

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

**Complaint No.CC00500000010743**

**1) Anis Jikare .. Complainant**

**Versus**

**1) M/s.Bhagvati Infra .. Respondents  
(Formerly known as Jalan  
Maple Sheiters)**

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

**FINAL ORDER**

1. It is the case of Complainant that he has booked the Flat No. 202 in D-8 Building i.e. the project of Respondent named as "Aura City" situated at Shikrapur, Tahshil Shikrapur, Pune vide registered Agreement dated 11/7/2012. In terms of that Agreement, the Respondents agreed to hand over the possession of the booked Flat on or before 11/07/2014. It is contended that the total consideration amount of the booked Flat was Rs. 12,10,650/-- (Rupees Twelve Lacs Ten Thousand Six Hundred Fifty) exclusive of Stamp Duty, VAT, other Charges, etc. The Respondents failed to hand over the possession in terms of Agreement and within the time limit prescribed. Since the possession of the booked Flat is much delayed, he wants to withdraw from the project of

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Respondents. Therefore, the Complainant has filed this Complaint and claimed the refund of Amount paid by him to the Respondents till date with interest at such rate as may be prescribed and compensation under the provisions of Sec. 18 of Real Estate Regulation Act (Hereinafter referred as "RERA").

2. It is also contended by the Complainant that he had filed the complaint No. PDF/129/2016 before the District Consumer Disputes Redressal Forum, Pune. However, that complaint is disposed off by that Forum vide Final Order dated 6/11/2017 on technical ground, i.e. lack of jurisdiction. By that Order the complaint of the Complainant is returned to him with direction to approach the proper Forum/ Commission / Court etc. After the aforesaid Order the Complainant has filed this complaint claiming the relief stated above. It is pertinent to note that the plea of the Respondent was recorded on 27/4/2018 to which they have pleaded not guilty.
3. The Respondents have resisted this Complaint by Written submission filed on record 21/5/2018. The material grounds raised in that Written submission are that the Project is delayed due to events which were not beyond the control. It is contended that the project of the Respondents wherein Complainant has booked the Flat is situated in Rural Area, so it causes frequent Power cut or Electric Supply is the acute problem. There was shortage of sand and other Building material. Having regard to all such problems, the project is delayed. There are specific terms incorporated in the Agreement dated 11/07/2012 vide Clause No. 12 (1) and the other relevant paras of the same in this regard. Due to acute

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slack of market, Respondents failed to hand over the possession within the time limit prescribed. The another material ground raised by the Respondent is that this Forum has no jurisdiction to entertain this complaint as the Agreement dated 11/07/2012 is registered under the provisions of Section 4 of the Maharashtra Ownerships of Flat Act, 1963. Further it is contended that the Amount spent by the Complainant towards Stamp Duty, Registration Charges, VAT etc. cannot be the part of this complaint as that Amount is not actually received to the Respondents. The complaint is being false and frivolous the same is not tenable, it is liable to be dismissed.

4. In the above facts and circumstances of the case following points arisen for my determination and I am going to record my findings thereon for the reasons stated below :-

**POINTS**

**FINDINGS**

- |                                                                                                                                                                                                       |                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| (1) Whether the complaint of the Complainant is tenable under the provisions of RERA ?                                                                                                                | In the affirmative |
| (2) Whether the Respondents have Failed to deliver the possession of the booked Flat to the Complainant in terms of Agreement dated 11/07/2012 within the time limit prescribed under the Agreement ? | In the affirmative |
| (3) Whether the Complaint is entitled to claim the refund of amount paid by him to the Respondents under the Agreement                                                                                | In the affirmative |

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till date with interest and compensation  
under the provisions of RERA ?

(4) What order ? .. .. . As per final order

### **REASONS**

**5. Pt. No.1** While considering the point about the tenability of this Complainant, I would like to make it clear that the facts which are not in dispute. The facts which are not in dispute i.e. entering into an Agreement dated 11/07/2012. Further it is fact that the RERA is came into force in this state w.e.f. 1<sup>st</sup> May, 2017. Having regard to all the aforesaid facts, the tenability of the Complainant questioned by the Respondents vide Written submission dated 21/5/2018 is worthy to be accepted? I can answer this question in the negative while relying upon Sec.3 of this Act. Vide Sec. 3(1) No Advertisement, Market, Book, Sale or offer for Sale or invite persons to purchase in any manner any plot, apartments or Building as the case may be in any Real Estate project or part of it in any Planning Area, without registering the Real Estate Project with Real Estate Regulatory Authority established under this Act. Further it is provided that the project that are ongoing on the date of commencement of this Act for which the Completion Certificate has not been issued the Promoter shall apply to the Authority for registration of such project within a period of 3 months from the date of commencement of this Act."

