

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

Complaint No.CC005000000022170

Daulatrao Bhagwanrao Raut,
R/at : 906, Wehome Lakeside Society,
S.No.50, Gjarwadi Road, Warkhade Nagar,
Katraj, Pune-411 046.

.. Complainant

Versus

1. **Darode Jog Homes Pvt/ Ltd.**
2. **Sudhir Chandrakant Darode**
3. **Anand Dhundiraj Jog.**

**Office at Darode Jog House,
1212, Apte Road, Pune-411 004.**

.. Respondents

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

Appearance :-

Complainant : In person
Respondent : Adv. Mane-Deshmukh

**FINAL ORDER
(20th March, 2019)**

1. It is the case of Complainant that he has booked a flat bearing No. B-2/801 in the project of Respondents known as "Padmanabh" located at Dudulgaon, Tal. Havell, District Pune under the agreement, dated 16.10.2014. In terms of that

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agreement, the Respondents had agreed to hand over possession of booked flat on or before December, 2016. The total consideration cost of the booked flat was Rs. 18,98,825/-. It is alleged that the Complainant had paid the amount of Rs. 17,09,783/- + stamp duty and registration charges of Rs. 1,33,500/- ~~to the Respondents~~. However, Respondents failed to hand over possession of booked flat as agreed, despite of pursuance. Therefore, by this complaint, the Complainant has claimed relief of refund of entire amount paid by him with interest and compensation under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA"), as he intends to withdraw from the same.

2. Plea of the Respondents was recorded on 13.03.2019, to which they denied the allegations made in the complaint. The Respondents have also filed on record their written reply to resist the complaint on 13.03.2019.
3. It is the case of the Respondents that complaint is misconceived and not tenable in the eye of law. All the allegations averred in the complaint are false. Further it is contended that only the amount of Rs. 15,76,783/- is received to the Respondents from the Complainant towards the consideration of the booked flat. The amount spent by the complainant towards the stamp duty and registration of the agreement is liable to be deducted while deciding the amount of refund. It is further alleged that the project was delayed due to recession in the construction business and the sale of the units was also slowed down. The Respondents are in a position to hand over possession of the booked flat

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to the Complainant before Dec. 2019. As there was delay for possession, the Respondents were paying the amount of Rs. 5000/- p.m. towards the rent in terms of agreement. By accepting the aforesaid amount, the allottees have passed the receipts of said amount. The Complainant has also passed the receipts accepting the rent and thus waived the right to claim the refund. The agreement in question was registered under the provisions of MOFA. So the Respondents are ready and willing to comply with the terms and conditions incorporated in the said agreement. Thus the complaint is liable to be dismissed.

4. In the above facts and circumstances, following points 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 to refund of the entire amount paid by him to the Respondents towards booked flat, with interest and compensation, under the provisions of RERA. | In the Affirmative |
| (2) | What order ? | As per final order. |

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REASONS

5. Heard Complainant in person, who is also a practising advocate, whereas Mr. Mane-Deshmukh, Adv. for Respondents. Perused the papers filed on record. In addition to his oral argument, Mr. Raut, the Complainant has

also filed on record the written notes of arguments. Mr. Raut pointed out that there was a clause in the agreement about the rent, if the project is delayed and possession could not be given in time, the promoter has to pay the rent to the allottee. As the project was delayed, the Respondents obtained the receipts with mutual understanding that the due amount towards the rent, as agreed, will be adjusted in final payment. In fact, not a single paisa has been received to him towards the receipts so issued against the rent. Mr. Mane Deshmukh, Adv. for Respondents submits that apart from receipts so passed, the Complainant has filed the police complaint against the Respondents. In order to settle that dispute, the Respondents had issued 5 cheques of Rs. 30,000/- each. Out of those five cheques, 3 cheques of Rs. 30,000/- each came to be encashed. Thus the Complainant has received the amount of Rs. 90,000/- towards the rent. This fact is also not disputed by the Complainant.

6. In terms of agreement, the possession of the booked flat was to be given on or before Dec. 2016. Now we are in March, 2019. In view of the provisions of Section 3 and proviso of same, this project can be treated as "ongoing project" as the same was not completed by the Respondent prior to the enforcement of RERA to the State of Maharashtra. The Respondents have also registered the project after commencement of RERA. I can say that the project is much delayed as the Respondents failed to hand over possession of the booked flat on or before Dec. 2016. Therefore, I can say that the claim of complainant for refund of entire amount from the Respondents on his withdrawal from the project under Section 18 of the RERA is justified.

