

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

Complaint No.CC00500000022126

Binu Koshy,
R/at 41, Thoovonu House,
Pendse Colony, Dehuroad,
Tal. Havell, District Pune
Pin-412101

.. **Complainant**

Versus

M/s. Sai Venkata Nirmitti Pvt.Ltd.
Office at Plot No.277, Sector No.24,
Prahikarn, Nigadi, Pune-411 044.

.. **Respondent**

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

Appearance :-

Complainant : In person.

Respondent : Exparte

FINAL ORDER

(30.04.2019)

1. Present complaint is moved under Section 18(1)(a) of the Real Estate (Regulation And Development) Act, 2016 (hereinafter referred to as "RERA") seeking relief of withdrawal from the project and refund of the amount paid towards consideration of a flat booked by

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the Complainant/allottee with the Respondent/Promoter with interest and compensation.

2. Facts set out in the complaint in brief are as under :-

Complainant has booked flat No. 302, D Wing, in the project "Astoria Royals" situate at Ravet, Tal. Haveli in District Pune vide registered agreement to sale on dated 20.08.2014 for consideration price of Rs. 52,68,700/- and thereby promoter/developer has agreed to deliver possession of the said flat within 36 months i.e. on or before 20.08.2017. In pursuance of said agreement, complainant has paid Rs.51,05,785/- and further paid Rs.2,15,600/- towards VAT and also paid stamp duty charges of Rs.3,16,200/- and registration together it's process Rs.30,960/-. Respondent/developer failed to deliver the actual possession of the booked flat within stipulated period without any just cause. So, the present complaint seeking relief of withdrawal from the project and for refund of amounts paid together with interest and compensation thereon, as sought.

3. Respondents in spite of service of notice, remained absent time to time and hence complaint proceeded exparte against the Respondents. So, plea and written statement of respondents is not on record.

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4. On the above contents, following points arisen for my determination. I have recorded my findings thereon for the reasons given below.

POINTS**FINDINGS**

- | | | | |
|-----|--|----------|--------------------|
| (1) | Whether the complainant is entitled withdraw from the said project and refund of amounts paid together with interest and compensation, as sought ? | | In the Affirmative |
| (2) | What order ? | | As per final order |

REASONS

5. **POINT No. 1** :- Registered agreement, dated 20.08.2014 reflecting that the complainant / allottee booked flat No. 302 in D Wing in the project "Astroria Royals" situate at Ravet, Tal. Haveli, District Pune and thereby promoter/developer agreed to deliver possession of the booked flat within 36 months i.e. on or before 20.08.2017 and consideration price settled at Rs.52,68,700/-. Complainant claims that he has made actual payment of Rs. 51,05,587/- and out of said amount, he has obtained Axix Bank Loan of Rs.41,13,432/- and in fact disbursed Rs.40,52,045/- in the account of the promoter vide No. PHR003701211249. According to complainant, he has paid remaining amount of Rs.10,53,542/- by two different cheques vide NO.034321 ICICI Bank of

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Rs.5,00,000/- and cheque No. 000001 through HDFC Bank of Rs. 5,53,740/-. So also, claim of the complainant speaks that he has paid Rs. 3,16,200/- towards stamp duty and further paid registration and process charges 30,960/- i.e. in total Rs. 3,47,160/-. Complainant further claims that he has made VAT payment of Rs.2,15,600/- by way of cheque. Thus the complainant / allottee has made actual payment of Rs.56,68,545/- including stamp duty of Rs.3,16,200/- and in that regard placed on record bank statement of ICICI Bank, bank statement of HDFC Bank, bank statement of Axis Bank about sanction and disbursement of loan, and four receipts issued by the promoter/developer about the receipt of payments time to time. Thus the complainant has established that he has made total payment of Rs. 56,68,545/- excluding stamp duty of Rs.3,16,200/-.

6. As per said agreement, possession of the booked flat was to be delivered on or before 20.08.2017, but the said obligation not discharged by the promoter/developer. It is further case of the complainant that till today project is not completed and there are no hopes of getting possession of the booked flat as per agreement. Thus the complainant is entitled to withdraw from the said project together with refund of Rs. 56,68,545/- excluding stamp duty of Rs. 3,16,200/-, together with State Bank of India's Highest

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Marginal Cost of Lending Rate + 2% above. Stamp duty of Rs. 3,16,200/- is refundable to the complainant/allottee according to the provisions of Stamp Act and in case failure to get said refund of stamp duty amount, Respondent/developer/promoter shall be liable to pay the stamp duty amount fully to the complainant appropriately. The Complainant is also entitled to Rs. 20,000/- as cost of this complaint. I therefore, answer Point No.1 in the affirmative and proceed to pass following order.

ORDER

- (1) The Complainant is entitled to withdraw from the project of the Respondents viz. "Austria Royals" situate at village Ravet, Tal. Haveli, District Pune.
- (2) The Respondent/Promoter shall refund an amount of Rs. 56,68,545/- excluding stamp duty of Rs. 3,16,200/-, to the Complainant with interest @ State Bank of India's Highest Marginal Cost Lending Rate + 2% since date of payments time to time till realization of the entire amount.
- (3) In case the complainant could not get refund of stamp duty amount as per the provisions of

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Stamp Act, the Respondent/developer/promoter shall be liable to pay the stamp duty amount fully to the complainant appropriately in accordance with law.

- (4) The Respondent shall also pay Rs.20,000/- to the Complainant as cost of this complaint.
- (5) The Respondents shall pay the aforesaid amounts within 30 days from the date of this order.
- (6) The Complainant shall execute cancellation deed of the agreement, dated 20.08.2014 at the cost of the Respondents.

Pune
Dated :-30/04/2019

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(W.K.Kanbarkar) 30-4-2019
Adjudicating Officer,
MahaRERA, Pune