

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

Complaint No.CC005000000011283

**1.RAVENDRA KUMAR SAXENA
2.MRS.SANTOSH SAXENA**

.. Complainants

Versus

Mantri Dwellings Pvt Ltd

.. Respondent

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

**FINAL ORDER
31-08-2018**

1. This is the Complaint under Section-18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as RERA). This Act came into force within the State of Maharashtra with effect from 1st May, 2017. 5-2017.
2. It is the case of complainant that he has booked the flat No.A-307 in the project of respondent named Mantri Vangate located at Kharadi Pune for total consideration of amount Rs.68,00,750/-, under the agreement dated 5-6-2015 In terms of that agreement the respondent had agreed to hand over the possession of that flat on or before December, 2017. It is alleged that out of total

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consideration amount the complainant had paid the amount of Rs.50,72,150/- inclusive of stamp duty etc., The respondent failed hand over the possession of booked flat as agreed. Not only that but the sent two letters extending the date of possession on January 2019 as well as June, 2020. The aforesaid extension is contrary to the agreement dated 5-6-2015. Therefore, the complainant has opposed the same. On the aforesaid act of the respondent complainant want to withdraw from the project. Therefore he has filed this complaint and claimed the refund of amount paid by him to the respondent on time to time with interest and compensation. Further it is alleged that due to aforesaid act of respondent regarding the extension of the date of possession the complainant has suffered mental agony. Hence they have also claimed the compensation of Rs.3,70,270/- + Rs.2,67,270/- towards the loss of opportunity due to appreciation in the value of the apartment. To support his claim the complainants have filed on record the ready reckoner about the prices of real estate during the year 2018. The aforesaid losses be considered while awarding the compensation and action be taken against them under Section 60 and 61 of the RERA.

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3. The plea of the respondent was recorded on 19-7-2018 through the authorised representative to which they pleaded not guilty. Further respondent have also filed

the written submission to resist the claim of complainants dated 20-6-2018.

4. The case made out by the respondents vide their say is that the complainants had booked the flat under the agreement dated 5-6-2015 i.e., prior to the commencement of the RERA. Further the date of possession given in that agreement was subject to clause of force majeure. There was also a separate clause under that agreement regarding arbitration even by the specific term that agreement the respondents were allowed to extend the date of possession in certain circumstances. In a compelled situation and circumstance the dates were adjourned pointing out that possession of the booked flat will be given on or before January, 2019 or June, 2020. It is also contended that in the year 2015 the main contractor abandoned the work of construction of the project. The project was also badly affected due demonetisation in the year 2016. Thereafter in the year 2017 the GST was made applicable. Due to facts noted above the project was badly affected so there was no alternate except the extend the of possession. Accordingly communication was made to the complainant but no grievance was raised by him. Remaining silent on that communication also amounts to admission. In view of clause 5 (b) of the said agreement, the respondents can be held liable to return the amount with simple interest at the rate of 9% per annum. The complaint of the

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complainant is also not tenable being it is premature and it was to be referred to the arbitration in terms of the said agreement. The complaint is also not tenable under the provisions of RERA. The plea of the complainant regarding the action to be taken under section 60 & 61 is also not tenable, therefore the complaint is liable to be dismissed.

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

POINTS

FINDINGS

- | | |
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| <p>(1) Whether the complainants are entitled to receive the refund of amount paid by them to the respondents on time to time with interest and compensation under the provisions of RERA</p> <p>(2) What order?</p> | <p>In the affirmative</p> <p>As per final order.</p> |
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REASONS

5. Point No.1 & 2 - Heard parties through their respective advocates and perused papers filed on record. Mr.Golekar advocate for complainant submitted that the claim of the complainant is liable to be allowed under the provisions of RERA and in addition to that the complainant's claim for compensation is also liable to be allowed due to hike in prices of real estates and loss of

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opportunities, due to not handing over the possession as agreed. The complainant is also suffered mental agony. Hence his prayer for action against the respondent under section 60 & 61 is also liable to be allowed. Mr.Khaladkar advocate for respondents argued that the provisions of RERA shall be in addition to and not in derogation of the provisions of any other law for the time being in force, in view of the section 88 of the said act. The circumstances like abandoning the work of construction by main contractor, demonetisation application of GST can be considered in terms of the clause of force majeure act as termed in the agreement in question. He also argued that at the most refund of the exact amount which received to the respondents with interest and compensation can be considered only under the provisions of RERA. The relief claimed by the complainant about taking action under section 60 and 61 of the RERA is not tenable.

