

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
PUNE

Complaint No.CC005000000010869

Vinay Vishwas Peshave .. Complainant

Versus

Deepak Sakharam Kulkarni .. Respondent

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

FINAL ORDER
26th APRIL, 2018

1. The Complainant Vinay Vishwas Peshave has filed this complaint claiming relief under the provisions of Section 18 (1)(a) & (b) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the **RERA Act**). It is to be noted that the Complainant does not intend to withdraw from the project. Therefore, ~~she~~ ^{he} has claimed interest for every month's delay till handing over of the possession at such rate, as may be prescribed on the amount paid by him to the Respondent. It is averred in the complaint that the Respondent launched the scheme i.e. "Aadhi Ghar, Paise Nantar". Under that scheme, the purchaser of the flat was required to deposit 10% amount of the entire consideration and other charges towards incidental expenses, as and when asked. Under the scheme, the Complainant booked a Flat No. 806 on the 8th floor in B Wing which was the part of the project known as "DSK-

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Mayurban" being developed at Gat No. 530 (Old Gat No.1093) at village Pirangut, Tal. Mulshi, District Pune. The total consideration amount of the said Flat was Rs. 41,62,000/-. Under the said scheme i.e. "Aadhi Ghar, Paise Nantar", the Complainant has obtained loan from TATA Capital Finance Corporation Ltd. The Respondent has agreed to pay the entire pre-monthly instalments of the aforesaid loan to TATA Capital Finance Corporation Ltd. and thereafter the loan instalments will be recovered from the allottee or the purchaser. It is alleged that the Respondent had agreed to give the possession of the booked flat on or before 30.06.2017 however, he failed to give the possession despite of repeated demands. It is also contended that the Complainant has paid the amount of Rs. 4,57,000/- inclusive of stamp duty of Rs.2,08,100/- to the Respondent. As he intend to remain in the project, he has claimed interest for every month's delay till the handing over of the possession, at such rate, as may be prescribed, and also prayed to direct the Respondent to hand over possession at the earliest possible.

2. On perusal of the record, it seems that initially the Respondent was represented by so-called representative Ajita Sharma and she was present before this authority on 26.03.2018. She was directed to file on record the authority letter to represent the Respondent. However, she failed to file on record the authority letter to represent the Respondent, nor anyone is appearing by or on behalf of the Respondent. Hence the complaint is proceeded further in absence of Respondent in accordance with the law.

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3. In the aforesaid facts and circumstances of the case, following points arise for determination and I am going to record my findings thereon for the reasons recorded below.

POINTS**FINDINGS**

- (1) Whether the complainant is entitled for Interest on the amount alleged to have Been paid by him to the Respondent for every month's delay till handing over possession of the unit, at such rate as may be prescribed in view of the provisions of RERA Act ? In the Affirmative
- (2) What order ? As per final order.

REASONS

4. Heard Complainant in person. Respondent could not be heard being absent. The complainant is proceeded further in his absence. Perused papers filed on record.
5. **POINT No.1 :-** On perusal of the papers, it seems that the Complainant has filed on record copy of Index II, from which ^{it} becomes clear that the date of agreement was 10.11.2014. Further it seems that the copy of the Agreement, dated 10.11.2014 is not filed on record. Even in absence of the copy of that agreement, there is no otherwise reason to disbelieve the contents of the Complainant that the date of possession was agreed ~~was~~ ^{on} 30.06.2017. On considering the aforesaid date of possession alleged to have been agreed, I can say that the Complainant is entitled to receive the interest of every month's delay, on the amount.

alleged to have been paid by him to the Respondent, till the handing over of the possession of the booked flat. The interest for every month's delay shall be calculated at such rate, as may be prescribed, under the RERA and the Rules made thereunder. Further on perusal of the receipt filed on record dated 13.11.2014, it becomes clear that the entire amount of Rs. 4,57,000/- Inclusive of stamp duty of Rs. 2,08,100/- has already been paid by the Complainant to the Respondent by cheque. As the Complainant intend to remain in the project, I think it will be proper to exclude the amount of stamp duty. Deducting the amount of stamp duty, the amount which the Complainant has paid to the Respondent comes to Rs. 2,48,900/-. Having regard to this fact and in view of the provisions of Section 18(1)(a) and (b) read with proviso, I can say that the Complainant is entitled to receive interest from the Respondent on the amount, which it has received, that interest shall be for every month of delay, till the handing over of possession, at such rate, as may be prescribed.

6. In view of the prescribed rules and the provisions of RERA, the rate of interest payable by the promoter to the Complainant-allottee shall be the State Bank of India's highest Marginal Cost Lending Rate (MCLR) + 2% above and in case if the aforesaid 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. In view of the rules framed under the RERA, the rate of interest @ MCLR of State Bank of India, which is currently 8.05% + 2%. Thus the Complainant is entitled to receive the amount of simple interest @ 10.05% p.a. for

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every month's delay from July, 2017 onwards ^{3.5%} handing over possession of the booked flat. As stated earlier, ^{6.5%} the actual amount which the Complainant has paid to the Respondent comes to the sum of Rs.2,48,900/-. Therefore, he is entitled to receive the interest on the aforesaid amount at such rate.

7. In addition to this, the Complainant is also entitled to cost of this litigation to the sum of Rs. 10,000/- from the Respondent.
8. It was clear and even argued by the Complainant that the Respondent has raised loan of TATA Finance Corporation Ltd. over the booked flats under the scheme "Aadhi Gar, Paise Nantar". In view of the scheme launched by the Respondent, the entire loan instalments till the possession of the booked flat were to be paid by the Respondent itself and thereafter the entire loan to be recovered from the Complainant by instalments. On this point, it was submitted that the Respondent be directed to pay the due instalments to TATA Finance Corporation Ltd.; on account of the loan raised over the booked flat by the Respondent. TATA Finance Corporation Ltd. is issuing notices to the Complainant asking to pay the due instalments; so the trouble which the Complainant is facing to be avoided by issuing specific direction to the Respondent. On this point, I would like to make it clear that TATA Finance Corporation Ltd. is not party to this litigation. Not only that, but there is no direct agreement or contract between the Complainant and TATA Finance Corporation Ltd. Having regard to all these facts, I am of the opinion that the aforesaid averments made by the Complainant cannot be taken into consideration.

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9. With these reasons, I answer Point No.1 in the affirmative and proceed to pass the following order.

ORDER

1. The Respondent are directed to pay the simple interest @ 10.05% for every month's delay from July, 2017 and onwards to the Complainant on amount of Rs. 2,48,900/- till handing over possession of the booked flat i.e. Flat No 806, on the 8th floor in B Wing which was the part of the project known as "DSK-Mayurban" being developed at Gat No. 530 (Old Gat No.1093) at village Pirangut, Tal. Mulshi, District Pune.
2. The interest amount due and payable by the Respondent to the Complainant is for every month's delay to be continued till handing over possession of the flat booked by the Complainant in the project named above. The interest amount which will be due shall be paid within the period of 30 days since the date of this order and it shall be continued for every month's delay till handing over possession of the respective flat.
3. The charge of the interest amount due and payable to the complainant be kept on the booked flat described above.
4. The Respondent is also directed to pay the amount of Rs. 10,000/- to the Complainant towards cost of this litigation.

Pune
Date :- 26.04.2018

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