

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

Complaint No.CC005000000022693

1.Mrs.Pratidnya Sanjay Nashte

2.Sanjay Shivaling Nashte

.. Complainants

R/At Flat No.6E, Shriramnagar, Aundh
DP Road, Pune-411007

Versus

1.M/s.Pristine Developers

Through Partner Sachin Ishwarchand Goyal

2. Sachin Ishwarchand Goyal

.. Respondents

H.No.338/2, Guruwarpeth, Behind Kanya
Prashala, Karad-415110

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

Appearance :-

Complainant : Adv.Prasad Temkar

Respondent : Adv.Jyoti Asnikar

FINAL ORDER

(30.09.2019)

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. The fact set out in the complaint in brief are as under:
Complainants have booked flat No.507 In 'F' Wing in the project Pristine City at Bakori Taluka Haveli,

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Dist.Pune, vide agreement dated 13-01-2016 for consideration of Rs.29,36,900/- and possession of the same was to be delivered on or before 31-03-2018. In pursuance of said agreement complainants have paid Rs.1,49,000/- as booking amount. Complainants have obtained loan amount from India Infoline Housing Finance Limited and the loan amount directly disbursed at the account of respondents and the complainants started paying Monthly EMI at the loan account at the said bank. Complainants have paid consideration of Rs.25,10,365/- to the respondents. Respondents have failed to deliver possession of the booked flat on or before 31-03-2018. Complainants intend to withdraw from the said project as no hopes of getting possession of the booked flat in pursuance of the agreement. Therefore the present complaint for seeking reliefs to allow the complainants to withdraw from the project and to direct the respondents to refund Rs.28,00,074/- alongwith interest till realization and further for recovery of compensation of Rs.5,00,000/- for mental agony and harassment and breach of agreement and for recovery of cost of Rs.1,00,000/- towards the present proceeding.

3. Plea of the respondents recorded. Respondents have filed written explanation and resisted the complaint claim on various grounds. It is admitted that the complainants have booked said flat in the said project. Complainants had to pay stamp duty of Rs.1,17,500/- and registration charges of Rs.29,370/- and VAT of Rs.29,369/- alongwith their contribution of

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Rs.1,49,000/-. It is admitted that the complainants have obtained loan from the said bank but the respondents have paid monthly installments totalling Rs.2,17,158/- at the accounts of the complainants in the said bank. It is admitted complainants have paid Rs.1,49,000/-. Payments of stamp duty, registration charges and other charges state way disbursed from the said loan accounts of the complainants. Said Bank has disbursed Rs.22,12,208/- towards consideration and Rs.1,10,132/- towards service tax and VAT totalling Rs.23,22,340/-. Therefore the claim of the complainants for refund is not maintainable, since the complainants have contributed Rs.1,49,000/- towards consideration. Respondents are ready to give possession of the booked flat and hence there is no reason for refund of any such amounts. It is denied that the respondents have agreed to deliver possession of the booked flat on or before 31-3-2018. It is denied that the complainants have paid monthly EMI to the said bank amounting to more than Rs.19,000/-. It is further denied that the complainants have paid consideration of Rs.25,10,365/-. Thus, the claim of the complainants for refund of amounts and for withdrawal from the project and for recovery of any such compensation as sought in the complaint is not maintainable in the law but the same deserves to be dismissed with cost.

4. On the above controversial contentions the following points have arisen for my determination and findings thereon are as under:

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POINTS	FINDINGS
1. Whether complainants are entitled to refund of amounts together with interest?	In the affirmative
2. Whether the complainants are entitled to recovery of compensation as sought?	In the negative
3. What order?	As per order Below.

REASONS

- Point No.1- Admitted position between the parties that flat No.507 booked in the said project Pristine City vide agreement dated 13-01-2016 for consideration of Rs.39,36,900/- including stamp duty, registration and other charges. Also admitted that in pursuance of the said agreement complainants have paid booking amount of Rs.1,49,000/-.
- As per agreement possession of the booked flat was to be delivered on or before 31-3-2018. Ofcourse respondents have denied that they have agreed to deliver possession of the booked flat on or before 31-3-2018. According to respondents RERA authority has registered completion of project date by 31-8-2019. Just to mention as per agreement possession of the booked flat was to be delivered on or before 31-3-2018. However, at

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RERA Authority website registered completion of project date by 31-8-2019 by way of procedural formalities. One thing is clear that the respondents have not delivered the actual possession of the booked flat within stipulated period.

