The Respondents/Developers have agreed to deliver possession of the booked flats in favour of the Complainants within 24 months from the date of agreement. However, the Respondents failed to deliver possession of the booked flats on the agreed date. The Complainants therefore, issued legal notice, dated 30.06.2018 to the Respondents and demanded withdrawal from the project on account of delay in possession. The Complainants are paying interest @

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11.99% on the loan amount paid to the Respondents. Since the Respondents have not replied the notice. The Complainants have paid Rs. 5,55,169/- as self fund to the Respondents towards Flat No.220 and Rs. 5,05,652/- towards Flat No.221, whereas by way of disbursement of loan amount of Rs. 14,86,613/- against Flat No.220 and Rs. 14,09,589/- against Flat No.221. By this complaint, the Complainants have claimed the relief of refund of entire amount paid by them to the Respondents together with interest, compensation of Rs.10,00,000/- and cost of Rs.1,00,000/-. Also claimed relief of penalizing the Promoters under Section 61 of the RERA Act.

2. Plea of the Respondents has been recorded on 26.03.2019, to which they denied the allegations made in the complaint. On the same day the Respondents have filed written explanation and resisted Complainants' claim on various grounds, as detailed therein. It has been contended by the Respondents that the complaint is malafide, false, vexatious and not tenable. At the time of registration of the project on RERA website, the Respondents have clearly mentioned the date of completion of the project as 31st Dec. 2018 and also informed to all the purchasers of the said project. The Respondents have completed this project in the month of October, 2018 and on 23.10.2018 they have applied for occupancy/completion certificate,

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which is not yet issued by the competent authority. The Complainants have not paid the total consideration irrespective of demands. The flats are ready for use however, since the Complainants have not paid the total consideration, the possession of booked flats has not been given. Since 19.01.2016 the Complainants have not paid any consideration to the Respondents. There is no any fault from the Respondents. The flats being ready for possession, the Complainants are not entitled to withdrawal from the project. The project is completed in October, 2018 and as such there is no cause of action to file the present complaint. With these averments and objections, the Respondents prayed for dismissal of the complaint.

3. On the basis of controversial contentions, following points have arisen for my determination and findings thereon are as under :-

POINTS

FINDINGS

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|-----|--|--------------------------|
| (1) | Whether the Complainants/Allottees are entitled for withdrawal from the project on account of delay in possession and refund amount paid by them together of interest? | .. In the Affirmative. |
| (2) | What order ? | As per final order |

REASONS

4. POINT Nos. 1 :- To support their claim, the Complainants have filed on record Xerox copies of two Agreements to sale, dated 26.11.2015 and legal notice, dated 30.06.2018. As against this, the Respondents have filed on record two separate Ledger Accounts of the respective flats of the Complainants; letter, dated 15.10.2018 issued to the Collector, Satara for issuance of occupancy/completion certificate, two separate statements, dated 15.10.2018 showing the agreement value and other amounts to be paid and paid by the Complainants and the balance payable thereof and demand letters, dated 08.03.2018.

5. It has been argued by Adv. Kapil Agarwal on behalf of the Complainants that on the agreed date of possession as per the agreement, the possession of the booked flats was not delivered by the Respondents nor the completion certificate has been obtained on or before the agreed date of possession. As such the provisions of Section 18 of the RERA are applicable to the present complaint. The demand letters produced by the Respondents are containing fake signatures and no any such demand letters have been received by the Complainants till date. The demand letters are of recent dates. On the contrary, Adv. Mr. Kokate argued on



behalf of the Respondents that the date of possession as per RERA website is 31.12.2018. The Complainants have not made any payment towards total consideration since 12.01.2016 irrespective of demand letters. As such the Respondents are not liable for handing over possession of the booked flats to the Complainants. It has been vehemently argued on behalf of the Respondents that covered and open parking are not the subject of agreements. Section 18 of RERA does not come in picture as project is not completed. The completion certificate has not been yet received though the project is completed. The Complainants were insisting for reducing the agreed cost of the booked flats and demanding parking free of cost.

