

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

Complaint No.CC005000000011734

Yoge Jaju

.. Complainant

Versus

**Yogesh Shelar
Jayant waidande**

.. Respondents

**Coram : ShriS.B.Bhale
Hon'ble Adjudicating Officer**

**FINAL ORDER
15-02-2019**

1. It is the case of complainant that, both the respondents are residence of Pune and deals with the business of Real Estate Development through their registered company known as W.S. Developers Pvt. Ltd having its office at Pune as shown in the agreement for sale dated 31-07-2017. It is further alleged that in continuation with the earlier agreement dated 21-4-2014 which was executed before notary Pune, the complainant has booked the flat bearing No.906 A Wing 9th floor in the project of respondents known as Shrushti Regency located at Wade Bolhaie Pune, under the regd. agreement dated 31-7-2017. Total cost of that flat was Rs.14,50,000/-. The respondents had agreed to hand

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over the possession of the booked flat on or before 31st May, 2018. According to complainant the construction of the project wherein he booked the flat is stalled. It is pending without any further progress. Respondents failed to hand over the possession of the booked flat even if he had paid the amount of Rs.8,79,900/- to the respondents. As the project is stalled and having no progress further, he intends to withdraw from the same. Hence by this complaint he has claimed the relief of the refund of entire amount paid by him to the respondents with interest and compensation under the provisions of Section-18 of Real Estate (Regulation and Development) Act 2016 which came to be implemented in the state of Maharashtra since May, 2017, hereinafter referred as RERA.

2. Respondents remained absent though served with the notice through email ID. Hence, complaint is proceeded exparte against them. Therefore heard complainant in person, perused papers filed on record.

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

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POINTS**FINDINGS**

- | | |
|--|--------------------|
| 1. Whether the complainant is entitled for the refund of amount paid by him to the respondents with interest and compensation under the provisions Section 18 of RERA? | In the affirmative |
| 2. What order? | As per final order |

REASONS

4. On perusal the previous agreement executed before the notary dated 21-4-2014 and registered agreement dated 31-7-2017 it be seen that the complainant has booked the flat No.906 in 'A' building under the registered agreement referred above. Further on perusal the payment receipts filed on record, it seems that the complainant has paid the amount of Rs.8,79,900/- to the respondents towards the consideration of booked flat. It is fact that the respondents failed to hand over the possession of booked flat on or before May, 2018. It is the specific case of complainant that the project wherein he booked the flat is stalled and pending without any further progress. On relying the case so made out by the complainant I am of the opinion that the complainant's claim for the refund of entire amount paid by him to the Respondents under the provisions of Section-18 of the RERA is justified. Hence I am going to record my findings against point No.1 in the affirmative.

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5. In view of the findings recorded against point No.1 in the affirmative question remains as to what will be the amount of refund with interest and compensation under the provisions of RERA. On perusal of the agreement dated 31-7-2018 it will be seen that the complainant has paid the amount of Rs.58,000/- towards stamp duty. As the complainant is intending to withdraw from the project he is entitled to claim the refund of amount from the concerned authority on the amount spent towards stamp duty. However, he will receive the amount of refund in proportionate and not the entire amount. At the most he will not receive the amount more than Rs.37,000/- towards the claim of refund on the amount spent towards stamp duty. Thus, he will suffer the loss of Rs.21,000/- on this count. Therefore, the loss incurred or likely to incur to the complainant will be compensated directing the respondents to pay the compensation of amount Rs.30,000/- to the complainant in this regard.

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If the amount of Rs.58,000/- spent by the complainant towards stamp duty is minused from the amount paid i.e., Rs.8,79,900/- it will come to the sum of Rs.8,21,900/- Further the amount of compensation Rs.30,000/- as stated above is added in the amount of Rs.8,21,900/- it will come to the sum of Rs.8,51,900/- Thus, this will be the amount of refund with interest and compensation to which complainant is entitled to recover from the respondents under the provisions of RERA.

6. In view of the provisions of RERA the rate of interest payable by the promoters /developers to the allottee or by the allottees to the promoters, as the case may be shall be State Bank of India's highest marginal cost of lending rates plus 2%. If the State Bank of India's marginal cost of lending rate is not in use, it would be replaced by such bench mark lending with the State of India may fix from the time to time for the lending to the general public. Now the highest marginal cost of lending rate of State Bank of India is currently 8.70% plus 2%. The amount which is due and payable towards refund as stated above Rs.8,51,900/- to which complainant is entitled to receive from the respondent with simple interest @ 10.70% per annum till the realisation of entire amount. Complaint is also entitled to receive the due and payable amount with interest @ 10.70% since the date of amount received by the respondents on time to time from the complainant till the realisation of the entire amount, in view of the affirmative findings recorded against point No.1.

ORDER

1. The Respondents are directed to pay the amount which is due and payable i.e. Rs.8,51,900/- to the complainant with simple interest @ 10.70% since the date of amount received by them on time to time from the complainant.

2. The Respondents are also 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 realisation of entire amount.
3. The charge of the due and payable amount as ordered be kept on the booked flat No.906 A Wing of Shrushti Regency located at Wade Bolhai, Taluka Haveli District Pune, which is taken by the respondents for development.
4. The Respondents are also directed to pay the amount of Rs.5,000/- to the complainant towards the cost of this litigation.
5. The complainant is directed to execute the deed of cancellation of agreement dated 31-7-2017 in favour of respondents at their costs, after realisation of entire amount with interest as ordered.

Pune
Date :- 15.02.2019

S.B. Bhale
15.2.19
(S.B. Bhale)
Adjudicating Officer,
MahaRERA,