

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

Complaint No.CC005000000011701

Mr. Vaibhav Shankar Bendre

R/at Monika D Bldg., Flat No.S/10,
Old Kate Pimpale Road,
Pimpri-Waghare, Pune-411 007.

.. Complainant

Versus

**Shree Sai Associates
Through its Partners**

- 1) Mr. Ganesh Laxman Zagade
- 2) Mr. Yogesh Chandrakant Zagade
- 3) Mr. Hrishikesh Chandrakant Zagade.

Address : Office Nos.1, 2, 3, Swapnanagari,
Pune Nasik Highway, Zagadevasti, Chakan,
Tal. Khed, District Pune.

.. Respondents

**Coram : Shri W.K. Kanbarkar
Hon'ble Adjudicating Officer**

Appearance :-

**Complainant : Adv. Mr. Janak Lunkad
Respondents : Adv. Mr. Nilesh Bhandari**

FINAL ORDER
(26.08.2019)

1. Present complaint is moved under Section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter called as "RERA Act") for withdrawal from the project and for refund of amounts paid together with interest and compensation, as sought therein.
2. Complaint reflects that complainant has booked Flat No. J1/706 in the project "Swapnanagari" situate at Chakan, Tal. Khed, District Pune vide registered agreement, dated 12.02.2013 for consideration of Rs. 20,86,250/-. As per the said agreement, proposed date of delivery of possession of the booked flat within 24 months from the date of the agreement, dated 12.02.2013. Construction of the said project is still incomplete. Complainant has paid Rs. 18,58,641/- towards part consideration. Complainant also has borne Rs. 1,04,350/- towards stamp duty and Rs.21,790/- towards registration of the agreement. Accordingly, complainant has paid total amount of Rs. 19,84,781/- including stamp duty of Rs. 1,04,350/-, as aforesaid. Therefore, the complainant wish to withdraw from the said project. Hence the complainant prays for refund of amounts of Rs. 28,03,487/- including stamp duty, registration charges, as well as litigation expenses of Rs. 30,000/- and Rs.6,84,394/- towards

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interest paid by complainant on the bank loan borrowed for the booked flat from March, 2013 to June, 2019.

3. Plea of the respondents recorded. Respondents have filed written explanation to the present complaint and resisted the complainant's claim on various grounds. Owners of certain lands executed various development agreements and power of attorney in favour of the respondents.
4. Village Chakan was within the limits of Grampanchayat, Chakan. Grampanchayat Chakan has granted NOC dated 10.05.2013 for construction of ownership scheme on the plot referred in para 1 of the written explanation. N.A. permission dated 28.02.2013 also granted by the competent authority. Plan for construction also sanctioned vide order, dated 20.05.2013 by the competent authority.
5. Respondents have executed agreement on dated 12.02.2013 in favour of the complainant for Flat No.J1/706 in "Swapnanagari" project situate at Chakan for consideration of Rs.20,86,250/-. Said Swapnanagari project comprises of various buildings and phases.
6. Government of Maharashtra has established PMRDA as well as Chakan Municipal Council. After formation of

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Chakan Municipal Council and PMRDA, new permissions for the said project were to be obtained.

7. Government of Maharashtra has imposed service tax on the transaction of the said project and for clarity of payment of service tax, apex court gave verdict in the year 2016 and thereby service tax recovered retrospectively from 2006 onwards. Accordingly, respondents have paid service tax in crores of rupees. Respondents also paid Rs.60,00,000/- in the year 2013 to the Income Tax Department. On account of demonetization and recession in the real estate market and Government of Maharashtra has imposed new liabilities towards security deposit, labour welfare and development charges, vide notification in the year 2015 and therefore, respondents have paid Rs. 53,00,000/- in that regard.
8. Proposed delivery of possession of booked flat, subject to certain terms and conditions. Complainant has paid Rs. 18,77,625/-, but still liable to pay Rs.2,08,625/- out of the agreed amount of Rs. 20,86,250/-, including MSEDCL and society expenses. Complainants have failed to pay the balance amount in spite of demands. Non-availability of building construction material. Aforesaid circumstances were beyond the control of the respondents and the same fall within the ambit of force majeure. Therefore, there is no delay in delivery of

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possession of the booked flat. As per RERA Registration Authority, date of completion of project is till 31.12.2019.