6. The execution of agreements between the parties in respect of the booked flats and agreed consideration thereof is not disputed. It is the case of the Complainants that the actual payments made by them against Flat No. 220 is Rs.15,86,613/- inclusive of stamp duty of Rs. 1,00,500/- and registration charges of Rs. 20,100/-. Out of this amount Rs. 1,00,000/- has been paid by cheque and Rs.14,86,613/- has been disbursed by the bank as loan. The actual payment made against flat No. 221 is Rs. 16,09,589/- inclusive of stamp duty of Rs.95,300/- and registration charges of Rs.19,100/-. Out of the actual payment made, Rs.



2,00,000/- was paid by cheque and Rs. 14,09,589/- by way of disbursement of loan by the bank. The Respondents themselves have filed on record the ledger statements and these amounts are reflecting in the said ledger accounts. Therefore, it can safely said that there is no dispute as regards the actual payments made by the Complainants towards the booked flats to the Respondents.

7. The defence taken by the Respondents that they have uploaded the date of completion of the said project on RERA Website as 31st December, 2018 and informed to all the purchasers regarding the same. However, the Respondents have not brought on record any such evidence stating that the change of date of completion of project in the RERA website has been informed to all the purchasers including the Complainants. Therefore, it can safely be inferred that such change in the date of completion of the project is unilateral and hence it is not binding on the Complainants. Had the Respondents informed regarding the change in the date of completion of the project to the Complainants, they would have replied to the notice issued by the Respondents, which is issued after registration of the project on RERA website by the Respondents; and would have mentioned for intimation given to Complainants in the matter. However, it is not so. The

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defence of the Respondents in this regard is therefore, not reliable and cannot be believed at all.

8. The Respondents/Developers have come with a further stand of maintainability of the present complaint on the ground that they have completed the project in October, 2018 and the booked flats are ready for use, however, no occupancy/completion certificate has been received from the competent authority. To support their averments, the Respondents have produced copy of the letter, dated 15.10.2018 issued by them to the Collector, Satara seeking occupancy cum completion certificate of their project "Prakruti Towers". If this letter is perused, it has been mentioned that the Occupancy-completion certificate for 23 petty shops is already issued on 12.09.2017. If it is so, then why the Respondents have not completed the booked flats within the agreed date as per agreement, is not coming forth. Moreover, the documents alleged to have enclosed with the said letter have not been produced on record by the Respondents. If really the project is completed in Oct. 2018, the Respondents would have produced on record the relevant documents. Moreover, no reply to the notice, dated 30.06.2018 has been issued by the Respondents, by which the Complainants have expressed their intention for withdrawal from the project and demanded refund of the amount.



9. The date of possession as per the agreement is within 24 months from the date of agreement, which expires as on 25.11.2017. The Complainants have issued legal notice, dated 30.06.2018 by which they expressed their intention to withdraw from the project. The change in the date of possession by the Respondents on RERA website is unilateral and is not binding on the Complainants. The Complainants have paid 70 to 75% of the amount of total consideration to the Respondents. As the Respondents failed to deliver possession on the agreed date as per agreement, they have committed breach of the agreement. The demand letters dated 08.03.2018 claiming demand of balance amount of Rs. 4,46,887/- and Rs.3,41,611/- respectively are also silent as to the date of possession. Section 18 (1)(a) of RERA provides the liability of the promoter to return the amount received by him from the allottee, in case of his failure to complete or to give possession of the booked flat in accordance with the terms of the agreement to sale, in case the allottee wishes to withdraw from the project. Admittedly, the Respondents failed to deliver possession of the booked flats to the Complainants on the agreed date in accordance with the terms of the agreement to sale. The claim of the Complainants for withdrawal from the project is therefore, justified.

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10. The agreements to sale and the description of the flat described in Schedule B, do not contain any clause of open and/or covered car parking to be allotted to the Complainants. Therefore, the claim of Complainants in para 5 of their complaint has no bearing. The Complainants have claimed Rs. 5,00,000/- per flat by way of compensation on account of mental agony, pain and loss of income/rent. The Complainants have to substantiate that they have actually suffered in such loss for the grounds of mental agony, pain, loss of income/rent, etc. and then only the Complainants are entitled to such compensation. Just to mention that the compensation claim of Rs. 10,00,000/- sought by the Complainants towards mental agony, pain, loss of income/rent, etc. is not substantiated and hence claim in that regard is not maintainable and not acceptable under the law.

