

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

Complaint No.CC005000000022075

Mr. Apurva Ashok Gujarathi

R/at 4187, Near Samachar Press,
Maidan Aa Lxmibal Karanja,
Ahmednagar-414001.

.. Complainant

Versus

M/s. Jalan Maple Shelters,

Now known as Bhagwati Infra,
A Partnership Firm

Mr. Vijay Narayan Jalan – Partner

O/at Rahul Capital, Third Floor,
Prabhat Road, C.T.S. No. 115/B,
Erandwane, Pune-411004

R Gat No.1347//5, Aura County,
Pune-Nagar Road, Wagholi,
Pune-412207.

.. Respondent

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

Appearance :-

Complainant : Adv. Leena Kaulgekar

Respondent : Adv. Dhamdhare

FINAL ORDER

(30.04.2019)

1. Present complaint is under Section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter called as "RERA Act").

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2. The facts set out in the complaint in brief is as under :-

Complainant has booked flat bearing No. 304 in 'D-8' building in the project "Aura City" situate at Shikrapur, Tal. Shirur in Pune District vide registered agreement to sale on 03.11.2012 for consideration price of Rs.12,45,620/-. In view of aforesaid agreement, proposed date of delivery of possession of the booked flat within 24 months from the date of agreement. Complainant/allottee has made actual payment of Rs.11,83,339/- excluding payment of stamp duty and registration of Rs.74,800/-. However, the complainant/allottee could not receive the actual possession of the booked flat on or before 03.11.2014 and even thereafter the complainant has not received possession of the booked flat till today. Complainant has suffered loss including monetary loss. Thus the present complaint for withdrawal from the said project and for refund of amount spent together with interest and compensation of Rs.5,00,000/- and cost of Rs. 50,000/- towards the present proceedings.

3. Respondent has filed written statement and resisted the complaint claim on various grounds. However, respondent could not attend this proceedings time to time in spite of an opportunity and hence plea of Respondent is not on record. So after written statement of the respondent, final arguments of both the parties

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heard. According to respondents, the present complaint is not genuine and there is no cause of action to the present complaint. Present complaint is also without jurisdiction, as agreement to sale dated 03.11.2012 for the booked flat has been registered under the provisions of Section 4 of the Maharashtra Ownership Flats Act, 1963 and hence the present complaint under the provisions of RERA is not maintainable.

4. Possession of the booked flat was to be handed over to the complainant within stipulated period, but on account of shortage of sand, labour, progress of the project got hampered and hence on account of that counts, possession delayed. At this juncture, project is practically completed and the process of obtaining completion certificate is in progress. Delivery of possession of the booked flat was within 24 months from the date of agreement subject to completion of the project smoothly without any hindrances and further subject to receiving all the dues payable by the allottees to the promoter, but all the dues were not paid by the allottee.
5. Admitted in general in pursuance of the said agreement, consideration for the booked flat was settled at Rs.12,45,620/- and out of which the complainant has paid amount of Rs.11,83,339/-.

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6. Jalan Maple Shelters is now known as Bhagwati Infra. Jalan Group and Maple Group were initially carrying on their business in partnership under the name and style as M/s. Jalan Maple Shelters, but afterwards Maple group got retired from partnership of M/s. Jalan Maple Shelters w.e.f. 01.04.2015 and hence thereafter the name of partnership firm got changed from M/s. Jalan Maple Shelters to M/s. Bhagwati Infra w.e.f. 4th Oct. 2016 vide reconstitution deed, dated 04.10.2016. The present complaint for withdrawal and for refund of amounts paid together with interest and recovery of compensation of Rs.5,00,000/- and cost of Rs.50,000/- is not just, proper, but the claim is liable to be dismissed.