9. Construction of the buildings of the said project is almost completed and respondents are ready to deliver the possession of the booked flat to the complainant.
10. There are reciprocal obligations between the complainant and the respondents, but the complainant has failed to discharge his obligations. Respondents are entitled to recover interest for the delayed payment @ 24% p.a. from complainant.
11. Thus the present complaint is not just and proper, but the same is liable to be dismissed with cost.
12. On the above controversial contentions, the following points have arisen for my determination and findings thereon are as under :-

POINTS

FINDINGS

- | | |
|----------------------------------------------------------------------------------------------------------|-------------------------|
| (1) Whether the Complainant/Allottee is entitled for withdrawal from the said project ? | ... In the Affirmative. |
| (2) Whether the complainant is further entitled to refund of amount paid together with interest thereon? | ... In the Affirmative. |

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- (3) Whether the complainant is further entitled to compensation as sought in the complainant ? .. In the negative.
- (4) What order ? .. As per final order

REASONS

13. **POINT No. 1 to 3** :- Admitted position that the complainant has booked flat No.J1/706 in the project "Swapnanagari", situate at Chakan in Pune District vide agreement, dated 12.02.2013 for consideration of Rs. 20,86,250/-. Respondents admitted in the written explanation that the complainant has made payment of Rs. 18,77,625/- out of said consideration. On the contrary, complainant has claimed and substantiated that he has made payment of Rs. 18,58,641/- vide cheques, dated 16.08.2012, 29.08.2012, 09.02.2013, drawn on State Bank of India as detailed in the complaint. Complainant also has made cheque payments dated 29.03.2013, 31.08.2013, 17.10.2013, 26.11.2013, 16.01.2014, 07.03.2014, 31.03.2015, 18.03.2016 drawn on HDFC Bank. Accordingly, complainant has made payment of part consideration of Rs.18,58,641/- as per above said cheques drawn on State Bank of India and HDFC Bank. Moreover, complainant has borne Rs.1,04,350/- towards stamp duty and Rs. 21,790/- towards registration charges of said agreement. Thus the complainant has borne total

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amount of Rs.19,84,781/- including part consideration, stamp duty and registration charges. Complainant has also paid all taxes including VAT, service tax and GST.

14. In pursuance of the aforesaid agreement, possession of the booked flat was to be delivered within 24 months from the date of agreement. Admittedly, construction of J1 and K1 buildings of Phase No.4 in the said project still to complete fully. According to respondents, application is moved for obtaining completion certificate, on 19.09.2018. Admittedly, completion certificate is yet to obtain. On behalf of respondents also submitted that almost all construction work of the project is completed and respondents are ready to deliver the possession of the booked flat to the complainant as early as possible. On the contrary, complainant submits that the construction of the buildings of the said project is not yet completed and completion certificate not yet obtained. Moreover, on behalf of respondents further submitted that on the website of RERA Authority registered date of completion of project by 31.12.2019. However, as per the aforesaid agreement between the parties, possession of the booked flat was to be delivered by the respondents/promoter within 24 months from the date of agreement i.e. 12.02.2013. So in view of the agreement, it was obligatory on the part of respondents to deliver possession of the booked flat within

stipulated time from the date of agreement, but the said part of the respondents is not complied. In this context, on behalf of respondents submitted certain grounds of delay for the completion of the project such as permission of municipal council, Chakan, and PMRDA and therefore, new permissions and new sanctions for the said project were to be obtained for the concern competent authority and therefore, there was delay and the same was beyond the control of the respondents. So also on account of demonetisation and recession in real estate market and non availability of building material and on account of financial crisis as respondents required to pay service tax/VAT and income tax in many crores and further the complainant has not made timely payment even though it was reciprocal obligation on the part of the complainant to make timely payment. Just to mention that the complainant has made timely payment towards part consideration and also complainant has borne stamp duty charges and registration charges timely. Moreover, the complainant has also paid all taxes towards VAT, service tax, GST. On behalf of respondents not disputed about the payment of such taxes claimed to be have paid by the complainant. Therefore, the contention of the respondents that the complainant has not made timely payment and that was one of the ground for not delivering timely possession to the complainant is not acceptable and maintainable under law. Said