11. The Complainants have made submissions that out of such agreed consideration, Complainants have paid Rs. 15,86,613/- against total consideration of Flat No.220 and Rs. 16,09,589/- against Flat No.221. Both these amounts are inclusive of stamp duty and registration charges. The stamp duty for Flat No.220 is Rs. 1,00,500/- and stamp duty for Flat No.221 is Rs.95,300/-. The Complainants can claim refund of the amount of stamp duty from the competent authority as per the provisions of the Stamp Act. Therefore, by



deducting the amount of stamp duty from the actual payments made by them, the Complainants are entitled to receive the balance amount by way of refund from the Respondents i.e. 14,86,113/- against Flat No.220 and Rs.15,14,289/- against Flat No.221. Of course, the agreements for sale of said two booked flats are registered on 26.11.2015. In the light of provisions of Maharashtra Stamp (Amendment) Act, 2015, to consider whether the Complainants are entitled to refund of the amounts of stamp duty paid by them on the said agreements for sale. Section 48 of the Maharashtra Stamp (Amendment) Act, 2015 speaks as, "where an agreement to sale of immovable property on which stamp duty is paid under Article 25 of the SCHEDULE I is registered under the provisions of the Registration Act, 1908, and thereafter such agreement is cancelled by a registered cancellation deed for whatsoever reason before taking the possession of the property, which is the subject matter of such agreement, within the period of five years from the date of execution of the agreement to sale, then the application for relief may be made within a period of six months from the date of registration of cancellation of deed". In the light of aforesaid legal position, just to mention here, the Complainants are entitled to refund of Rs. 14,86,113/- exclusive of stamp duty of Rs. 1,00,500/- towards Flat No.220 and further entitled to refund of Rs. 15,14,289/- exclusive of stamp duty of Rs.95,300/- towards Flat No.221. However, in case if the Respondents fail to refund the said amount to the Complainants within the



stipulated period of 5 years from the date of agreement, as provided in Section 47 and 48 of the Maharashtra Stamp (Amendment) Act, 2015, then in that case, the Respondents shall be liable to pay Rs. 1,00,500/- towards Flat No.220 and Rs. 95,300/- towards Flat No.221 in lieu of stamp duty, in case if the Complainants are not entitled to get such refund of stamp duty in accordance with law.

12. In view of the prescribed rules and provisions of Section 18 of the RERA Act, the Respondent/Developer shall be liable to pay interest as per the State Bank of India's highest Marginal Cost of Lending Rate i.e. $8.75\% + 2\% = 10.75\%$ p.a. on amount of refund of Rs. 14,86,113/- against Flat No.220 and Rs.15,14,289/- against Flat No.221 to the Complainants. Under such circumstances, Point No.1 is answered accordingly. Further the Complainants are also entitled to cost of this proceedings Rs.30,000/-. In the result, I proceed to pass the following order.

ORDER

- (1) The Respondents/Promoters shall refund the amount of Rs. 14,86,113/- exclusive of stamp duty charges of Rs.1,00,500/- against Flat No.220 and amount of Rs. Rs.15,14,289/- exclusive of stamp duty charges of Rs.95,300/- against Flat No.221, to the Complainants along with interest at the State Bank of India's Highest Marginal Cost

Lending Rate i.e. 8.75% + 2% = 10.75% p.a. from the date of actual payments received by them from the Complainants time to time towards the Flat Nos.220 and 221 respectively.

- (2) The Respondents shall be liable to pay Rs. 1,00,500/- towards Flat No.220 and Rs. 95,300/- towards Flat No.221 in lieu of stamp duty, in case if the Complainants are not entitled to get such refund of stamp duty in accordance with law.
- (3) Respondents/Developers shall pay Rs.30,000/- to the Complainants/Allottees as cost of this complaint.
- (4) The Respondents/Developers shall pay the aforesaid amounts within 30 days from the date of this order.
- (5) The Complainants shall execute cancellation deeds of the respective agreements after receipt of all the amounts mentioned in the order, at the cost of the Respondents/Developers.

Pune
Dated :-28/03/2019


(W.K.Kanbarkar)
Adjudicating Officer,
MahaRERA, Pune