

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
PUNE

Complaint No.CC005000000010931

1. Mrs. Rita Uthra
2. Mr. Pradeep Uthra.

R/o.E-1, 807, Shubhshree Residency, Phase II,
Behind Fame Multiplex, Akurdi,
Pune-411 035.

.. Complainants

Versus

Lavasa Corporation Ltd.,
Hincon House, 247 Park, LBS Marg,
Vikhroli (W), Mumbai-400 083.

.. Respondents

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

FINAL ORDER
29th AUGUST, 2018

1. This is a complaint under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the **RERA**). It is the case of the Complainants that they have booked Flat No.05 on 1st floor in the project of the Respondents "Bel-Shore" Wing No.07 situated at village Mugaon, Tal. Mulshi, District Pune, which is to be constructed on Survey No.59/1A, 59/1B, 60. The Flat was booked under the Agreement, dated 25.10.2012. The total cost of the Flat was Rs. 19,98,000/- . The Respondents had agreed to hand over possession under the Agreement on or before 25.04.2015. However, Respondents failed to hand

over possession, as agreed, in spite of receiving the amount of Rs. 14,63,810/- inclusive of stamp duty from the Complainants. Therefore, by this complaint, the Complainants have intend to withdraw from the project and claiming refund of amount paid by them with interest and compensation under the provisions of RERA.

2. Plea of the Respondents was recorded on 17.07.2018, to which they pleaded not guilty. Further the Respondents have also filed on record written submissions on 19.06.2018 to resist the claim. In short, the case made out by them is that, the project undertaken by them is under the guidelines of Reserve Bank of India. In fact, the reconstructing scheme of the Respondents had been approved by the Joint Lenders' Forum (JLF). The Respondents are a subsidiary of Hindusthan Construction Company. The project which is to be developed is of a huge area of 23014 acres of land situated over 18 villages in Pune District. The work is undertaken since 2002-2003, but due to status-quo order on the construction by the Ministry of Environment & Forests in Nov. 2010, they failed to complete the same. Now the Respondents are facing difficulties to meet the liabilities to complete the project due to swelling of loan and financial obligations. Further it is contended that the Respondents have incurred heavy losses on account of manpower, materials and other resources due to price escalation. They faced severe financial crisis and impediments in construction. Many other difficulties, to which the Respondents have faced is about manpower, machinery, various disputes, stoppage of work and burden fall on them to pay the payments of staff, labourers, etc. Further it is

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contended that the only amount received to them from the Complainants is Rs. 12,98,700/- and remaining amount spent towards taxes and cesses. Considering the aforesaid facts and as the agreement between the parties governed by force majeure and prior to the commencement of the RERA, the complaint is liable to be dismissed.

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) Whether the Complainants are entitled to the refund of the amount paid by them to the Respondents, with interest and compensation ?	In the Affirmative
(2) What order ?	As per final order.

REASONS

4. Heard Complainant No.1 in person, whereas the Respondents have filed written arguments. Perused the same.

5. **POINT No.1 :-** It would not be out of place to point out that initially the Respondents had challenged the maintainability of the complaint being the apartment or flat booked under the agreement is not the sale being the transfer is under the lease agreement. However, that dispute is set at rest by the final order of Hon'ble High Court that long standing lease

also can be termed as a sale and transfer under the provisions of RERA.

6. It is to be noted that the agreement by which the Complainants had booked the flat was prior to commencement of the RERA, still it can be termed as "ongoing project" in view of the proviso of Section 3 of the RERA. In such circumstances and as the Respondents failed to hand over possession of the booked flat, as agreed under the agreement, it can be said that the claim of the Complainants to withdraw from the project claiming refund of entire amount with interest and compensation, is justified. In the written arguments as well as written submissions of Respondents, it is contended that due to force majeure, the Respondents failed to complete the project and now facing the financial crisis. The aforesaid stand as has been taken by the Respondents cannot come within the scope of the alleged clause of "force majeure". "Force majeure" clause can be made applicable only when the entire situation is beyond the human control or vis majeure. Admittedly, the Respondents have received huge amount from the Complainants knowingly fully well that there is status-quo order since 2010 by the Ministry of Environment and Forest Department, Government of India. Even in the arguments, it is not disputed that they have received the amount, as alleged by the Complainants, except some of the amount is spent towards taxes and cesses. The act and conduct of the Respondents speaks in volume to reject their defence.

7. On account of delay, payment of taxes and cesses also can be increased and going to be increased continuously.

Therefore, that burden cannot be shifted on the Complainants, who paid the amount as per the terms of the agreement in question and even accepted by the Respondents that they are unable to comply with the terms of agreement.

9. In view of the aforesaid findings, now the question remains, "what will be the amount of refund with interest and compensation, which the Complainants are entitled to receive from the Respondents?". As stated earlier, the Complainants intend to withdraw from the project. Therefore, Complainants are entitled to receive the amount paid by them to the Respondents in respect of that apartment with interest at such rate, as may be prescribed in this behalf, including compensation in the manner as provided under the RERA. It is necessary to make it clear that when the Complainants are intending to withdraw from the project, they will claim refund of stamp duty from the competent authority, of-course, the refund towards the claim of stamp duty will be in proportionate. The amount spent towards the stamp duty is Rs. 1,05,000/-. Considering this very fact, approximately it can be said that in proportionate, they will receive the claim of refund towards stamp duty not more than Rs. 64,000/- to Rs.65,000/-. Thus towards the stamp duty claim, they will suffer loss of Rs. 40,000/-. That loss can be compensated by directing the Respondents to pay compensation of Rs. 65,000/- to the Complainants towards refund of stamp duty claim. If the amount of stamp duty Rs. 1,05,000/- is minused from the entire amount paid by the Complainant to the Respondents Rs. 14,63,810/-, it will come to the sum of

26/29/4

Rs. 13,58,810/- plus compensation Rs. 65,000/- i.e. Rs. 14,23,810/- will be the due and payable amount of refund to which Complainants are entitled to receive with interest as per the provisions of RERA.

10. 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 Complainants 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 8.65% and it will be added by 2%. Thus the Complainants are entitled to receive the simple interest @ 10.65% p.a. on the amount of Rs. 14,23,810/-. In addition to that, the Complainants are 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 order.

ORDER

1. The Respondents are directed to pay the amount which is due and payable of Rs. 14,23,810/- with simple interest

@10.65% p.a. since the date of amount received by them on time to time from the Complainants.

2. The Respondent are directed to pay the amount, which is due and payable, as ordered, with interest within 30 days since the date of this order and continue to pay the same with interest till realization of the entire amount.
3. The charge of the due and payable amount with interest, as ordered, be kept on the booked flat.
4. The Complainants are directed to execute the deed of cancellation of agreement, dated 25.10.2012 in favour of the Respondents at their cost after realization of the entire amount, as ordered.
5. The Respondents are also directed to pay the amount of Rs. 20,000/- to the Complainants towards the cost of this litigation.

Pune
Date :- 29.08.2018

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

29.8.18
S. B. Bhale