

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY, PUNE

Complaint No.CC005000000011112

Shalini Bharat Choudhary .. Complainant

Versus

Bhujbal Brothers Construction .. Respondent
Company

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

FINAL ORDER

16-11-2018

1. This is the complaint under Section-18 of the Real Estate (Regulation and Development) Act, 2016, which came into force and made applicable to the State of Maharashtra with effect from 1st May, 2017. Hereinafter referred as RERA.

2. It is a case of complainant that she had booked the flat No.701 on 7th floor of building No.B in the project of respondents named as Forest Mist located at Hadapsar Pune and as described in the registered agreement dated 12-8-2013. It is alleged that the total consideration of booked flat was Rs.42,62,000/-. It is further alleged that out of total consideration till date the complainant has paid the amount of Rs.38,78,925/- inclusive of stamp duty and all the other charges. In terms of agreement respondents had agreed to hand over the possession of booked flat within the period of 18 months from the date of agreement. However,

20/11/18

respondents failed to hand over the possession of booked flat within the agreed period and did not care to refund the amount paid to them towards the booked flat despite of repeated demands. Therefore, by this complaint complainant has claimed the refund of entire amount paid by her to the respondents with interest and compensation as she do not intend to remain with the project. The interest so claimed by the complainant under the relief clause is at the rate 24% per annum as the respondents are also allowed to charge the interest at the same rate in view of clause No.6 of the agreement in case of default of instalments if any.

3. The respondents are served with the notice sent by email ID through this office dated 10-10-2018. Prior to that notice of this complaint was also served to the respondents through Bombay Head Office. On account of the failure of the respondents to appear before this authority despite of service of notice the complaint proceeded ex parte against them.

AM/16.11.

4. In the above facts and circumstances of this case, following points arise for my determination and I am going to record my findings thereon for the reasons given below:

POINTS	FINDINGS
1. Whether the complainant is entitled for the refund of entire amount alleged to have paid by her to the respondents in terms of agreement	In the affirmative

dated 12-08-2013 towards the booked flat?

2. What order? As per final order.

REASONS

5. Point No.1 & 2.

Heard complainant through her representative Mr.Bharat Choudhary the husband of complainant. Perused papers filed on record. Mr.Bharat Choudhary submitted that in terms of registered agreement dated 12-8-2013, vide clause No.6 the respondents are allowed to charge interest on the amount in case of any default at the rate of 24% per annum, therefore, like the respondents the interest be charged on the entire amount paid by the complainant to them towards the booked flat since the date of amount received by them from the complainant on time to time and till the realisation of same. Further he also claimed the compensation pointing out that he himself and his wife required to change the house accommodation as they could not get the possession of the booked flat within the period of 18 months since the date of agreement. Therefore, they suffered heavy financial loss. The respondents have also charged the interest at the rate of 24% from the complainant in respect of default committed in payment of instalments, therefore complaint be allowed as prayed with heavy interest and compensation.

(P.M. 16.11)

6. Apart from the argument advanced by or on behalf of complainant it is to be noted that the claim of refund with interest and compensation will have to be considered in accordance with the provisions of Section-18 of the RERA. Therefore this authority cannot travel beyond the scope of the provisions of aforesaid section while entertaining the complaint under Section-18 of the RERA. In this case it is fact that the respondents failed to hand over the possession of the booked flat to the complainant within the time limit of 18 months as agreed in the agreement since the date of registration of same. Not only that but complainant is waiting for possession of booked flat and subsequently for the refund since last three years or more than that. Therefore, the claim of complainant for refund of amount with interest and compensation is justified.

7. In view of the provisions of RERA the rate of interest payable by the promoters to the allottees or by the allottees to the promoters, as the case may be shall be the State Bank of India's highest Marginal Cost of Lending rate plus 2%. If the State Bank of India's Marginal Cost of Lending rate is not in use it would be replaced by such benchmark lending which the State Bank of India may fix from time to time for lending to the general public. Now the highest Marginal Cost Lending rate of State Bank of India is currently 8.65% + 2%.

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16.11.*

8. While considering the claim of refund it cannot be ignored that the complainant can claim the reimbursement

on the amount spent towards stamp duty from the authority concerned. However, the reimbursement claim towards stamp duty will be in proportionate and not in full. The amount spent by the complainant towards the stamp duty is of Rs.2,55,900/- Considering this very fact I can say that complainant cannot receive the refund of amount more than Rs.1,60,000/- towards reimbursement. Thus on this count complainant will suffer the loss to the sum of Rs.95,900/-. That loss can be compensated by directing the respondents to pay the amount of compensation of Rs.1,50,000/-. Thus, after deducting the amount spent by the complainant towards stamp duty Rs.2,55,900/- from the amount paid by her till date i.e. Rs.38,78,925/- it will be come to the sum of Rs.36,23,025/- If the amount of compensation is added in the aforesaid amount of Rs.36,23,025/- it will come to the sum of Rs.37,73,025/- Thus, this will be amount of refund with interest and compensation to which complainant is entitled to receive from the respondents with simple interest at the rate of 8.65% plus 2% i.e. 10.65% per annum. The complainant is entitled to receive the aforesaid amount from the respondents since the date of amount received by them from the complainant on time to time and till the realisation of entire amount as ordered. In addition to this complainant is also entitled to the amount of Rs.30,000/- towards the cost of this litigation. With this and having regard to the facts and circumstances of this case I am going to record my finding against point No.1 in the affirmative and proceed to pass the following order.

27/11/2018

ORDER

1. The Respondents are directed to pay the amount which is due and payable i.e. Rs.37,73,025/- to the complainant with simple interest at the rate of 10.65% since the date of amount received by them on time to time from the complainant.
2. The respondents are also directed to pay the amount which is due and payable with interest as ordered within 30 days from the date of this order and continue to pay with interest as ordered till the realisation of entire amount.
3. The charge of the due and payable amount with interest as ordered be kept on the booked flat bearing No.B-701 of the project of respondents under the agreement dated 12-8-2013.
4. The respondents are also directed to pay the amount of Rs.30,000/- to the complainant towards the cost of this litigation.
5. The complainant is directed to execute the deed of cancellation of agreement dated 12-8-2013 in favour of respondents at their cost after realisation of entire amount.

Pune
Date : 16.11.2018

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

S.B.Bhale
16.11.18