

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

Complaint No.CC005000000011960

Pradeep Shrikrishna Thatte

R/at 4, Yeshwant Shree Apartment,
780/2, Shivajinagar,
Pune-411 004.

.. Complainant

Versus

1. M/s. SWET Realtors Pvt.Ltd.

Through it's Director

Mr. Amit Ashok Thepade,

Office at : 4, Vishnu Prasad,

Near Kamla Nehru Park,

783B, Erandwane,

Pune-411 004.

2. M/s. Vineet Constructions

Through it's Partner

Mr. Roshan Ramesh Dushane

R/at 350, Hotel D Palace Lane,

NDA Pashan Road, Bavdhan Budruk,

Pune-411 021.

.. Respondents

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

Appearance :-

Complainant : Hrishikesh Phadke, A.R.

Respondent : Adv. Anviksha Dhamdhere

WKK

FINAL ORDER
(31.05.2019)

1. The Complainant/Allottee has filed the present complaint against the Respondents/Promoters seeking relief of refund of withdrawal from the project and refund of entire amount paid by him together with compensation under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA").
2. It has been alleged by the complainant in online complaint that possession date as per agreement is June 2016, building is still incomplete and no progress by builder to complete the building and provide legal possession along with occupancy certificate. In relief column, the complainant claims refund of amount along with compensation. In hard copy of the complaint, the complainant has contended that he booked a flat No.903 along with car park having carpet area of 68.20 sq. mtrs. (terrace Inclusive) in the project known as "Galaxy Vineet" launched by the respondent located at S.No.350, D Palace Lane, NDA Pashan Road, Bavdhan Khurd, Pune-411 021 for the price of Rs. 55,63,610/- excluding stamp duty and registration charges. The agreement was executed on 25.01.2016. Out of the total agreed consideration, complainant has contributed Rs.6,00,000/- and bank loan of Rs. 48,00,000/-. Thus

WKK

total amount of Rs. 54,00,000/- has been received by the respondent. As per agreement, the possession of the flat was supposed to be handed over to the complainant on or before June, 2016. Since June, 2016 the complainant is continuously being following up with the respondent for handing over possession however, the building is incomplete. Complainant is paying EMI of Rs. 33,930/- and till Nov. 2018 he paid Rs.6,79,925/- towards the loan out of which the interest component is Rs. 4,89,915/-. Complainant made inquiry with the Metropolitan Development authorities regarding completion certificate and received information that completion certificate has not been issued to the respondent. Therefore, complainant claims the relief of return of 54,00,000/- together with interest @ 18%. Also claims the relief of payment of interest of Rs.4,89,915/- paid till March, 2018 on the bank loan, foreclosure charges of Rs.10,000/-, compensation of Rs. 10,00,000/- and legal fees of Rs.2,00,000/-.

3. The respondents remained absent in spite of due service of notice to them and as such, the matter is proceeded exparte against the respondents.
4. On the above contentions, following points have arisen for my determination and findings thereon are as under :-

WKK

POINTS**FINDINGS**

- (1) Whether the Complainant/Allottee is entitled to withdraw from the project and refund of the amount paid by her to the Respondents towards consideration of the booked flat, along with interest and costs?.. .. In the Affirmative.
- (2) What order ? As per final order

REASONS

5. **POINT No. 1** :- Heard the complainant through A.R. Mr. Hrishekesh Phadke. Perused the papers filed on record.
6. The complainant has placed on record copy of the agreement to sale, dated 25.01.2016 whereby he agreed to purchase a flat 903 in the project of the Respondent known as "Galaxy Vineet" situate at village Bavdhan Budruk, Pune for the total consideration of Rs. 55,63,610/- excluding stamp duty, registration charges, VAT, Service tax and other taxes and cess, etc. The complainant has also placed on record xerox copies of receipts dated 11.08.2016 for Rs. 42 lakhs, dated 03.01.2016 for Rs. 2 lakhs, dated 26.01.2016 for Rs. 3 lakhs and dated 26.07.2016 for Rs.1 lakh. The complainant has also placed on record bank statement

WKK

of S.B.I. Account No. 00000035952452604 for the period from 01.01.2016 to 31.12.2018, Interest certificate for the year 2016-2017 and 2017-2018. Also he has placed on record copy of the letter, dated 31.07.2018 Issued by Metropolitan Commissioner & Chief Executive Officer, Pune Metropolitan Development Authority, Pune.