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7. Now the question is what will be the amount which is due and payable towards the refund along with interest and compensation. Complainant Mr. Raut submitted that he has spent the amount of Rs. 1,33,500/- towards the stamp duty and registration charges. About deduction of ~~the~~ amount of stamp duty from the actual amount paid by him and on the point of claim of refund of stamp duty after cancellation of the agreement, he invited my attention towards the Section 48 of the Maharashtra Stamp (Amendment) Act, 2015 and submitted that he will not be entitled to receive the refund of stamp duty if the cancellation of agreement is delayed for more than five years. On perusal of the proviso of Section 48 of the said Act, it seems that, "where an agreement to sale of immovable property on which stamp duty is paid under Article 25 of the SCHEDULE I is registered under the provisions of the Registration Act, 1908, and thereafter such agreement is cancelled by a registered cancellation deed for whatsoever reason before taking the possession of the property, which is the subject matter of such agreement, within the period of five years from the date of execution of the agreement to sale, then the application for relief may be made within a period of six months from the date of registration of cancellation of deed". Pointing out the aforesaid provision, Mr. Raut submitted that necessary direction in this regard be given to the Respondents so that there would be no problem of claiming the refund of stamp duty after the cancellation of the agreement, dated 16.10.2014. On considering the date of agreement, i.e. 16.10.2014, the period of five

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years will be over on 15.10.2019. It means the cancellation deed of the agreement in question will have to be executed on or before 15.10.2019. Otherwise, the claim of refund towards stamp duty will be out of limitation. Anyhow, and if the amount of stamp duty and registration charges of Rs. 1,33,500/- is added in the actual payment made viz. Rs. 17,09,783/-, it will come to the sum of Rs. 18,43,283/-. On perusal of the Index II of the registered agreement, it be seen that the Complainant has spent the amount of Rs. 1,14,000/- towards stamp duty. If the claim of refund of stamp duty is considered in favour of complainant in proportionate, he will not receive the amount more than Rs. 70,000/- towards refund. On this count, he will suffer the loss of Rs. 44,000/- and that loss can be compensated by directing the Respondents to pay the amount of Rs. 50,000/- towards compensation. The amount of Rs. 1,14,000/- if deducted from Rs. 18,43,283/-, the amount of refund will come to the tune of Rs. 17,29,283/- + amount of compensation of Rs. 50,000/- = Rs. 17,79,283/-. Admittedly, the Complainant has received the amount of Rs. 90,000/- by cheque from the Respondents. If that amount is adjusted in the amount of refund, it will come to the sum of Rs. 16,89,283/-. Thus this will be the amount of refund, to which Complainant is entitled with interest under the provisions of Section 18 of the RERA.

8. If the Respondents failed to comply with the order of refund so passed by this forum on or before 15.10.2019, the amount of Rs. 70,000/- towards the balance refund of the stamp duty shall be payable by the Respondents to

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the Complainant, in view of the provisions of Section 48 of the Maharashtra Stamp (Amendment) Act, 2015 referred above.

9. In view of the provisions of the Maharashtra Rules, the Complainant is entitled to receive the Interest at State Bank of India's highest Marginal Cost Lending Rate i.e. $8.70\% + 2\% \text{ above} = 10.70\% \text{ p.a.}$ The Complainant is therefore, entitled to receive the interest on the amount of Rs.16,89,283/, which is due and payable towards the refund of amount paid by him to the Respondents. ^{at such rate} The Complainant is also entitled to receive cost of this complaint from the Respondents. I therefore, answer Point No.1 in the affirmative and proceed to pass following order.

ORDER

- 20/3/20*
- (i) The Respondents are directed to pay to the amount of Rs. 16,89,283/- to the Complainant, which is due and payable, with simple interest @ $10.70\% \text{ p.a.}$ since the date of amount received by them on time to time from the Complainant.
 - (ii) The Respondents are directed to pay the amount which is due and payable as ordered within 30 days from the date of this order and continue to pay with interest as ordered till the realization of the entire amount.
 - (iii) The charge of the due and payable amount as ordered be kept on the booked flat No.B-2/801 in

the project of the Respondents named "Padmanabh" situated at Dudulgaon, Tal. Haveli, District Pune, as mentioned in the agreement, dated 16.10.2014.

- (iv) The Respondents are directed to pay Rs.5,000/- to the Complainant towards cost of this litigation.
- (v) The Complainant is directed to execute the deed of cancellation of agreement, dated 16.10.2014 in favour of the Respondents, at the cost of Respondents after realization of refund of entire amount, as ordered.
- (vi) In case of failure of the Respondents to fulfil the order of refund together with interest as ordered above in clause (i) on or before 15.10.2019 i.e. expiry of period of five years from the date of agreement, the Respondent is directed to pay Rs.70,000/- to the Complainant as balance refund of the stamp duty, in addition to the amount of refund.

Pune
Date :-20.03.2019

S.B. Bhale
20-3-19
(S.B. Bhale)
Adjudicating Officer,
MahaRERA, Pune