

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

Complaint No.CC0050000000010483

1. Rohan Naraya Dawkhar
2. Narayan Ramchandra Dawkhar
R/at C-12, Yashshree, Taware Colony,
Near Chowgule Maruti Showroom,
Pune-411 019. .. Complainants

Versus

1. Marvel Landmarks Pvt.Ltd.
Through it's Director,
Mr. Vishvajeet Jhawar,
Office at 301, 302, Jewel Tower,
Lane 5, Koregoan Park,
Pune-411 001.
2. Mr.Subhash Sitaram Goel,
3. Mr. Rajendra Sitaram Goel,
4. Mr. Umesh Sitaram Goel.

**Nos.2 to 4 having Office at
San Mahu Commercial Complex,
5, Bund Garden Road,
Pune-411 001.**

.. Respondents

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

**FINAL ORDER
28TH MARCH, 2018**

1. It is the contention of the Complainant that he had entered into an Agreement dated 17.12.2012 to purchase the apartment i.e. Flat No. 901 in J building to be constructed by

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the Respondents Marvel - situated at village Mohammedwadi, Tal. Haveli, District Pune. In terms of that agreement, the Respondents were to deliver the possession of the aforesaid apartment to the Complainants on or before 31.12.2013. However, the Respondents failed to deliver the possession of booked apartment to the Complainants despite of receiving the consideration amount of Rs. 1,18,37,205/- out of the agreed consideration amount of Rs.1,37,50,000/- Due to delay caused on behalf of the Respondents to deliver possession, the Complainants have withdrawn from the same. Hence they claimed the entire amount paid towards the consideration along with interest and compensation under the provisions of Section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the **RERA Act**).

2. On material allegations of the Complainants averred in the complaint, my learned predecessor Hon'ble Member and Adjudicating Officer, MahaRERA, Mumbai has recorded the plea of the Respondents through their representative on 10.01.2018. However, the Respondents denied the claim of the Complainants. It is necessary to point out that even after recording the plea, the Respondents have failed to file any written submission or explanation to defend the claim.
3. Therefore, in the above facts and circumstances of the case, following points arise for determination and I am going to record my findings thereon as under.

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POINTS**FINDINGS**

- (1) Whether the Respondents have failed to deliver the possession of the Apartment booked by the Complainants in the project stated above in terms of the Agreement ? In the Affirmative
- (2) Whether the complainant is entitled to claim refund of the amount paid by them under the agreement to the Respondents along with interest and Compensation under the provisions of RERA Act ? In the Affirmative
- (3) What order ? As per final order.

REASONS

6. Heard Mrs. Leena Kaulgekar for the Complainants whereas Mr. Karthik Dhanshekharan, authorized representative of Respondents. Perused papers filed on record.
7. Mrs. Kaulgekar, Advocate for Complainant invited my attention towards the statement of accounts, which is marked as Exh."A" consisting of 3 pages in the title of consideration amount, TDS, Service Tax, Payment of Stamp Duty and VAT, etc. While pointing out the aforesaid statement Exh. "A", she submitted that the Complainants have paid the amount of Rs. 1,18,37,205/- towards the consideration out of agreed amount of consideration of Rs. 1,37,50,000/-.. In addition to that, she invited my attention towards the payment of amount of Rs. 3,86,103/- towards service

tax and amount of Rs. 8,42,600/- towards stamp duty, legal charges and VAT, etc. Thus she submitted that the Complainants are entitled to receive the entire amount as shown in the statement of accounts Exh. "A" with interest and compensation as per the provisions of RERA Act. As against this, Mr. Karthik Dhanshekharan, the authorized representative of the Respondents submitted that an amount of Rs. 7,01,110/- towards stamp duty is not received to the Respondents. On the contrary, Complainants will reimburse that amount in proportionate. He also submitted that the Complainants are not entitled for service tax and VAT, etc., though subsequently agreed to bear the amount paid towards the service tax.

8. On the aforesaid arguments of rival parties, I can say that the amount paid towards service tax and even towards VAT cannot be received to the Complainant by way of reimbursement. Likewise, the total amount paid towards the stamp duty also cannot be reimbursed to them though they can reimburse the same at the proportionate.

9. Having regard to the facts noted above and submissions made in the arguments on behalf both the parties, I am of the opinion that the Complainants are entitled to receive an amount of Rs. 1,18,37,205/- towards the consideration + Rs. 3,86,103/- towards the service tax as well as the amount of Rs. 1,37,500/- paid by them towards VAT. The amount of Rs. 4,990/- towards legal charges can be ignored while paying the

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compensation under the provisions of RERA Act. The fact that the delay caused to deliver the possession of booked apartment by or on behalf of the Respondents is not in dispute. The Respondents have also admitted while making the submissions in the arguments referred above. In this circumstance, the Complainants are entitled to receive the entire amount inclusive of service tax, VAT including legal charges and amount paid towards stamp duty to the sum on Rs. 1,23,60,808/- with interest as prescribed in the RERA Act and the rules framed thereunder. As per the Rules framed under the RERA Act, the prescribed interest at the rate MCLR of State Bank of India, which is currently 8.05% + 2% above. Thus the Complainants are entitled to receive the aforesaid amount with simple interest on the amount of Rs. 1,23,60,808/- from the Respondents along with interest @ 10.05% p.a. In addition to that, I also feel it just and proper that if the Respondents are directed to pay to the complainants an amount of compensation for causing delay in handing over possession of the booked apartment to the sum of Rs. 20,000/- as well as Rs. 5,000/- towards cost of the litigation.

10. As stated earlier, it is certain that the Complainants have not received the amount of Rs. 7,05,100/- paid towards stamp duty. No doubt, about it that the Complainant will receive the reimbursement of proportionate amount towards the stamp duty, if they claim. Hence considering the fact that they will receive the reimbursement of amount paid towards the stamp

duty, I am of the opinion that it will be just and proper to direct the Respondents to pay the amount of Rs.2,50,000/- to the Complainant towards the loss of stamp duty. Thus the Complainants are entitled to receive an amount of Rs. 1,18,37,205/- towards the consideration + Rs. 3,86,103/- towards the service tax as well as the amount of Rs. 1,37,500/- paid by them towards VAT = Rs. 1,23,60,808/- + Rs. 2,50,000/- towards the loss on account of stamp duty = Rs. 1,26,10,808/- + Rs. 20,000/- by way of compensation for delay in handing over possession + Rs. 5,000/- towards cost of this litigation.

11. For these reasons and express provisions of the RERA Act, I am going to allow the complaint of the complainant while recording affirmative findings against Point Nos.1 and 2. Hence the order.

ORDER

1. The Respondents jointly and severally shall refund an amount of Rs. 1,26,10,808/- to the complainants with simple interest @10.05% p.a. within 30 days from the date of this order.
2. The Respondents jointly and severally shall also pay compensation of Rs. 20,000/- to the Complainants.

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3. The charge of the aforesaid amount shall be on the Flat booked by the Complainants with the Respondents till the realisation of their claim.
4. On realisation of their claim, the Complainants shall execute the Deed of Cancellation of Agreement in favour of the Respondents at the Respondents' cost.
5. The Respondents shall pay cost of Rs. 5,000/- to the Complainants.

Pune
Date :- 28.03.2018

S. B. Bhat
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(S. B. Bhat)
Adjudicating Officer,
MahaRERA, Pune