

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

Complaint No.CC005000000022121

**Vidyadhar Kore,
R/at 18, Sahawas, Kashinath Dhuru-Cr.Road,
Dadar, Mumbai-400 028. .. Complainant**

Versus

**Hemanti Deepak Kulkarni
1187/60, DSK House,
J.M.Road, Shivajinagar, Pune-411 005 .. Respondent**

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

Appearance :-

**Complainant : In person.
Respondent : Exparte**

**FINAL ORDER
(22.01.2019)**

1. This is a complaint filed under Section 18(1)(a) of the Real Estate (Regulation And Development) Act, 2016 (hereinafter referred to as "Act") seeking refund of the amount paid towards consideration of a flat booked by the Complainant/allottee with the Respondent/Promoter with interest.

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2. It is the case of the Complainant/allottee as is pleaded in the complaint that he booked a flat bearing No. E904 in the project DSK-Nabhangan, Pune launched by the Respondents/Promoters for a total consideration of Rs.84,97,535/- and paid an amount of Rs.36,17,435/- against the agreed total consideration however, the construction of the said project has come to a standstill and the Complainant wish to cancel the agreement. With these averments, the Complainant seeks relief of refund of amount paid by him to the Respondents/Promoters along with interest.
3. The complaint is filed before the Maharashtra Real Estate Regulatory Authority (hereinafter referred to as "Authority") on 08.10.2018 and the complainant was directed to submit hard copies on or before 22.11.2018. On 10.12.2018, when the matter was posted before the Hon'ble Member, the Respondent was absent. It has been transferred on 12.12.2018 for adjudication before the Adjudicating Officer, Pune with the remark that the Complainant wants to withdraw from the project. On 21.01.2009, the complaint was posted before me for hearing. The Respondent though served with notice, was absent. The copy of Notice of Hearing in the form of Annexure-4 served to the Respondents/Promoters D.S.Kulkarni And Company via email, dated 01.03.2019, at 3:25:07 P.M. has been

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placed on record. Therefore, the matter is proceeded ex parte against the Respondents/Promoters.

4. On the basis of the facts and circumstances on record, following points arose for my determination. I have recorded my findings thereon for the reasons given below.

POINTS

FINDINGS

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| (1) | Whether the Respondents/Promoters failed to deliver possession of the flat booked by the Complainant/allottee as per the agreement, without there being reasons beyond their control ? | In the Affirmative |
| (2) | Is the Complainant entitled to the Reliefs sought ? | In the Affirmative |
| (3) | What order ? | As per final order |

REASONS

5. POINT Nos. 1 and 2 :- Heard the Complainant in person. Respondent being absent, could not be heard. Perused the documents filed on record.
6. The Complainant has placed on record Xerox copy of the Agreement, dated 12.08.2015. It is a registered document registered vide Registration No. 7111/2015 before the Jt. Sub-Registrar (Class-II), Haveli No.13,

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Pune City, for which stamp duty of Rs. 3,85,000/- and registration charges of Rs.30,000/- and document handling charges of Rs.1920/- are paid vide Receipt No. 7886, dated 12.08.2015 issued in the name of Vidyadhar Jeevan Kore i.e. the Complainant/allottee. The Agreement is executed by M/s. D.S. Kulkarni And company, a registered partnership firm represented by one of it's Partners Mrs. Hemanti Deepak Kulkarni, as Owner/Developers in favour of Vidyadhar Jivan KORE and Vinita Vidyadhar Kore as Purchasers. It has been mentioned in clause (1) of the said Agreement, that the Owner/Developers shall "DSK"Vishwa Ph-VII-Nabhangan" on the land described in Schedule II of the Agreement i.e. land bearing Survey No. 124, Hissa No. 1 to the extent of 569.25 sq. Mtrs. out of totally admeasuring 00 H. 32 Ares situated at village Dhayari, Tal. Haveli, District Pune, within the local limits of Pune Municipal Corporation. In clause (2) of the said Agreement, the Purchaser/s agree to purchase from the Owner/Developers and the Owner/Developer/s agree to sell to the Purchaser/s a Residential Flat No. E904 on 9th floor of the Wing 'E', admeasuring about 89.71 sq. Mtrs. of the carpet area + Terrace admeasuring about 9.23 sq. Mtrs. Carpet area i.e. total carpet area of about 98.94 sq. Mtrs. in the project "DSK"Vishwa Ph-VII-Nabhangan". In clause (3) of the Agreement, the owner/Developers allotted Covered Car Park No. E32(CP) in Wing E Basement Floor. In clause (5) of the

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said Agreement, the Purchasers agreed to purchase the said flat for consideration of Rs. 76,99,000/- to be paid to the Owner/Developers as mentioned in the Schedule IV. In para (7) of the said Agreement, it has been mentioned that the total consideration as mentioned in clause (5) is excluding all the expenses, taxes like VAT, Service Tax, GST, NA tax or LBT, levies, government charges, stamp duty and registration charges, share contribution and entrance fees of Association, Company or Society, which shall be paid by the Purchasers separately.