6. Apartment from the terms and conditions of the agreement in question I can say that the project of respondent wherein the complainant had booked the flat can be termed as ongoing project on the date of commencement of the RERA in view of the section 3 of the same. It is also not in dispute that the respondents have registered this project under the provisions of RERA. Considering this very fact I can say that the dispute in between the allottee and promoter/developer is to be considered under the provisions of RERA, apart

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from the terms and conditions laid down in the agreement dated 5-6-2015. No doubt about it that as argued by Mr.Khaladkar, the provisions of RERA shall be in addition to and not in derogation of the provisions of any other law for time being in force, in view of the section 88 of said Act. For the reasons stated above I would like to make it clear that the claim of the complainant and even defences taken by the respondents can be considered under the provisions of section 18 of RERA and even the help of other existing provisions of law which are time being in force can be taken into consideration to meet the end of justice.

7. It is pertinent to note that the defence taken by respondents regarding force majeure clause is not appealing to the reasons and nor it stands to the tests of force majeure term. This term will come into force only when the situation goes out of the control or beyond the human control for any reason or the act of god i.e., vice- majeure. In short the respondents cannot extend the date of possession contrary to the terms of agreement at their whims. Admittedly respondents failed to hand over the possession as agreed on or before December, 2017. Therefore the complainant's claim to withdraw from the project, claiming the refund of amount with interest and compensation from the date of amount paid by him to

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the respondents on time to time is justified under the provisions of section 18 of the RERA.

8. Now the question is what will be the amount of refund with interest and compensation, to which the complainants are entitled to receive from the respondents. It is to be noted that complainants intends to withdraw from the project. Therefore they can receive the refund on the amounts spent by them towards stamp duty. Ofcourse that refund will be in proportionate and not in full. The amounts spent by the complainants towards stamp duty is Rs.4,08,100/-. If this amount is deducted from the amount paid by them to the respondents i.e. Rs.50,72,150/-, it will come to the sum of Rs.46,64,050/-. Approximately the complainants will not receive the refund towards the claim of stamp duty more than Rs.3,00,000/-. Thus complainants would suffer loss about Rs.1,10,000/- towards the claim of refund of stamp duty. The loss suffered or likely to suffer to the complainants towards the refund of stamp duty can be compensated by directing the respondents to pay the compensation of amount Rs.1,25,000/-. If the amount of compensation is added in the amount of Rs.46,64,050/- received to the respondents from the complainants it will come to sum of Rs.47,89,050/- Accordingly the amount of Rs.47,89,050/- can be treated as due and payable for

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the refund with interest from the respondents to the complainants under section 18 of RERA.

9. In view of the provisions of RERA and rules framed under the same, 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 8.65% + 2% above. Thus, the Complainants are entitled to receive the due and payable amount of refund of Rs.47,89,050/- with simple interest at the rate of 8.65% + 2% till the reliasition of the same. The complainants are entitled to receive the aforesaid amount which is due and payable from the respondents with simple interest since the date of receiving the amount by the respondents from them on time to time until the reliasition of the same. In addition to that complainants are also entitled to the amount of Rs.25,000/- towards the costs of this litigation. For the foregoing reasons 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.

Handwritten signature and date 27.11.20

ORDER

1. The Respondents are directed to pay the refund of amount which is due and payable Rs.47,89,050/- to the complainants with simple interest @ 10.65% per annum from the date of payment received to them on time to time from the complainants till the reliasition of entire amount.
2. The Respondents are directed to make the payment of refund as ordered with interest within 30 days from the date of this order.
3. The charge of the amount which is due and payable with interest as ordered be kept on the flat booked by the complainants under agreement dated 5-6-2015.
4. After receiving or reliasition of entire amount of refund which is due and payable with interest, the complainants shall execute the deed of cancellation of agreement dated 5-6-2015 in favour of Respondents at their own costs.
5. The Respondents are also directed to pay the amount of Rs.25,000/- to the complaint towards the cost of this litigation.

Pune
Date :- 31.08.2018

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