Admittedly, the Respondents have registered their project with the Maharashtra RERA Authority. Not only that but the Respondents have not completed the construction of the entire project wherein the Complainant has booked the Flat nor received the Completion

Certificate from the competent Authority. Considering this very fact, It can be said that the project in question of Respondents is ongoing project and being it is ongoing project the Complaint of the Complainant is governed under the provisions of RERA. Thus, this point is answered in the affirmative that the complaint is tenable.

**Pt. No.2 to 4**

Admittedly, the Respondents have failed to hand over the possession of the booked Flat to the Respondents on or before July,2014 in terms of Agreement dated 11/07/2012. It is also fact that the Respondents have received the Amount of Rs. 12,71,318/- from the Complainant till date under the Terms of Agreement. The Amount referred above is inclusive of Stamp Duty, Registration fees, VAT and other charges. As stated earlier the date of agreement is 11/07/2012 and date of possession is July.2014. From the facts noted above, it becomes clear that the possession is much delayed. Therefore, Respondents cannot raise the lame excuse that shortage of acute Electric Power, non-availability of Building Material, sand, slack in market etc. Admittedly this is the second-round litigation wherein Complainant is still suffering worst. Therefore, having regard to the aforesaid facts, I can say that the claim of the Complaint from withdrawing the project and demanding the refund of Amount paid by him to the Respondent with interest and compensation under the provisions of Sec. 18 of RERA, is justified.

The further question which needs to consider is what is the due and payable amount on which Complainant can claim the refund with interest. Now he is intending to withdraw from the project of Respondent. Therefore, he can receive the claim of

reimbursement towards Stamp Duty. Further, he will not receive the entire claim though he is entitled to receive the claim in proportionate. The amount spent towards Stamp Duty is Rs. 60,590/-. In short and roughly, I can say that reimbursement of Stamp Duty claim of Complainant will not be more than Rs. 40,000 to 45,000/-. Consequently, in this regard the Complainant has to suffer loss of Rs. 20,000/-. Thus, the loss caused to the Complainant in the reimbursement of claim of Stamp Duty it will be just and proper to direct the Respondents to pay the compensation of Rs. 25,000/- on this count to the Complainant. Having regard to the facts noted above and if the Amount spent by the Complainant towards Stamp Duty of Rs. 60,590/- is minused from the Amount of Rs. 12,71,318/- paid by him to the Respondents, inclusive of Stamp Duty, Registration Charges, VAT etc. the remaining amount will be of Rs. 12,10,728 + 25,000/- towards compensation for the loss of reimbursement of claim, it will come to the sum of Rs. 12,35,728/-. Here I can say that the Amount of Rs. 12,35,728/- is due and payable by the Respondent towards refund with interest under the provisions of Sec. 18 of RERA.

8. In view of the prescribed Rules and Provisions of RERA the rate of interest payable by the Promoter/Developer to Complainant / allottee shall be the State Bank of India's highest Marginal Cost Lending Rate (MCLR) + 2% above and in case if he 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. In view of the Rules framed under the RERA the rate of interest @ MCLR of State Bank of India, which is currently 8.05% + 2%. Thus, the Complainant is entitled to receive simple interest @ 10.05 p.a. on the amount which is due

and payable i.e. Rs. 12,35,728/-. The interest can be charged on the Amount received to the Respondent from time to time. Therefore, Respondents are directed to refund the aforesaid Amount to the Complainant with interest till the realisation of the same which is due and payable with interest within the period of 30 days from the date of this order. In addition to this the Respondents are directed to pay the Amount of Rs. 30,000/- towards the cost of this litigation.

8. For the reasons stated above and considering the provisions of RERA I am answering the Point No. 1 to 3 in the affirmative and proceed to pass following order.

**ORDER**

1. The Respondents are directed to refund the amount of Rs. 12,35,728/- to the Complainant with interest @ 10.05 p.a. within 30 days from the date of this Order.
2. The Complainant is entitled to receive the Amount under the Order with interest stated above till the realisation of the same.
3. The charge of aforesaid Amount which is due and payable by the Respondent to Complainant be kept on the Flat booked under the Agreement dated 11/07/2012.
4. On realisation of the entire claim, the Complaint shall execute the Deed of cancellation of agreement in favour of Respondent at the Respondents cost.

Pune

Date :- 8/6/2018

( S.B. Bhale )

Adjudicating Officer  
MahaRERA, Pune

*S.B. Bhale*  
*8.6.18*