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

Complaint No.CC005000000010432

Ajay Kumar Patel

.. Complainant

Versus

Marvel Zeta Developers Pvt Ltd

.. Respondent

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

**FINAL ORDER
17-07-2018**

1. The Complainant Ajay Kumar Patel has filed this complaint under Section-18(1) Part-I for claiming the relief ^{of} ~~and~~ refund of the amount received by the respondent in respect of Apartment No.101 from the 1st floor of building No.C-1 complex to be known as Marvel Izara to be constructed by promoter i.e., respondent situated at Gram Panchayat Undri, Taluka Haveli District Pune, with the interest at such rate as may be prescribed in this behalf, including compensation in the manner as provided under Real Estate (Regulation and Development) Act 2017, hereinafter referred as RERA.
2. It is the case of complaint that he entered into an agreement with the promoter i.e., respondent vide

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agreement dated 6-12-2014 to purchase the flat No.101 from the 1st floor of building No.C-1 complex to be known as Marvel Izara. In terms of this agreement respondent has agreed to handover the possession of booked flat on or before ^{December} 2017. However, he failed to handover the possession of booked flat within the time limit as agreed under the said agreement. Therefore complainant has claimed the relief of refund of amount paid by him with interest and compensation.

3. The plea of the respondent was recorded before this Forum on 19-5-2018 to which he do not admit the same and pleaded not guilty.
4. The respondent has resisted the claim of the complainant vide written statement dated 31-5-2018. The contention of the respondent is that the complaint of the complainant is not tenable being the agreement to purchase booked flat is under the provisions of MOFA. Further it is not tenable as the complainant is bad for nonjoinder of parties. The project Marvel Izara is to be completed by the respondent and co-promoter i.e. (1) Nyati builders as mentioned in the agreement dated 6-12-2014. The complaint is without any cause of action, therefore it is liable to be dismissed with costs.
5. In the above facts and circumstances, following points are arise for my determination and I am going to record my findings thereon for the reasons stated below:

POINTS**FINDINGS**

1. Whether the complainant is entitled for the refund of amount paid by him to the respondent with interest and compensation if any under Section 18(1) Part-I of the RERA? In the affirmative
2. Whether the complainant is tenable as alleged by the respondent under the provisions of RERA? -do-
3. What order? As per final order

REASONS

6. Heard, - Ms.Mingire Advocate, holding for Dua Associates on behalf of complainant whereas Ms.Ulka Sarangane holding for Advocate Kutkar on behalf of respondent. Perused papers filed on record, as the respondent have challenged the tenability of this complaint under RERA due to misjoinder of necessary parties or another ground in this behalf, I would like to consider this point i.e., point No.2 at the beginning.

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7. **Point No.2.** On the point tenability, it is argued on behalf of respondent that the Nyati builders are the original owners of the land on which the project in question is to be constructed. They all are confirming parties to the said agreement but they are not parties to this complaint. Further the agreement in question is

registered under MOFA so it can be governed under the provisions of MOFA. So far as the register of agreement in question under the provisions of MOFA, I would like to say that the present act i.e., RERA came into force in Maharashtra State with effect from 1st May 2017. Under the provision of RERA the respondent has registered this project and to be developed and constructed under the provisions of RERA. Therefore the respondent cannot come before this forum with the plea that the complaint of complaint is not tenable under the provisions of RERA. The another stand taken by respondent is that the confirming parties signed the agreement dated 6-12-2014 are necessary parties but they are not made parties to this complaint. In order to verify this ground I gone through the agreement in question and more particularly the ~~recycles~~ ^{necessaries} of the last portion of page No.3 inclusive of earlier portion of page No.4. On perusal of the say it becomes clear that the party No.1 is confirming this agreement as it is supplementary to the agreement dated 27-11-2014 and agreement for development dated 3-7-2009. The party No.3 is confirming to agreement being he had granted the right of development to the portion of his land in favour of this respondent. The clause No.1 to 5 if read together it will be seen that the respondent was to construct the project Marval Izara where the complainant has booked the flat vide agreement dated 6-12-2014. Further he says that the promoter i.e.,

