

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

**Complaint No.CC005000000010798**

**Prashant Patil**

**.. Complainant**

**Versus**

**Anand Jog**

**.. Respondent**

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

**FINAL ORDER**

22<sup>nd</sup> MAY, 2018

1. It is the contention of Complainant that he had booked Flat No. 503 on 5<sup>th</sup> floor in the building/Wing No. B-2 of the project of Respondent named "Padmnab" in B2 Wing situated at village Dudulgaon, Tal. Havel, District Pune. In view of the terms of the Agreement, the Respondent had agreed to hand over possession of the booked flat to the Complainant on or before December, 2016. Further it is contended that the total cost of the booked flat was Rs. 27,40,000/-. It is further alleged that the Complainant has paid till date the amount of Rs. 25,14,962/- inclusive of stamp duty out of the total consideration. Since the possession is delayed, the complainant intends to withdraw from the project claiming refund of the amount paid by him to the Respondent with interest and and compensation under Section 18 of the Real Estate (Regulation and Development) Act, 2016 ( hereinafter referred to as the **RERA**).

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2. On perusal of the record i.e. Roznama, it seems that initially Respondent appeared though Adv. Sangita S. Rawat and filed Vakalatnama on their behalf. Further she requested for adjournment as she will try her level best to compromise the matter. However, today Mr. Mane-Deshmukh, Advocate for Respondent appeared and filed written notes of arguments. In the written arguments only he disputed the receipt of amount of Rs. 3,55,464/-. He also admits that Respondent received the amount of Rs. 21,59,498/- from Complainant.
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 terms of the Agreement, dated 17.12.2014 ? .. In the Affirmative
- (2) What order ? .. .. .. As per final order.

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#### **REASONS**

4. Heard the Complainant in person. Perused the documents on record.
5. **POINT No.1** :- On perusal of the Agreement, dated 17.12.2014, it would become clear that the date of

possession of the booked flat was December, 2016. Further it is fact that Respondent failed to hand over possession, as agreed in terms of the Agreement stated above. In such circumstance, the Complainant's claim for refund of amount paid by him to the Respondent till the date along with compensation is justified.

6. In order to prove the amount paid by the Complainant to the Respondent till the date, he invited my attention towards the statement of account filed at Ex.A. On perusal of the same, it becomes clear that he had paid the entire amount of Rs. 3,55,464/- + Rs/ 21.59,498/- i.e. Rs. 25,14,962/- to the Respondent till date. Admittedly, the aforesaid amount paid to the Respondent by the Complainant is inclusive of stamp duty. It is to be noted that the disputed amount of Rs. 3,55,464/- by the Respondent is received to it through cheques and statement of account Ex. A is the best proof to believe the complainant that he paid total amount of Rs. 25,14,962/- through cheques and by EMIs through Bank. So the claim of Respondent that they received an amount of Rs. 21,59,498/- from Complainant as yet cannot be relied upon. It is necessary to make it clear that the amount of Rs. 1,64,400/- spent by the Complainant is towards the stamp duty. It is also necessary to point out that the Complainant is entitled to receive the reimbursement towards the amount of stamp duty spent by him for cancellation of the agreement. However, he will not receive the full reimbursement of the amount spent by him though he is entitled to receive the same in proportionate. On rough calculation, it can be said that the Complainant will not receive the claim of reimbursement of stamp duty amount

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spent by him more than Rs 1,02,000/-. It means he will suffer loss towards the loss of reimbursement claim of stamp duty to the sum of Rs. 62,400/-. Therefore, I think it just and proper to compensate this loss towards the stamp duty to award the compensation of Rs. 65,000/- directing the Respondent to pay the same to the Complainant. Thus the Complainant is entitled to claim refund of amount of Rs. 24,15,562/-, which can be due and payable to the Complainant as per the provisions of Section 18 of the RERA.

8. In view of the prescribed rules and the provisions of Section 18 of the RERA, 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. 24,15,562/- with simple interest @ 10.05% p.a. since the date received to the Respondent on time to time till the recovery of the entire amount. The Respondents are also liable to refund the aforesaid amount, which is due and payable with interest at the rate stated above till realization of the same. In addition to that, the Complainant is also entitled to receive the cost of Rs. 10,000/- towards <sup>the cost</sup> ~~the cost~~ of this litigation from the Respondent. The Respondent is also liable to pay the entire amount which is due and

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payable stated above to the Complainant with interest within the period of 30 days from the date of this order. For these reasons and the express provisions of RERA, I recorded my findings on Point No.1 in the affirmative. Hence the order.

### ORDER

1. The Respondents are directed to pay amount of Rs. 24,15,562/- 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 directed to pay the amount of Rs. 10,000/- to the Complainant towards the 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 17.12.2014.
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 :- 22.05.2018

*S. B. Bhale*  
22-5-18  
( S. B. Bhale )  
Adjudicating Officer,  
MahaRERA, Pune