

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

Complaint No.CC005000000011075

Vishakha Kulkarni

.. Complainant

Versus

D.S.Kulkarni Developers Ltd

.. Respondent

Coram :ShriS.B.Bhale

Hon'ble Adjudicating Officer

FINAL ORDER

20-07-2018

1. This is the Complaint under Section-18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as RERA). For the State of Maharashtra the above said act came into force on 1-5-2017.

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2. It is the case of complainant that she had booked a flat No.A-703 in DSK Mayurban located at Pirangut, Pune vide agreement dated 07-6-2014. Under the terms of agreement, the date of possession of booked flat as agreed was June, 2017. The total consideration amount

of booked flat was Rs.43,87,620/-. The complainant has paid till date the amount of Rs.35,38,012/- to the respondent. However, the respondent failed to hand over the possession of booked flat on or before June, 2017, therefore by this complaint the complainant has claimed the relief of refund of the amount paid by her to the respondent under the provisions of Section 18(1) Part-1 of RERA.

3. On perusal of the record it seems that the respondent is served with the notice dated 17-5-2018 but failed to appear before this forum. Therefore, complaint is proceeded ex parte against the respondent. In the above facts and circumstances of the case the following points arise for my consideration and I am going to record my findings thereon, for the reasons stated below:

POINTS

FINDINGS

1. Whether the complainant is entitle to Claim the refund on the amount paid By her to the respondent against the Booked flat under the agreement dated 7-6-2014, in view of the provisions of Section 18(1) Part-1 of RERA?
2. What Order?

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REASONS

4. Heard complainant. Respondent could not be heard being absent and as the complaint is proceeded ex parte, further. On perusal of the receipts of the amount paid by the complainant to the respondent on time to time, filed on record it will be seen that she has paid the entire amount of Rs.35,38,012/-. Despite of receipt of aforesaid amount, the respondent failed to hand over the possession of booked flat on or before June, 2017. As the possession is much delayed, the claim of complainant for the refund of amount paid by her to the respondent with interest and compensation is justified under provisions of Section 18(1) Part-1 of RERA.
5. In view of the aforesaid finding, the question remains what will be the amount of refund, complainant can claim from the respondent. As stated above, till date the complainant has paid the amount of Rs.35,38,012/- to the respondent against the booked flat, inclusive of stamp duty amount Rs.2,04,300/-. Considering this very fact I can say that complainant can claim the reimbursement of amount spent towards stamp duty. However, she could not get the entire amount spent towards stamp duty, though she could get the same in proportionate. At the most the complainant will not receive the reimbursement amount of stamp duty more than Rs.1,00,000/- to Rs.1,10,000/- Thus, she will

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suffer the loss of amount nearly Rs.80,000/- Thus, this loss can be compensated by directing the respondent to pay the compensation of Rs.90,000/- With this the amount spent by the complainant towards stamp duty is deducted from the amount paid till date Rs.35,38,012/- It will come to the sum of Rs.33,33,712/- If this amount of compensation i.e., Rs.90,000/- as directed, added It will come to the sum of Rs.34,23,712/-. This will be the amount of refund which the complainant can claim from the respondent with interest from the date of receipt of same to the respondent from time to time till the relasition of same at the rate as may be prescribed under provisions of RERA.

6. In view of the provisions of RERA and rules framed under RERA, the rate of interest payable by the promoters / developers is as such rate as may be prescribed shall be the State Bank of India's highest marginal cost lending rate (MCLR) + 2% above. In case the 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 the money 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% above. Thus, the complainant is entitle to receive the refund of the amount Rs.34,23,712/- from the respondent with simple interest at the rate of 10.05% since the date of

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receipt from the complainant on time to time till the reliasition of same. In addition to this the complainant is also entitle to receive the amount of Rs.10,000/- towards the cost of this litigation. For the reasons stated above and having regard to the facts and circumstances of the case, I am going to record my finding against point No.1 in the affirmative and proceed to pass the following order:

ORDER

1. The respondent is directed to refund the amount of Rs.34,23,712/- to the complainant with simple interest at the rate of Rs.10.05% per annum since the date of receipt of amount from the complainant on time to time, till the reliasition of same.
2. The respondent is directed to make the refund of amount to the complainant as directed within the period of 30 days since the date of this order.
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20.7. 3. The respondent is also directed to pay the amount of Rs.10,000/- to the complainant towards the cost of this litigation.
4. The charge of the amount which is due and payable to the complainant by the respondent as ordered, be kept

on the flat booked by the complainant under agreement dated 7-6-2014.

5. On relasition of entire amount as ordered, the complainant to execute the deed of cancellation of agreement dated 7-6-2014 in favour of respondent at the cost of respondent.

Pune

Date :- 20.07.2018

S.B. Bhale
(S.B. Bhale)

Adjudicating Officer,
MahaRERA,