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

Complaint No.CC005000000022068

Mr. Ajinkya , Sumatilal Parekh

A-3 G-3, Rakshak Nagar Gold Society,
Behind Radisson Hotel,
Kharadi, Pune-411 042.

.. Complainant

Versus

**1. Maa Sankalp Buildcon,
Through it's partner
M/s. Sankalp Shrushti Buildcon,
Through Santosh Hagavane.**

**2. Maa Sankalp Buildcon,
Through it's partner
M/s. Maa Pranam Consultancy,
Through Vishal Pawar.**

**3. Maa Sankalp Buildcon,
Through it's partner
Mr. Hemant Pishorilal Malik**

.. Respondents

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

Appearance :-

**Complainant : Adv. Mr. Akut
Respondent : Adv. Mr. Mulani
Representative Mr. Vishal Pawar**

**FINAL ORDER
(15.03.2019)**

*2019
15.3.19*

1. It is the case of Complainant that he had booked the Unit No. 104 in Building E in the project of Respondents named as "Sal Dwarika" located at Mouje Yeolewadi, Tal. Haveli, District Pune under the agreement, dated 31.12.2014. In terms of that agreement, Respondents had agreed to hand over possession of booked unit on or before December, 2017. It is alleged that Respondents failed to hand over possession of the booked flat even if the Complainant has paid the entire amount of consideration including taxes, registration charges, stamp duty, etc. Rs. 50,02,580/- on or before Feb. 2017. Therefore, he intends to withdraw from the project claiming the relief of refund of entire amount paid by him to the Respondents towards the booked flat, with interest and cost ⁱⁿ view of Section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA").
2. The plea of the Respondent was recorded on 11.03.2019 to which they pleaded not guilty. Further they also filed their written statement to resist the complaint of the Complainant on 11.03.2019.
3. The case so made out by the Respondents vide their written statement is that as per the terms and conditions laid down in the agreement, dated 31.12.2014, the obligations are casted on both the parties i.e. Complainant and Respondents. However, Respondents failed to hand over possession of the booked unit on or before 31.12.2014 due to special circumstances which are already mentioned in the aforesaid agreement i.e. non-availability of building material, natural calamity, any hindrance by or on behalf of

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Government authority, change in any rules by the concerned authority, any delay in grant of any NOC etc. by the concerned authorities, etc. Moreover, in terms of the agreement incorporated in clause (6), any dispute arise between them shall have to be referred to the arbitrator and not before any legal forum. The delay was caused due to facts mentioned above and as the dispute between the parties has to be referred to the arbitrator, this forum has no jurisdiction to entertain the present complaint. Further it is contended that there was an accident on 17.05.2018 on the site of construction of the project wherein the Complainant has booked the unit. ¹⁷ The said accident two labourers have lost their lives. Therefore, the work stopped by the authority concerned from 09.07.2018 to 28.08.2018. Further it is contended that now the project is complete and the unit booked by the Complainant is ready for occupancy. In terms of the agreement, the Complainant is now liable to pay Rs. 6,84,622/- to the Respondents as balance consideration. If the project is now complete and if majority of allottees like Complainant are withdrawing from the project, the Respondent will suffer irreparable loss. Further it is contended that in view of Section 32 of the RERA, the Respondents are also entitled for protection. The complaint being without any cause, the same is liable to be dismissed.

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4. In the above facts and circumstances, following points arise for my determination. I am going to record my findings against each of them for the reasons stated below.

POINTS**FINDINGS**

- (1) Whether the Complainant is entitled to claim refund of the entire amount paid by him to the Respondents against the booked flat under the agreement, dated 31.12.2014 with interest and compensation under the provisions of RERA ?.. In the Affirmative
- (2) What order ? As per final order.

REASONS

5. Heard Mr. Anand Akut, Advocate for Complainant whereas Mr. Shakil Mulani,, Advocate for Respondents, even Mr. Vishal Pawar, the director of Respondents. Perused papers filed on record.
6. It is to be noted that the agreement in question by which Complainant has booked the unit in the project of Respondents is dated 31.12.2014 and under the provisions of MOFA. The RERA came into force and made application to the State of Maharashtra w.e.f. May, 2017. It is also fact that the Respondents have registered this project with Maharashtra Real Estate Regulatory Authority (MahaRERA). As agreed by the Respondents in terms of agreement, the possession was not given of booked unit to the Complainant on or before 31.12.2017. On the submission of Respondents themselves, what is seems that the project is about to complete or may be complete^d at this stage. It means it was not completed on or before December, 2017, which was the date of possession, as agreed. This fact itself is sufficient to

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make it clear that project of Respondents wherein unit is booked by the Complainant was ongoing project under the provisions of Section 3 of RERA. In view of this fact and as the project already registered with the MahaRERA, the dispute between the parties shall have to be governed by the provisions of RERA and not in any terms and conditions incorporated in the registered agreement, as alleged by the Respondents.