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agreement executed on 12.02.2013 and N.A. permissions and sanction of plan and Grampanchayat NOC were obtained on or before 20.05.2013. However, Chakan Municipal Council and PMRDA established in the year 2015. Therefore, the contention of the respondents that new permissions were required to be obtained from Municipal Council Chakan and PMRDA and therefore, the said grounds were beyond their control and hence construction delayed but such grounds are not acceptable and not maintainable under law because before establishment of municipal council, Chakan and PMRDA all requisite sanctions for the project were obtained by the respondents in the year 2013 itself. Other grounds are raised for delay such as payment of service tax/VAT, payment of income tax, recession in the real estate, and non availability of building material for construction cannot be said as the same were beyond the control of the respondents. One thing is to be noted that Swapnanagari project consists of 6 phases with more than 2000 flats and disputed flat is in Phase No.4 and in the disputed buildings 80% flats are sold to various allottees. However, only because in the Swapnanagari project construction of more than 2000 flats was to be made and that is one of the grounds for delay on the part of the respondents but said ground also cannot be said as beyond the control of the respondents. Thus aforesaid grounds do not come under the purview of force majeure.

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15. Complainant contends that construction of the project building is still to complete and complainant is not hopeful to get the possession of the booked flat as per agreement. Obviously, the complainant is entitled to withdraw from the said project. Accordingly, complainant is entitled to recover Rs. 18,80,431/- excluding stamp duty of Rs. 1,04,350/-, which is refundable as per the provisions of Maharashtra Stamp Act, together with permissible interest from the date of payments till its realisation by the complainant to the respondents.
16. Claim of Rs.6,84,394/- towards payment of interest on bank loan as sought in the complainant is not permissible, when on the refundable amounts appropriate and permissible interest is levied. Therefore, the claim of complainant for recovery of said interest amount is not maintainable but is liable to dismiss. Complainant has also claimed litigation charges. Just and proper that the respondents have to pay litigation charges of Rs. 25,000/-to the complainant. On the other hand, respondents are claiming interest @ 24% on the delayed payment by the complainant. However, complainant has made timely payment and such claim is not maintainable and liable to dismiss. Complainant has also claimed interest @ 24% p.a. on the refundable amount. Of-

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course, respondents by way of written explanation just claimed interest @ 24%, but respondents have not actually charged interest @ 24% p.a. on the whatever amounts paid by the complainant. At the instance of the complainant submitted that in pursuance of the agreement and provisions of RERA, promoter are liable to pay interest @ 24% p.a. promoter has not actually charged and recovered interest @ 24% p.a. on the whatever amounts paid by the complainant. Obviously, the claim of complainant for recovery of interest @ 24% p.a. in pursuance of the agreement and provisions of RERA is not maintainable, but @ rate of permissible interest in accordance with law. Thus point No.1 and 2 are answered in the affirmative and point No.3 in the negative. In the result, pass the following order.

ORDER

- (1) Complainant is hereby entitled to withdraw from the said project "Swapnanagari" situate at Chakan, Tal. Haveli, District Pune.
- (2) The Respondents shall refund the amount of 18,80,431/- except stamp duty of Rs.1,04,350/-, which is refundable as Maharashtra Stamp Act, to the complainant together with interest at the State Bank of India's Highest Marginal Cost Lending Rate i.e. 8.75% + 2% = 10.75% p.a. from the date of

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actual payments till it's realization from the respondents.

- (3) Complainant is entitled to claim refund of stamp duty amount of Rs. 1,04,350/- under the provisions of Maharashtra Stamp (Amendment) Act, 2015 and in case if complainant is not entitled to claim refund of such stamp duty amount within stipulated period under said law, then the respondents shall pay said amount within period of 30 days after the expiry of statutory period provided under the said Act.
- (4) Respondents shall pay Rs.25,000/- as litigation cost to the complainant.
- (5) The Respondents shall pay the aforesaid amounts within 30 days from the date of this order.
- (6) The complainant shall execute cancellation deed of the agreement, dated 12.02.2013 after receipt of all the amounts mentioned in the order, at the cost of the Respondents/Developer.
- (7) Charge of the aforesaid amounts due and payable be kept on the booked flat of the said project till realization of the entire amount.
- (8) Claim of the complainant as regards recovery of compensation towards interest hereby stands dismissed.

Pune
Dated :-26/08/2019

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26-8-19
(W.K.Kanbarkar)
Adjudicating Officer,
MahaRERA, Pune