7. From perusing the Agreement, it has been proved by the Complainant/allottee that he is an allottee as is defined in Section 2(d) of the Act and the Respondents/Promoters are "promoters" as is defined in Section 2(zk) of the Act.
8. As per clause (12) of the Agreement, the Respondents/Promoters agreed to deliver possession of the flat booked on or before 31st August, 2018.
9. The Complainant/Allottee has placed on record certain receipts passed on behalf of the Respondents/Promoters for payments received towards the booked flat. Receipt No. 77132, dated 17.08.2015 for Rs.1,00,000/- paid by cheque No.00011, dated 11.06.2015 drawn on HDFC Bank, Branch Mumbai

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Prabhadevi seems to be passed which includes amount of Rs.46,107/- towards stamp duty and Rs.53,893/- towards part consideration against the booked flat. Receipt No. 77133, dated 17.08.2015 for Rs. 19,87,633/- paid by cheque No. 000018, dated 30.07.2015 includes amount of Rs. 3,38,893/- towards stamp duty, Rs. 31,920/- towards registration, Rs. 76,990/- towards Vat, Rs. 15,39,800/- and Rs.28.99 towards part consideration. Receipt No. 77970, dated 02.10.2015 for Rs. 15,399/- is paid by TDS Certificate, dated 11.09.2015. Receipt No. 79593, dated 10.03.2016 for Rs. 11,81,266/- paid by Demand Drat No. 863664, dated 08.03.2016 drawn on State Bank of India, Pune Main Branch as a part consideration. Receipt No. 80033, dated 10.05.2016 paid by TDS Certificate, dated 06.04.2016 for Rs.11,812.66. Receipt No. 80010, dated 06.05.2016 for Rs. 3,18,143/- paid by NEFT, dated 28.01.2016 and Receipt No. 80231, dated 14.06.2016 for Rs. 3181.72 is paid by TDS Certificate, dated 13.05.2016. The Complainant has placed on record Schedule of Payment made by him, which includes these amounts and the total comes to Rs. 36,17,435.38 ps. Thus the Complainant/allottee has proved the payment of Rs. 36,17,435.38 ps. to the Respondents/Promoters towards the part consideration of the said flat as per the Agreement, inclusive of stamp duty, registration charges and other taxes.

10. Now the question remains as to whether the Respondents/Promoters failed to deliver possession of the booked flat to the Complainant/allottee ? The Respondents though served with the notice, failed to appear and file their written submissions. The date of possession as per the Agreement is 31.08.2018. Therefore, it is apparent that the Respondents/Promoters have failed to deliver possession of the booked flat to the Complainants/allottees as per the agreement.
11. As per Section 18(1)(a) of the Act provides that if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale, as the case may be, duly completed by the date specified therein, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, to return the amount received by him in respect of that apartment, plot or building, as the case may be, with* interest at such rate, as may be prescribed in this behalf including compensation in the manner as provided under this Act.
12. Apparently, the Respondents/Promoters have failed to complete and deliver possession of the booked flat to the Complainant/Allottee in accordance with the terms

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of the agreement for sale. The Complainant/Allottee by his complaint, wishes to withdraw from the project. Therefore, I am of the opinion that the Complainant/Allottee is entitled to claim refund of the amount paid by him to the Respondents/Promoters towards the booked flat.

13. The rate of interest as provided under Rule 18 of the Maharashtra Real Estate (Regulation & Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest & Disclosure of Website) Rules, 2017 (hereinafter referred to as "Rules") is State Bank of India's Highest Marginal Cost of Lending Rate + 2% above. The Complainant is therefore, entitled to claim interest on the amount of Rs. 36,17,435/- excluding the stamp duty amount, which is refundable from the competent authority under the Stamp Act. The stamp duty shown in the Index-II of the Agreement is Rs.3,85,000/- and it is to be deducted from the amount of Rs.36,17,435/-. Therefore, the actual amount which the complainant is entitled to claim as refund is Rs. 32,32,435/-. The Complainant is entitled to claim interest on amount of Rs. 32,32,435/- @ S.B.I.'s Highest Marginal Cost Lending Rate, which is presently @ 8.70% + 2% above i.e. @ 10.70%.


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14. The Complainant is also entitled to Rs. 20,000/- as cost of this complaint. I therefore, answer Point Nos.1 and 2 in the affirmative and proceed to pass following order.

ORDER

- (1) The Respondents/Promoters shall refund an amount of Rs. 32,32,435/- to the Complainant with interest @ State Bank of India's Highest Marginal Cost Lending Rate + 2% since date of payment till realization of the entire amount.
- (2) The Respondents shall also pay Rs.20,000/- to the Complainant as cost of this complaint.
- (3) The Respondents shall pay the aforesaid amounts within 30 days from the date of this order.
- (4) The Complainant shall execute cancellation deed at the cost of the Respondents.

Pune
Dated :-22/01/2019


(W.K.Kanbarkar)
Adjudicating Officer,
MahaRERA, Pune