7. Admittedly complainants have obtained bank loan. According to complainants entire bank loan state way disbursed at the account of the respondents. So also complainants submit that in pursuance of the agreement 90% amount is already paid to the respondents and there is no breach of terms of the agreement. On the contrary respondents submit that the bank loan amount state way disbursed at the account of the respondents after deducting amounts towards, stamp duty, registration, VAT and other charges and thereby complainants have paid part consideration of Rs.22,12,208/-. Respondents also claim that they have paid monthly installments at the loan account of the complainants amounting to Rs.2,17,158/-. Admitted position is that consideration of Rs.29,36,900/- includes stamp duty registration and other charges. In the context payment of monthly installments at the loan account claimed by respondents amounting to Rs.2,17,158/- never paid. On behalf of Complainants submit that interest amounts paid by the respondents and the same was not installment payments as per agreement. So also Complainants submit they

have paid total amount of Rs.28,00,074/- including part consideration, stamp duty and other charges but still then the respondents have not delivered the possession of the booked flat within stipulated period. It also appears that the Complainants have issued notice in this context on 27-8-2018. Grounds put forth by the respondents for non delivery of possession of the booked flat on or before 31-3-2018 not just and proper. Therefore, the Complainants have lost hopes and hence they intend to withdraw from the project. At the instance of the respondents submit that recently on 23-09-2019, completion certificate of the project is obtained and therefore the respondents are willing to deliver the possession of the booked flat to the Complainants. Respondents even though willing to deliver the possession of the booked flat in pursuance of the aforesaid completion certificate but respondents are not willing to pay any compensation for the delayed periods. Moreover, the Complainants have lost faith with the respondents and hence they intend to withdraw from this project. Under such circumstances, Complainants are allowed to withdraw from the project and they are entitled to refund of Rs.28,00,074/- alongwith interest @ Rs.10.75% p.m. from the date of payment till its realisation except stamp duty of Rs.1,17,500/- which is refundable to the Complainants in accordance with the provisions of Maharashtra Stamp Act, 2015 and in case the Complainants are

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unable to get refund of such stamp duty amount in accordance with law, then respondents are liable to pay amount of Rs.1,17,500/-, to the Complainants in lieu of stamp duty within the period of one month from expiry of statutory period under the Maharashtra Stamp Act, 2015. Hence point No.1 is answered in the affirmative.

8. Point No.2 and 3 – Complainants are claiming compensation of Rs.5,00,000/- for the harassment, mental agony and breach of agreement but the same is not substantiated by the Complainants appropriately and hence the claim to recover compensation is not maintainable under law. However, the Complainants are entitled to Rs.25,000/- as cost of this proceeding. So point Nos. 2 and 3 answered accordingly. In the result pass the following order.

ORDER

1. Complaint is hereby allowed to withdraw from the said project.
2. Respondent shall refund the amount of Rs.28,00,074/- except stamp duty of Rs.1,17,500/- which is refundable as per Maharashtra Stamp Act, 2015 to the complainants together with simple 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 its realization by the complainants.

4. The complainant are further entitled to refund of stamp duty amount of Rs.1,17,500/- under the provisions of Maharashtra Stamp Act, 2015 and in case if the complainant is unable to get such refund of stamp duty amount within stipulated period under the said law, then the respondents shall pay Rs.1,17,500/- within 30 days from the expiry date of statutory period provided under the said Act.
5. Respondents shall pay Rs.25,000/- as cost of this litigation, to the complainants.
6. Respondents shall pay the aforesaid amounts within 30 days from the date of this order.
7. Complainants shall execute cancellation deed of the said agreement after receipt of all the aforesaid amounts, at the cost of respondents.
8. Charge of the aforesaid amounts due and payable be kept on the booked flat of the said project till realization of the entire due amount.
9. The complaint for recovery of compensation hereby stands dismissed.

Pune
Dated :- 30/09/2019

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30-9-19
(W.K.Kanbarkar)
Adjudicating Officer,
MahaRERA, Pune