

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
PUNE

Complaint No.CC00500000022486

1.Abhijeet Bhimshankar Mashale .. Complainants
2.Shweta Abhijeet Mashale

C-3-503, Shivnandan Society,
Beside Waghire Colony No.2, Pimpri
Pune-411017

Versus

1.Pankaj Prakash Yeola .. Respondent

Manik Colony, Chinchwad,
Pune-411033.

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

FINAL ORDER

14-11-2019

1. It is the case of the complainant that they have booked the flat No.D-1006 in Orabelle Phase-II located at Ravet, Pune, under the agreement dated 29-1-2016. In terms of this agreement the respondent has agreed to hand over the possession of booked flat within 36 months from the date of execution of agreement i.e., on or before 28-1-2019. However, respondent failed to hand over the possession in terms of agreement despite of receiving the amount of Rs.50,56,712/- inclusive of stamp duty and all the other charges. The consideration of the booked flat was Rs.49,94,200/- As respondent failed to hand over the possession as agreed the complainants have claimed the interest for delayed possession till handing over the possession of same as such rate as may be prescribed under the provisions of Section-18

Note

This final order is corrected in view of application of complainant himself dt. 13-1-2020. The order passed on this application is as "Correction alleged by the complainant is allowed, being it seems to be p. 10-

of Real Estate (Regulation & Development) Act, 2016 (herein after referred as RERA).

2. Initially the complaint was proceeded ex parte, however the respondent remained present on the date of final argument. Prior to that the complainants have also submitted in writing on the complaint itself on 18-9-2019 that, their claim is limited to the extent of interest only on the amount paid by them till the delivery of possession of booked flat. In view of this, the respondent has submitted that to pass the suitable order which deems fit.

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

POINTS

FINDINGS

- | | |
|--|----------------------------|
| <p>1. Whether the complainants are entitled to Claim the interest on the entire amount Of consideration paid by them for delayed Possession, under the provisions of Section-18 of RERA?</p> | <p>In the affirmative</p> |
| <p>2. What order ?</p> | <p>As per final order.</p> |

REASONS

Point No.1: As stated earlier, it is not in dispute that, the complainants have booked the flat No.D-1006 in the project of

Note (party)
 Fair and even in favour of Respondent though he is absent. Hence final order is corrected accordingly.

Signature
 A.D. 2.1.2020

respondent known as Orabelle Phase-II located at Ravet, Pune under the agreement dated 29-1-2016. In terms of agreement respondent was to hand over the possession of the booked flat within 36 months from the date of agreement i.e., on or before 28-1-2019. Admittedly the respondent has received entire amount of consideration of Rs ~~49,94,200/-~~ ^{44,70,958/-} exclusive of stamp duty and all the other taxes and cess, but failed to hand over the possession as agreed. Therefore the complainants claim of the interest for delayed possession is liable to be allowed in view of the provisions of Section-18 of the RERA. Section-18 (1) (a) (b) and proviso of same, states that where an allottee does not intend to withdraw from the project he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

4. It is to be noted that complainants intend to remain with the project and restricted their claim to the extent of interest as stated earlier. In view of this fact the complainants can claim the interest on the amount of consideration paid by them to the respondent from the date of possession as agreed in the agreement i.e., 28-1-2019 (36 months from the date of agreement) and onwards till the handing over of actual and physical possession of booked flat. The entire consideration amount paid by the complainants excluding stamp duty, registration fees and all the other charges is Rs ~~49,94,200/-~~ ^{44,70,958/-}. Thus the complainants are entitled to claim the interest on the aforesaid amount w.e.f. 28-2-2019 and onwards, till the handing over the actual and physical possession of booked flat with occupancy certificate.

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5. Where the allottee opts not to withdraw from the project, the promoter is liable to pay him interest at the prescribed rate for every month of delay till handing over the possession. In view of the Maharashtra RERA Rules, the rate of interest payable by the promoter to the allottee or by the allottee to the promoters, as the case may be, shall be the State Bank of India's highest marginal cost of lending rate plus 2%. In absence of marginal cost of lending rate it would be replaced by such bench mark lending rates which the State Bank of India may fix from time to time for lending rate to the general public. Now the marginal cost lending rate of State Bank of India is 8.75% plus 2%. Thus the complainants are entitled to claim the interest on the consideration amount paid by them Rs. ~~49,94,200/-~~ ^{44,70,953/-} since 28-2-2019 and onwards till the handing over the actual and physical possession of booked flat alongwith occupancy certificate with a simple interest @ 10.75% per annum. Thus the point No.1 is answered accordingly.

ORDER

1. The respondent is directed to pay the simple interest @ Rs.10.75% per annum on the consideration amount paid by the complainants Rs. ~~49,94,200/-~~ ^{44,70,953/-} with effect from 28-2-2019 and onwards, till the handing over of actual and physical possession of booked flat with occupancy certificate, under the agreement dated 29-1-2016.

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2. The respondent is also directed to pay the amount of Rs.10,000/- to the complainants, towards the cost of this litigation.

Pune
Date : 14.11.2019

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

S.B. Bhale
14.11.19