

**MAHARASHTRA REAL ESTATE APPELLATE
TRIBUNAL UNDER RERA Act**

No. AT005000000010409

VENKATESH MANGALWEDHE
Flat No.9, Ashiyana Park 2,
Opp Lane of Gaikwad Petrol Pump
Pune Haverli 411 007

.. Appellant

Vs.

D S KULKARNI Developers Ltd.
1187/60 DSK House,
J.M. Road, Shivajinagar,
Pune 411 005.

.. Respondent

Adv. Jairam Chandnani for the Appellant.

None present on behalf of the Promoter D.S. Kulkarni Developers Ltd.

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.
Heard on : 5th September , 2018
Dictated/Pronounced on: 5th September, 2018
Transcribed on : 6th September, 2018

-:ORAL JUDGMENT:-

Heard.

1. This is Allottee's appeal challenging the correctness of the order dated 1st May, 2018 recorded by Lt. Adjudicating Officer, MahaRERA, Pune. The order under challenge reads as under:



1. Respondent to pay Rs.39,98,604/- to complainant alongwith interest thereon @ 10.05% p.a. from the date of filing of complaint till final realisation.
2. Respondent to pay Rs.20,000/- to complainant as compensation.
3. Respondent to pay Rs.5000/- as costs to the complainant.
4. Charge of aforesaid amounts shall be kept on the flat booked by complainant.

2. The grievance is the Appellant / Allottee in peculiar facts and circumstances as the project is not completed in given time and since affairs of the Promoter are arrested owing to the ongoing investigations and several complaints against the Promoter hence, the Allottee / Appellant intended to withdraw from the project. It was in this situation, the complaint was lodged with MahaRERA on 4.11.2017. The request was to cancel the booking and refund his money alongwith applicable interest

3. The principal amount released time to time by the Allottee is highlighted in the complaint and also at Exhibit 'A' to the appeal. The total amount comes to Rs.35,21,368/- In addition to said payments the complainant had also released Rs.1,50,605.74 towards service tax, VAT and TDR Certificate.
4. Ld. Counsel for the Complainant / Allottee has claimed Rs.30,000/- towards registration fees, Rs.1760/- towards registration paper handling charges and Rs.2,94,867/- incurred owing to legal fees, travel expenses for pursuing the complaint from Delhi. He has also claimed Rs.2,25,000/- towards rent paid for the period of delay from 1st January, 2017 to March 2018 @ Rs.15,000/- per month.
5. The Allottee / Complainant had entered into Agreement to purchase the Flat dated 13th January, 2014. The possession was to be handed over by 31st December, 2016 being Flat no. H/304 in Bldg. DSK Anandghan DSK Vishwa Phase VI Sinhagad Road, Pune.
6. Sec. 18(1) of RERA deals with refund of amount and compensation. It conceives in case the Allottee wishes to withdraw from the project, the promoter shall be liable on demand to return the amount received by him in respect of that apartment with interest at such rate as may be prescribed including compensation in the manner as provided under the Act. Section 2(za) of RERA deals with interest. The particular clause 2(za)(ii) reads as under :

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"(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

7. In the light of the legal position and there being no controversy of several deposits referred to above made by the Complainant / Allottee, the order under challenge dated 1st May 2018 of Ld. Adjudicating Officer, MahaRERA, Pune needs modification, the interest payable would be from each payments.
8. The Allottee / Complainant in peculiar facts of the case is entitled to receive interest @ 10.05% per annum from respective date of payment totalling Rs.35,21,368/- including the payment of Rs.1,50,610/- released towards tax, VAT and TDS Certificate. The complainant has incurred expenses for registration and registration paper handling charges. Its refund is not directed.
9. Section 18 provides compensation in addition to interest as claimed by the Allottee in the event of his exiting from the project, the complainant shall be receiving refund of registration of Rs.2,61,500/- deposited by him after cancellation of agreement and he will not be entitled to receive Rs.2,61,500/-. The claim disallowed of rental Rs.2,25,000/- does not warrant interference for the simple reason that there is no adequate evidence to indicate that the complainant has shifted to Delhi and is paying rental of Rs.15,000/- or to accept that his mother has to reside in Pune and she has the burden to pay the rental of Rs.15,000/- per month.
10. The Ld. Adjudicating Officer granted interest @ 10.05% per annum which in the state of above facts needs to be corrected / modified from date of respective payments for an amount of Rs.35,21,368/-

:- ORDER :-

1. Respondent to pay Rs.35,21,368/- to the complainant alongwith interest thereon @ 10.05% per annum from date of each such payment till final realization.



2. The complainants shall be entitled to service tax, VAT and TDS Certificate amount of Rs.1,50,610/-.
3. The Respondent to pay cost of Rs.20,000/- as directed by the Ld. Adjudication Officer, MahaRERA, Pune. The Respondent to pay cost of Rs.25,000/- of this Appeal to the complainant.
4. Till the payments are released in favour of the complainant there shall be charge on the subject flat till realization of the entire amount receivable by the complainant.

Dictated and pronounced in open Court today.

Place: Mumbai
Dated: 5th September, 2018


(K. U. CHANDIWAL, J.)
President,
Maharashtra Revenue Tribunal,
Mumbai
& I/c. Maharashtra Real Estate
Appellate Tribunal, (MahaRERA),
Mumbai