

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

Complaint No. CC005000000011149/2018

Mr. Prashant Pankaj Mehta  
 R/at Row House No.1, Gera Terraces,  
 Vimannagar, Pune-411 014. .... Complainant

Versus

- 1) Mr. Vishwajeet Subhash Jhavar
- 2) Windshield Developers Pvt. Ltd.  
 4<sup>th</sup> floor, above IDBI Bank,  
 Arthavishwa Building, Lane No.5,  
 Koregaon Park, Pune-411 001.
- 3) Marvel Omega Builders (P) Ltd.
- 4) Marvel Promoter & Developers (Pune)  
 Pvt.Ltd. through its Director  
 Mr. Vishwajeet Subhash Jhavar,  
 Amalgamated with Marvel Realtors  
 And Developers Ltd.  
 Having Office at A/10-1, Mira Nagar,  
 Koregaon Park, Pune-411 001. .... Respondents

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

*26/3/18*  
**FINAL ORDER**

31<sup>st</sup> AUGUST, 2018

1. By this complaint, the Complainant has claimed relief of interest on the amount paid by him to the Respondents towards the booked flat for delayed possession of the booked flat i.e. for every month of

- delay, till handing over possession, at such rate, as may be prescribed.
2. It is the case of the Complainant that he along with his family members have booked flat in the project of the Respondents i.e. Marvel Cerise Complex, C Wing bearing No. 1204 on 12<sup>th</sup> floor, with level terrace, open terrace with parking, located at Kharadi, Pune under the agreement, dated 06.06.2013. In terms of that agreement, the Respondents had agreed to hand over possession of the booked flat on 31.12.2013. It is further alleged that the total cost of the booked flat was Rs. 1,63,81,576/- inclusive of stamp duty. Accordingly, the Complainant has paid the amount of Rs. 1,20,40,514/- Despite of receiving the aforesaid amount and repeated requests to the Respondents to give possession of the booked flat, they have failed to do so. Therefore, the Complainant has filed this complaint and claimed interest on the amount paid by him for delayed possession under Section 18 of the Real Estate (Regulation and Development) Act, 2016 ( hereinafter referred to as the **RERA**).
3. Plea of the Respondents was recorded through their representative on 07.08.2018, to which they pleaded not guilty.
4. The Respondents have also tendered their written say on 20.06.2018 and additional say on 28.08.2018. By their earlier say, it was contended that the complaint is not tenable, as the complainant has made party as Respondents to only Mr. Vishwajeet Subhash Jhavar instead of Marvel Promoters & Developers (Pune) Pvt. Ltd as well as Windshield Developers Pvt. Ltd. And Marvel Omega Builders Pvt. Ltd., etc. After that say, the Complainant has amended the complaint adding all the aforesaid developers as Party-Respondents, in view of the order, dated 18.07.2018 passed by this forum on their application for amendment. Therefore, additional say is filed contending that complaint is not tenable as the agreement in question was under the provisions of MOFA. Further it is contended

that it is clear and good intention of the Respondents to hand over possession of the booked flat to the Complainant on completion of the same within few months. They are taking all efforts to complete the project at an earliest possible. Further it is contended that Section 32 of this Act also authorized the Respondents to extend the period of possession. There is no cause of action to file this complaint, hence it is liable to be dismissed.

5. 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.

| <b>POINTS</b>  | <b>FINDINGS</b>        |
|--|------------------------|
| (1) Whether the Complainant is entitled to receive Interest on the amount paid by him to the Respondents against the booked flat under the agreement, dated 06.06.2013 for delayed possession under the provisions of RERA ?.. .. .. | .. In the Affirmative  |
| (2) What order ? .. .. ..  | .. As per final order. |

**REASONS**

6. Heard the Complainant in person whereas the Respondents through their Advocate Mr. Kutkar. Perused the papers filed on record.
7. **POINT No.1** :- On perusal of the agreement in question and more particularly, clause No. 5(b) of the same, it is seen that the Respondents have agreed to hand over possession of the booked flat on 31.12.2013. Now we are in 2018. It means possession is

much delayed and the delay is about 5 years. Further as alleged by the Complainant and on perusal of the statement of account, it becomes clear that till date he has paid the amount of Rs. 1,26,40,514/- to the Respondents inclusive of stamp duty against the booked flat. It is fact that the Respondents have failed to hand over possession, as agreed and still they are claiming that all the efforts are being taken and possession will be handed over to the Complainant at an earliest possible. Considering the long standing delay, as referred above, I can say that the claim of the Complainant for interest under the provisions of Section 18 of the RERA is justified.

8. Now the only question remains for consideration is, what will be the amount on which the Complainant can claim the interest and since what date ? As stated earlier, the Complainant intends to remain with the project. Therefore, he cannot claim any interest on the amount spent by him towards the stamp duty of Rs. 9,04,350/-. If the aforesaid amount is deducted from the amount paid by him to the Respondents i.e. Rs. 1,26,40,514/-, it will come to the sum of Rs. 1,17,36,164/-. Thus, this will be the amount on which the interest can be calculated for every month of delay, till handing over of possession, at such rate, as may be prescribed. Further, the agreed date of possession of the booked flat in terms of agreement was 31.12.2013. Therefore, the Complainant is entitled to receive interest on the amount which is due and payable for interest w.e.f. 01.01.2014, till handing over possession of the booked flat under the agreement, dated 06.06.2013.
9. 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 Complainant 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, the rate of interest at the rate of MCLR of State Bank of India which is currently 8.65% and it will be added by 2%. Thus the Complainant is entitled to receive the simple interest @ 10.65% p.a. on the amount of Rs. 1,17,3,164/- paid by him to the Respondents. In addition to that, the Complainant is also entitled to receive the cost of Rs. 20,000/- towards this litigation from the Respondents.

10. For these reasons and the express provisions of RERA, I recorded my findings on Point No.1 in the affirmative. Hence the following order.

#### ORDER

1. The Respondents are directed to pay simple interest @ 10.65% on the amount of Rs. 1,17,36,164/- paid by the Complainant to them w.e.f. 01.01.2014 till handing over possession of the booked flat under the agreement, dated 06.06.2013.
2. The Respondent are directed to make the payment of interest as ordered to the Complainant within the period of one month since the date of this order and continue to pay the same till handing over possession of the booked flat under the agreement, dated 06.06.2013.
3. The Respondents are also directed to pay the amount of Rs. 20,000/- to the Complainant towards the cost of this litigation.

Pune  
Date :- 31.08.2018

*31-8-18*  
( S. B. Bhale )  
Adjudicating Officer,  
MahaRERA, Pune