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

POINTS

FINDINGS

- | | |
|--|---------------------------|
| (1) Whether the Complainants/Allottees are entitled for withdrawal from the said project and further entitled for refund of amount paid together with with interest and compensation thereon ? | In the Affirmative. |
| (2) Whether the complainant is further entitled to compensation of Rs.5,00,000/- as sought ? | In the Negative. |
| (3) What order ? | As per final order |

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REASONS

8. **POINT Nos. 1 and 2** :- Present complaint is moved under Section 18 of the RERA seeking withdrawal from the said project of respondent/promoter and further for refund of amounts paid together with interest and compensation thereon. Undisputed position between the parties that respondent/developer has executed registered agreement to sale on dated 03.11.2012 in favour of complainant/allottee for flat No. 304, D-8 in the project 'Aura City' situate at Shikrapur, in Taluka Shirur, District Pune. Further undisputed position that consideration price was settled of Rs. 12,45,620/- and out of said price, complainant/ allottee has made actual payment of Rs.11,83,339/- excluding stamp duty and registration amounts. Of-course, in favour of the complainant/allottee 9 payment receipts issued by promoter/developer about the payment of Rs.11,83,339/- received time to time from the complainant. Accordingly, complainant has made actual payment of Rs.11,83,339/- and out of which Rs.9,75,000/- was home loan sanctioned by the Axis Bank, but out of the said sanction loan Rs.9,12,715/- was disbursed through Axis Bank Account No. P8HR021500667442 and Rs.2,70,624/- payment was made by cheque separately to the promoter/developer. So, position is very clear from record that the

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complainant/allottee has made total payment of Rs.11,83,339/-.

9. Complainant claims that he has made payment of Rs.62,300/- towards stamp duty and Rs.12,500/- towards registration and process. However, on behalf of respondent/promoter made submission that as per agreement stamp duty payment of Rs.62,300/- actually paid by the promoter and stamp is actually purchased by the promoter and not by the complainant. In this context, on behalf of complainant, no document is placed on record to show that complainant has actually paid or borne Rs.62,300/- towards the stamp duty. Just to mention that complainant has failed to establish that he has paid payment of Rs.62,300/- towards stamp duty. However, as regards payment of Rs.12,300/- towards registration and process, in that regard on behalf of the respondent not claimed that the said amount is also paid by the respondent. On the contrary, complainant claims that he has borne Rs.12,500/- towards registration and process in that regard. Thus the complainant has made total payment of Rs. 11,83,339/- towards price and further made payment of Rs. 12,500/- towards registration and its process and thereby paid total payment of Rs.11,95,839/-.

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10. Respondent/developer has resisted the present complaint on the ground that agreement to sale is registered on 03.11.2012, towards the booked flat and on that date provisions of Section 4 of the MOFA Act were applicable and hence the provisions of RERA are not applicable. Suffice it to say that agreement to sale came to be registered on 03.11.2012, but the process of said project is in progress and not yet completed and hence the provisions of RERA are applicable as the same came into effect w.e.f. 01.05.2017. Obviously, plea of respondent that provisions of RERA are not applicable to the present project of the respondent is not maintainable and acceptable under law. On the contrary, the provisions of RERA are fully applicable to the said project of the respondent/developer.
11. Said registered agreement dated 03.11.2012 towards the booked flat executed by M/s. Jalan Maple Shelters, partnership firm through its partners Vijay Narayan Jalan and Sachin Ashok Agarwal in the capacity of developers as party of the first part and further by Deven Jaysukhlal Shah and M/s. Sai Associates through its proprietor Vishwanath Tapkir in the capacity of owners/consenting party as party of the second part with Apurva Ashok Gujrathi and Gauri Apurva Gujrathi, party of the third part. Agreement also speaks developer in joint venture of consenting party / owner of the said property has sole and exclusive right to

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develop the project and thereby developer and consenting party came proposes to sell/allotte flats/tenaments/apartments along with parking in the said project. So in the light of the said agreement, Party No.1 and Party No.2 are fully responsible for the project and for any liability arising for and towards that project and thereby cannot rescue either of the parties from any liability towards the said project.