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respondent who had bound by clause No.5 to handover the possession of the booked flat to the complainant on payment of the instalments towards the purchase price as mentioned under clause 20 to 23. Further in view of Clause -2 of the agreement, the respondent shall construct the complex Marvel Izara in accordance with the plans sanctioned by the office of Collector, Pune. Further in view of clause -14 of the agreement what it seems that the sole liability of the construction of the project and to hand over the possession within the time limit prescribed as per agreement in question is of respondent. Further in terms of agreement, the complainant has made entire payment to the sum of Rs.71,12,752/- to the respondent inclusive of stamp duty amount Rs.3,54,900/- to the respondent. The confirming parties to the agreement have no concern to the construction of project and sale the units, to the complainant and others nor received any purchase amount. Therefore the respondent cannot escape from his liability. Having regard to the aforesaid facts and circumstances I would like to say that the entire liability is on the part of respondent to construct the complex and accept the amount of purchase of units from allottees, so he cannot say complaint of the complainant is bad for non-joinder of necessary parties i.e., confirming parties. With this I would like to say that the complaint is tenable under the provisions of RERA and it can legally proceeded further against this respondent,

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even in absence of confirming parties. There is no specific plea in the written statement cum submission of the respondent as to in what way the confirming parties to the agreement are co-promoters and they are also equally responsible for the act of this respondent. Hence point No.2 is answered in the affirmative that the complaint of complainant is tenable and to be governed under the provisions of RERA.

8. **Point No.1** As I have answered point No.2 in the affirmative, I must record my findings against No.1 that the complainant is entitle to claim the amount with interest and compensation paid to the respondent towards the booked flat vide agreement dated 6-12-2014 under the provisions of Section 18(1) Part-I. Further I would like to say that the complainant infact failed to hand over the possession of booked flat on or before 30-6-2017. Therefore his claim for refund of amount as stated above on the amount paid by him to the respondent with interest and compensation is justified.

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9. It is argued on behalf of complainant that he had paid the entire amount of Rs.71,12,752/- to the respondent inclusive of stamp duty amount Rs.3,54,900/- and all other charges and Cess.

10. In general and as a matter of rule the stamp towards the stamp duty is to be purchased on the name of purchaser while registering document in the office of Sub Registrar, so the stamps purchased are in the name of complainant. As the complainant is intend to withdraw from the project he can claim the refund of amount expended towards stamp duty, from the office of Sub-Registrar after cancelling the same. However, the complainant will not receive the entire amount expended towards stamp duty, though he can receive the same in proportionate. Averagely complainant can receive the refund towards the amount expended towards stamp duty not more than Rs.2,10,000/- to Rs.2,15,000/-. Therefore he will sustain the loss to the sum of Rs.1,50,000/- to 1,54,000/- Therefore considering this very fact I feel just and proper to direct the respondent to compensate this loss by paying the amount of Rs.1,60,000/- to the complainant towards refund of stamp duty expended by the complainant himself at the time of registration of agreement dated 6-12-2014.

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11. In addition to that the complainant will receive the amount to refund towards stamp duty to the sum of Rs.2,10,000/-to Rs.2,15,000/-. Considering the above facts I would like to direct the respondent to refund the amount of Rs.69,19,852 to the complainant with interest at the MCLR rate plus 8.05% + 2% under the provisions of RERA. In view of the prescribed rules and

provisions of the rate of interest payable by the promoter / developer to the complainant shall be higher marginal costs lending rate plus 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.

12. In view of the rules framed under the RERA the rate of interest i.e. MCLR of State Bank of India, which is currently 8.05% + 2% above. Thus the complainant is entitled to receive simple interest on the amount due and payable i.e., Rs.69,19,852/- till the realisation of same with effect from 1-7-2017 since the date of amount received on time to time. The respondent will have to pay the amount which is due and payable to the complainant as stated above within the period of 30 days from the date of this order. In addition to this respondent are directed to pay the amount of Rs.50,000/- towards cost of this litigation. Hence the order.

ORDER

1. The Respondent is directed to refund the amount of Rs.69,19,852/- to the complainant with simple interest at Rate of 10.5% since date of receipt of same on time to time with effect from 1-7-2017 till the realisation of same.
2. The Respondent is directed to make the payment of amount, as directed to the complainant within thirty days since the date of this order.

3. The Respondent is directed to pay the amount of Rs.50,000/- to the complainant towards the cost this litigation.
4. The charge of amount which is due and payable to the complainant as ordered be kept on the Flat booked by him, under the agreement dated 6-12-2014.
5. On relasition of entire amount as ordered, the complainant to execute the deed of cancellation of agreement dated 6-12-2014 in favour of Respondent at the cost of Respondent.

Pune
Date :- 17.07.2018

S.B. Bhale
17.7.18
(S.B. Bhale)
Adjudicating Officer,
MahaRERA,