

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

Complaint No.CC005000000011142

1) Omprakash Swami .. Complainant

Versus

1. M/s D. S. Kulkarni Developers .. Respondents

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

FINAL ORDER

1. It is the case of Complainant that he has booked the Flat No. G-1101 on the 11th Floor "G" Wing under the project named in "DSK VISHWA PH-VI AANANDGHAN" located at Dhairi under the Agreement dated 1/2/2014. In terms of that Agreement, date of possession as agreed was on or before December, 2016. The total price of the booked Flat was Rs. 36,86,000/- (Rupees Thirty Six Lacs Seventy Eighty Six Thousand) inclusive of Stamp Duty, Registration charges, VAT, Service Charges, etc. It further contends that he has paid the amount of Rs. 28,04,422/- to the Respondent inclusive of Stamp Duty, Registration charges, VAT, Service Tax etc. Further he contends that as the Respondent failed to hand over the possession of the booked Flat within the time limit prescribed in terms of Agreement so he intends to withdraw from the project of Respondents. Therefore, he has

7063
6-6-18

claimed the Refund of the Amount paid by him to the Respondent with interest at such rate as may be prescribed, and compensation under the provisions of Real Estate Regulation Act (Hereinafter referred as "RERA")

2. The Respondent remained absent though served with the Notice dated 2/5/2018. The Complainant is proceeded ex-parte against Respondent.
3. In the above facts and circumstances of the case following points arisen for my determination and I am going to record my findings thereon for the reasons stated below :-

POINTS

FINDINGS

- (1) Whether the Complainant is entitled to refund all amount paid by him under the Agreement to the Respondent alongwith interest and compensation under the provision of RERA?
- (2) What order ?

REASONS

4. Heard Complainant in person. Respondents could not be heard being absent. The complaint is proceeded further in absence of Respondents. Perused papers filed on record. On perusal the Registered Agreement dated 1/2/2014, it has become clear the Date of Possession of the booked flat as agreed by the Respondent was December, 2016. Admittedly no possession is received to the Complainant as yet. Therefore, his claim of the refund of the amount till

2064
6.6.18

date with interest and compensation under the provisions of RERA is justified.

5. It is the case of Complainant that he had paid the Amount of Rs. 28,04,422/- to the Respondent out of total price of Rs. 36,86,000/-. In support of his claim, complainant has filed on record the extract prepared by him in respect of amount received to the Respondent from time to time till September, 2016. That Extract is verified from the receipts filed on record. Those receipts are passed by the Respondent against the received Amount. On verification all those receipts with the extract filed on record which is prepared by him, it becomes clear that Respondents have received the Amount of Rs. 28,04,422/- inclusive of Stamp Duty. The amount spent by the Complainant towards Stamp Duty is Rs. 1,84,300/-. Now the Complaint is intending to withdraw from the project claiming the refund of with interest and compensation. It is to be noted that the Complainant ^{can} be reimburse the refund of Stamp Duty Amount in proportion though not fully. On rough calculation the Complainant will receive the claim of reimbursement roughly not more than Rs. 1 lac in proportion. Thus, on this item Complainant will suffer a loss of Rs. 84,300/- which can be compensated by directing the Respondent to pay the amount of compensation of Rs. 90,000/- to the Complainant towards the loss stated above.

6. Having regard to the fact noted above and if the amount of Rs. 1,84,300/- spent by the Complainant towards stamp duty is minused from the amount received to the Complainant of Rs. 28,04,422/- it will come to the sum of

25/11/16
6.6.18

Rs. 26,20,122/- . Thus the amount of Rs. 26,20,122/- will be treated as due and payable by the Respondents to the Complainant with interest at such rate as may be prescribed in view of the provisions of RERA.

7. In view of the prescribed Rules and Provisions of RERA the rate of interest payable by the Promoter/Developer to Complainant / allottee shall be the State Bank of India's highest Marginal Cost Lending Rate (MCLR) + 2% above and in case if 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 to the general public. In view of the rates framed under the RERA the rate of interest @ MCLR of State Bank of India, which is currently 8.05% + 2%. Thus, the Complainant is entitled to receive the amount of Rs. 26,20,122/- + 90,000/- to be paid towards loss of compensation on the amount towards Stamp Duty, i.e. the due and payable Rs. 27,10,922/-. Hence, it will be just to direct the Respondent to refund the aforesaid Amount which is due and payable with interest within the period of 30 days from the date of this Order.

8. With these reasons I answered Point No. 1 & 2 in the affirmative and proceed to pass following order.

ORDER

1. The Respondents are directed to refund the amount of Rs. 27,10,122/- to the Complaint with interest @ 10.05\$ p.a. within 30 days from the date of this Order.

7063
6.6.18

2. The Respondents are directed to pay the amount of Rs. 10,000/- towards the cost of litigation.
3. The charge of the aforesaid amount shall be on the flat booked by the complaint under the Agreement dated 1/2/2014 till the realisation of the claim with interest.
4. On realisation of the entire claim, the Complaint shall execute the Deed of cancellation of in favour of Respondent at the Respondents cost.

Pune

Date :- 6/6/2018

S.B. Bhale
6.6.18
(S.B. Bhale)

Adjudicating Officer
MahaRERA, Pune