7. In fact. The payment alleged to have made by the Complainant to the Respondents against the booked flat is not disputed by the Respondents. However, on perusal of documents produced on record, it becomes clear that the entire amount of Rs. 50,02,580/- was paid by the Complainant to the Respondents inclusive of stamp duty, registration charges, taxes, etc. The consideration of the booked flat as mentioned in the agreement is Rs. 47,26,000/-. Despite of making entire amount of consideration and in addition the amount for taxes, stamp duty, registration, etc. huge amount is paid by the Complainant to the Respondents. Despite this, Respondents failed to hand over the possession even after the period of more than 4 years have been lapsed since the date of agreement.

8. As argued by and on behalf of the Respondents, the authority under RERA can protect the interest of both allottees and promoters and even the real estate sector. The sub-clause which is in the form of as is argued, seems to be of force majeure. The alleged accident wherein two labourers have lost their lives on the construction site of said

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project is subsequent to December, 2017. In view of the provisions of Section 6, the authority under RERA can extend the registration granted under Section 5 in certain circumstances and explanation of Section 6 makes it clear that the expression, " 'force majeure' shall mean in case of war, flood, draught, fire, cyclone, earthquake or any other calamity caused by nature affecting regular development of the real estate project". What ^{even} ~~have~~ ^{from} is the case made out by the Respondents in their written statement and even as argued, cannot come within the scope of aforesaid expression. For this reason and as complaint of Complainant is to be governed by the provisions RERA, I am of the opinion that the claim of the Complainant is legally justified claiming the relief of refund, as he intend to withdraw from the project.

9. In view of the aforesaid findings, now question is what will be the amount of refund, which is due and payable with interest and compensation. As noted above, the entire amount alleged to have paid by the Complainant to the Respondent on or before 14.02.2017 was Rs. 50,02,580/- inclusive of stamp duty and registration charges. On perusal of the Index II of the registered agreement, it be seen that the amount of Rs. 2,83,600/- has been spent towards the stamp duty. As the Complainant is intending to withdraw from the project, he will claim the stamp duty amount from the competent authority. However, he will not receive the entire claim of stamp duty though that refund can be paid in proportionate. At the most, the Complainant will receive the amount not more than Rs. 1,95,000/- towards the claim of stamp duty. Considering this very fact and amount of

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stamp duty, if Rs. 2,83,600/- is deducted from the amount of Rs. 50,02,580/-, it will come to the sum of Rs. 47,18,980. As stated above, the amount of Rs. 1,95,000/- will be roughly calculated as amount of refund of stamp duty. Thus the Complainant will suffer a loss of Rs. 88,600/- towards the claim of refund of stamp duty. That loss can be compensated by directing the Respondents to pay the amount of compensation of Rs. 1,00,000/-. If the amount of Rs. 1,00,000/- is added in the amount of Rs. ~~47,18,980/-~~ ^{47,18,980} it will come to the sum of Rs. 48,18,980/- . Thus this will be the amount which is due and payable by the Respondents to the Complainant with interest.

10. 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% above = 10.70% p.a. The Complainant is therefore, entitled to receive due aforesaid due amount of Rs. 48,18,980/- from the Respondents together with interest at such rate. In addition to the interest, the Complainant is also entitled to receive cost of this complaint from the Respondent. I therefore, answer Point No.1 in the affirmative and proceed to pass following order.

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ORDER

- (i) The Respondents to refund the amount of Rs. 48,18,980 to the Complainant with simple interest @ 10.70% p.a. from the date of actual payments till realisation of the entire amount which is due and payable.

- (ii) The Complainant to execute the deed of cancellation of the agreement, dated 31.12.2014 at the cost of the Respondents after realisation of entire amount as ordered.
- (iii) Charge of the aforesaid due and payable amount be kept on the booked unit until the full and final realization of the amount as ordered.
- (iv) The Respondents to pay Rs.15,000/- to the Complainant towards cost of this litigation.
- (v) The Respondent to pay the due and payable amount to the Complainant within 30 days from the date of this order and continue to pay the same till the realisation of entire amount as ordered.

Pune
Date :-15.03.2019

S.B. Bhale
15-3-19
(S.B. Bhale)
Adjudicating Officer,
MahaRERA, Pune