

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

**Complaint No.CC005000000022308**

1. **Pradeep Rathod,**
2. **Harsha Rathod,**

Both R/at C Wing, Parmar Trade Centre,  
12, Connaught Road, Sadhu Vaswani Chowk,  
Pune-411 0001.

**.. Complainants**

**Versus**

**M/s. Pacific Orient Properties,**  
Pacific House, 1B, Moledina Road,  
Camp, Pune-411 001.

**.. Respondents**

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

**Appearance :-**

|                     |          |   |
|---------------------|----------|---|
| <b>Complainants</b> | <b>:</b> | <b>In person</b>  |
| <b>Respondent</b>   | <b>:</b> | <b>Mr. Sameer Sayed Ahmed Khan, A.R.<br/>Smt. Shilpa Pratap, Advocate</b> |

**FINAL ORDER**

(20<sup>th</sup> May, 2019)

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It is the case of the complainants that they have booked Flat No. 704, 'B' Wing in the project of respondents known as "Engracia" located at Mohammedwadi, Pune under the agreement, dated 14.01.2015. In terms of that agreements, the respondents had agreed to hand over possession of the booked flat on or before 25.12.2017. However,

respondents failed to hand over possession of the booked flats as agreed despite of receiving amount of Rs. 58,19,000/- inclusive of stamp duty, registration fees and other charges. Hence by this complaint, the complainants have claimed refund of entire amount paid by them to the respondents with interest and compensation under the provisions of Section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA").

2. The respondents have not filed written explanation to resist this complaint. However, Mr. Sameer Sayed Ahmed Khan, the authorised signatory and power of attorney holder of respondents, has pleaded guilty on behalf of all the respondents admitting the entire contents of complaint. Further he submits that initially matter was pending before the Maharashtra Conciliation and Dispute Resolution Forum, Pune, wherein he had agreed to repay the entire amount with instalments. However, he could not repay the amount, as agreed in view of the conciliation order that was passed on 05.06.2018. It was one of the terms of the said conciliation order, which copy is filed on record, that if any party fails to abide by the said terms of settlement, then the MahaRERA Rules will be applicable for further default. In the above circumstances and on account of failure of respondents to comply with the conciliation order, the complainants have filed this complaint.

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3. As the respondents have pleaded guilty admitting the claim of complainants, the complaint is liable to be allowed as prayed, being the respondents have failed to hand over



possession of the booked flat in terms of the agreement, dated 14.01.2015.

4. On perusal of the papers filed on record, it seems that the claimants have spent an amount of Rs. 3,83,100/- towards stamp duty. On consideration <sup>of the date</sup> of agreement, the complainants can claim refund of stamp duty amount within five years since the date of execution of agreement, under Section 48 of the Maharashtra Stamp (Amendment) Act, if they moved an application for claiming such refund. However, that refund can be in proportionate and not in full. The complainants at the most will not receive the refund of stamp duty amount more than Rs.2,55,400/-. Thus on this account, they will suffer loss to the sum of Rs. 1,27,700/-. That loss can be compensated directing the respondents to pay an amount of compensation of Rs. 1,60,000/-. If the amount of Rs. 3,83,100/- is deducted from the amount of Rs. 58,19,000/-, it will come to the sum of Rs. 54,35,900/-. Likewise, if the amount of compensation of Rs. 1,60,000/- is added in the aforesaid amount of Rs. 54,35,900/-, it will come to the sum of Rs. 55,95,900/-. Thus this amount of Rs. 55,95,900/- will be the amount as due and payable by the respondents to the complainant, with interest and compensation under the provisions of RERA.

5. In view of the provisions of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017, the complainants are entitled to receive the Interest at State Bank of India's highest Marginal Cost Lending Rate i.e.

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8.75% + 2% above = 10.75% p.a. on the amount due and payable mentioned in para (4) above from the date of payments made from time to time till realization of the entire amount so ordered below.

10. In addition to the interest, the complainants are also entitled to receive costs of this complaint from the respondents. I therefore, proceed to pass following order.

### ORDER

- (i) The respondents to pay amount of Rs.55,95,900/- to the complainants with interest @ 10.75% p.a. from the date of payments made from time to time till realization of the entire amount.
- (ii) The respondents to pay the amounts due and payable to the complainants within 30 days from the date of this order.
- (iii) The charge of the due and payable amount with interest, as ordered, be kept on the booked flat No. 705, 'B' Wing of the project of respondents known as "Engracia" located at Mohammedwadi, Pune under the agreement, dated 14.01.2015.
- (iv) The respondents to pay Rs. 5,000/- to complainants as costs of this proceedings.
- (v) The complainants to execute the deed of cancellation of the agreement, dated 14.01.2015 at the costs of the

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respondents, after recovery of the entire due and payable amount.

- (vi) In case of respondents' failure to satisfy the complainants' claim within the period of five years from the date of execution of agreement, the respondents shall pay the amount of Rs. ~~2,55,400/-~~<sup>1,27,700</sup> to the complainants spent towards balance amount of stamp duty.

Pune  
Date :-20.05.2019

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