12. Complainant claims Rs. 5,00,000/- by way of compensation. Adv. for the complainant made submission in that regard that amount of Rs.5,00,000/- sought by way of compensation as the complainant has suffered great loss monetary as well as mental as complainant has not received the booked flat within stipulated period and hence complainant is entitled to recovery of compsnation of Rs.5,00,000/-. Just to mention the claim of complainant is not supported with any documents in that regard and hence said claim is not maintainable in the law and liable to be dismissed. Further the complainant has claimed Rs. 62,300/- towards stamp duty and Rs. 12,500/- towards registration. However, complaiant has also failed to prove payment of Rs.62,300/- towards stamp duty and hence his claim towards stamp duty of Rs. 62,300/- is also not maintainable and liable to be dismissed. As regards refund of Rs. 12,500/- towards registration and

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its process is maintainable and same needs to be accepted under law.

13. Complainant/allottee has established about payment of Rs.11,83,339/- towards the price and Rs.12,500/- towards registration and its process, in total of Rs.11,95,839/-. The complainant could not get possession of the booked flat within stipulated period within 24 months from the date of agreement i.e. on or before 03.11.2014. According to complainant, on the date of proposed date of delivery of possession hardly negligible progress to the extent of 10% progress of the construction was made and thereafter till today the construction of project in all respect is not completed and completion certificate is yet to be obtained and thereby the hopes of the complainant are shut down and hence complainant is entitled to withdrawal from the said project. In this context, on behalf of respondent submitted that the construction of the project is 95% practically completed but admitted that process of obtaining completion certificate is in progress. So also on behalf of respondent made submission as well as raised plea that delivery of possession of booked flat within 24 months was subject to availability of sand, labour, etc., but the same were shortage and further said period was subject to payment of dues. Such other grounds, if any incorporated in the agreement are not just and proper

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unless there is ground of de majeure and that too, established by the party concern. Such is not the position in the instant case and hence grounds put forth at the instance of respondent that respondent could not complete the project within stipulated period is not proper and not acceptable in law. On the contrary, on behalf of complainant made substantive payment of Rs.11,83,339/- out of consideration price of Rs.12,45,620/- as well as complainant has borne Rs.12,500/- and thereby complainant has borne total payment of Rs. 11,95,839/-. Hence submission and plea of respondent that delivery of possession of the booked flat was subject to payment of dues is also not just and acceptable under law. On the contrary, on or before 03.11.2014, the progress of the construction of the project was just negligible and hence that aspect has also to be taken into account for not to accept the submission and plea of the respondent as such.

14. Thus the complainant is entitled to withdraw from the said project, as aforesaid and further entitled to refund of amount of Rs. 11,95,839/- including registration and its process of Rs.12,500/-, together with Interest at State Bank of India's Higher Marginal Cost Lending Rate which is at present 8.75% + 2% above i.e. 10.75% p.a. under such circumstances, Point No.1 is answered in affirmative and point No.2 in the negative.

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15. Further the Complainants are also entitled to cost of this proceedings Rs.30,000/-. In the result, I proceed to pass the following order.

ORDER

- (1) Complainant is entitled to withdraw from the said project.
- (2) The Respondents/Promoters shall refund the amount of Rs. 11,95,839/- to the Complainant along 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 actual payments received by him from the Complainant time to time towards Flat No.302 in D-8 building of the project "Aura City" situate at Shikrapur, Tahsil Shirur in Pune District.
- (3) Respondent/Developer shall pay Rs.30,000/- to the Complainant/Allottee as cost of this complaint.
- (4) The Respondent/Developer shall pay the aforesaid amounts within 30 days from the date of this order.
- (5) The Complainant shall execute cancellation deed of the agreement after receipt of all the amounts

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mentioned in the order, at the cost of the Respondent/Developer.

Pune
Dated :-30/04/2019

wkk 30-4-2019
(W.K.Kanbarkar)
Adjudicating Officer,
MahaRERA, Pune