10. From the documents placed on record, it appears that complainant has Rs.54,00,000/- towards the agreed consideration, out of which Rs. 2,00,000/- is paid as an earnest money by way of booking of the flat vide cheque No. 301633, dated 03.01.2016 drawn on State Bank of India, Rs.3,00,000/- by way of booking of flat vide cheque No. 301635, dated 26.01.2016 and Rs. 1,00,000/- were paid by cheque No. 301630 dated 02.06.2016; whereas amount of Rs. 42,00,000/- are seems to be paid by RTGS, dated 30.07.2016 through the loan sanctioned. Also Rs. 6,00,000/- seems to be transferred through loan sanctioned on 23.09.2016. Copy of Index II of the agreement, dated 25.01.2016 coupled with copy of e-challan, dated 20.01.2016 shows that the amount of stamp duty of Rs. 3,16,000/- has been paid by the complainant. Also the Registration Receipt dated 25.01.2016 coupled with e-Challan shows that the registration fees and document handling charges of Rs.31,120/- has been paid by the complainant. Therefore, the total amount of Rs.

WKK

57,47,120/- is paid by the complainant towards the consideration of the said flat including stamp duty and registration fees and charges.

11. Since the respondent remained absent and as such the complaint remains unresisted by the respondent^{WKK}. The agreed date of possession of the booked flat as per the agreement is on or before June, 2016. Thus it is apparent on the face of record that the respondents/developers have failed to deliver possession of the booked flat to the complainant as per agreement. Section 18 (1)(a) of the RERA provides that,

"If the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act."

WKK

In view of these facts and circumstances on record, I do not hesitate to hold that the complainant is entitled to

withdraw from the project of the Respondents and claim refund of the amount paid by him towards the booked flat. The complainant is therefore, entitled to claim refund of Rs.54,00,000/- + registration fees and document handling charges of Rs. 31,120/- = Rs. 54,31,120/- from the respondent, excluding the stamp duty amount of Rs. 3,16,000/-, which is refundable as per the provisions of the Maharashtra Stamp (Amendment) Act, 2015. However, after realization of the amount by the respondents/developers, the complainant is under obligation to repay the entire outstanding loan amount to the bank.

12. In view of the provisions of Rule 18 of the Maharashtra Real Estate (Regulation & Development) (Registration of Real Estate Projects), (Registration of Real Estate Agents), Rate of Interest and Disclosure of Website Rules, 2017, the rate of interest to be awarded on the due and payable amount is @ State Bank of India's Highest Marginal Cost Lending Rate + 2% above. Therefore, the Complainants are entitled to interest @ 10.75% p.a. on the amount of Rs. 54,31,120/- from the date of payments till realization of the entire amount.

WKK

13. In para 8 of the hard copy of the complaint, the complainant has contended that he has paid Rs. 6,79,925/- towards the loan amount till November, 2018, out of which interest component is Rs. 4,89,915/-

. In relief column he prays the relief of refund of this interest amount. However, there is no any such provision in the RERA to pay interest on the interest amount. As such this claim of the complainant is not substantiated according to law.

14. Moreover, in relief column ©, the complainant has claimed Rs.10,000/- as foreclosure charges. However, no any document has been placed on record by the complainant to show that he has repaid the entire amount of loan sanctioned and/or disbursed by the bank against the booked flat. The Interest certificate, dated 25.04.2018 placed on record goes to show that the complainant has repaid a sum of Rs. 4,08,283/- till 31.03.2018. Therefore, the claim of the complainant for Rs.10,000/- as foreclosure amount is not substantiated by the record.
15. The complainant has further claimed Rs.10,00,000/- by way of compensation. However, no any proof / document has been placed on record to show that the complainant has suffered any loss on account of failure of respondents in handing over possession of the flat on the agreed date of possession as per the agreement. As such this claim of the complainant also cannot be granted for want of any substantial record and also according to law.

WKS

16. The complainant has also claimed Rs. 2,00,000/- by way of legal fees. The complainant has not engaged any advocate to appear and conduct the present complaint nor he has placed on record any document to show that he has incurred such amount towards the legal fees. This claim of the complainant as such is fatal for want of record and not substantiated according to law. However, the complainant is entitled to costs of this complaint to the tune of Rs. 20,000/-.

17. In view of aforesaid reasons, I answer Point No.1 partly in affirmative and proceed to pass the following order.

ORDER

- (1) The Respondents/Promoters shall refund Rs. 54,31,120/- excluding the stamp duty amount of Rs. 3,16,000/-, which is refundable, to the Complainants together with interest @ 10.75% p.a. from the date of payments till realization of the entire amount.
- (2) The Respondents/Developers shall pay Rs. 20,000/- to the Complainants/Allottees as cost of this complaint.
- (3) The Respondents/Developers shall pay the aforesaid amounts within 30 days from the date of this order.

WKK

- (4) The Complainants shall execute deed of cancellation of the agreement, dated 25.01.2016 after realization of the entire amount awarded by this order, at the cost of the Respondents.
- (5) After realization of the entire amount from the respondents/developers, the complainant shall repay the entire outstanding loan amount, if any, to the State Bank of India availed against the booked flat.

Pune
Dated :- 31/05/2019

WKK *31-5-19*
(W.K.Kanbarkar)
Adjudicating Officer,
MahaRERA, Pune