

**BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY, PUNE
Complaint No.CC005000000022306**

1. Asra Shabbar Hussain

2. Shabbar Ali M Hussain

R/at E-606, Sai Marigold, Pimple Saudagar,
Pune-411 027.

.. Complainants

Versus

1. Rohit Bandagale

2. Flagship Infrastructure (P) Ltd.

3. Suksham Suryawanshi

Office at Blue Ridge,
Behind Cognizant, Rajiv Gandhi
Infotech Park, Phase 1,
Hinjewadi, Pune-411 057.

.. Respondents

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

Appearance :-

Complainant : Adv. Nilesh Borate

Respondent No.2 : Adv. Manasi Marathe

Respondent No.1 & 3: Exparte

**FINAL ORDER
(31.10.2019)**

1. The facts set out in the complaint in brief is as under :-
Complainants have booked Flat No.1901 in the project
"Blue Ridge The Lofts" situate at Hinjewadi-Mulshi, in
Pune District vide agreement, dated 13.01.2017 for

WKK

consideration of Rs. 42,29,970/- excluding stamp duty, registration and other charges. Rs. 29,76,764/- paid by the complainants and the said amount includes stamp duty and other charges. As per agreement, proposed date of possession of the booked flat on or before 31.12.2021. Complainants had a pre-approved loan based on the complainants' salary from HDFC Bank in Oct. 2016. Complainants had booked said flat on 19.06.2016 and paid amount of Rs. 1,00,000/- as booking amount and further paid Rs. 2,50,000/- in Sept. 2016 and Rs. 1,00,000/- in Oct. 2016. At the time of registration of the agreement, complainants have paid Rs. 5,00,000/- on 28.05.2017 and Rs. 1,17,115/- on 21.06.2017. In the meantime, pre-sanctioned loan got expired due to non-compliance of documents by the promoters. Complainants were pursuing for the documents with the promoter and their representatives that in the loan sanctioned matter, date 31.03.2018 is getting expired due to non-compliance of documents. Complainants due to delay in getting project documents in time, suffered various problems. Complainants state on 25.08.2018 HDFC Bank informed about the disbursement of loan of Rs. 9,47,514/- on 21.08.2018. Respondent/Promoter has unnecessarily and illegally charged interest that too, with hire rate i.e. 15% p.a. The act of the promoter is in violation of the provisions of the RERA Act. Thus the complaint for refund of interest amount of Rs. 60,000/- paid to the

WKK

promoter along with compensation towards mental agony and harassment caused by the promoter and cost of the proceeding.

2. Matter proceeded exparte against respondent Nos.1 and 3. Plea of Respondent No. 2 recorded. Respondent No. 2 has filed written explanation and resisted the complaint claim on various grounds. Admitted that the complainants had executed agreement on 13.01.2017 and booked said flat for consideration of Rs.42,29,970/- and till date complainants have paid Rs. 29,76,764/- and the possession of the booked flat is to be delivered on or before 31.12.2021. At the time of booking of the said flat, the complainant had informed the promoter to avail loan facility for purchase of the said flat, but then complainants were informed that promoter had tie up with HDFC Bank and they would provide requisite assistance to the complainants in the loan process. HDFC Bank had already sanctioned loan to the complainants, but in spite of such sanction of loan, complainants intended to obtain loan from State Bank of India and for that purpose started demanding various documents from the promoters on the pretext of obtaining loan from S.B.I. Therefore, whatever documents sought by the complainants were provided to the complainants vide email dated 07.01.2018. Respondents sent various demand letters and reminders to the complainants stage-wise and as per

WKK

schedule in the agreement. Approved Project Finance (APF) of the said project was valid till 15.03.2018 and the same was got renewed up to 16.08.2019 for the purpose of sanction of loan. Respondents promoter had charged interest @ 15% as per the agreed terms of the agreement. Therefore, the claim of the complainants is not in accordance with the provisions of the RERA Act and hence the complaint is liable to be dismissed with cost.

3. 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 are entitled to refund of interest amount of Rs.60,000/- as prayed ? | .. In the Negative. |
| (2) | Whether the complainants are further entitled to compensation, if any ? | .. In the negative. |
| (3) | What order ? | .. As per final order |

REASONS

4. **POINT No. 1 and 2** :- Under Section 2 (zg) of the RERA Act, nature of sanctioned plan is described. Section 11(3) of the RERA Act speaks that the promoter

WKK

at the time of booking and issue of allotment letter shall being responsible to make available to the allottees the information relating to sanctioned plan, stage-wise time schedule of the completion of the project, etc., as incorporated therein. Under Section 19(1) of the RERA Act, the allottees shall be entitled to obtain information relating to sanctioned plan, layout plans, etc. details, as embodied therein. However, under Section 18(3) of the RERA, if the promoters fails to discharge any other obligation imposed on him under this Act or Rules or Regulations made therein or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided in this Act.

5. In the instant case, admitted position between the parties that the complainants have booked flat No.1901 in the said project vide registered agreement, dated 13.01.2017 and proposed date of possession of the said flat on or before 31.12.2021. Agreement dated 13.01.2017 describes that the consideration shall be paid by the purchasers to the promoters as per the payment schedule given in the Annexure "L" and in case if default is committed by the purchasers in payment within time agreed herein of any amount due under this agreement, promoters without prejudice to the other rights available as per the terms and

INKK

conditions hereof and applicable law, shall be entitled to claim an interest @ 15% p.a. from the date become due till actual receipt thereof. Payment schedule given in the Annexure "L" of the agreement. Respondent/Promoter submits that the complainants have delayed payment towards the consideration of said flat and for every stage payment shown in the chart of the written notes of argument of the respondent time to time delay period occurred in the agreed payment by the complainants. Undisputed position that the complainants have made total payment till date of Rs. 29,77,764/- including stamp duty and registration. As per the agreement, timely payment is not made by the complainants. Therefore, it appears that the promoter had charged on the agreed consideration amount towards delayed payment stage-wise @ 15% p.a. Under Section 19 (6) of the RERA Act every allottee shall be responsible to make necessary payment in the manner and within the time as specified in the agreement for sale and shall pay at the proper time and place. Further under Section 19(7) of the RERA Act, the allottee shall be liable to pay interest at such rate as may be prescribed for any delay in payment towards any amount or charges to be paid under sub-section (6). Therefore, the contention of the complainants that whatever interest charged @ 15% p.a. is exorbitant. Just to mention that interest is charged @ 15% p.a. as agreed between the parties,

WKK

and hence the same cannot be said to be exorbitant or unreasonable.

6. According to complainants delay was occurred on the part of the promoter to make available the documents timely to the complainants, towards the said project for sanction of loan by the State Bank of India. In this context, respondent/promoter submits that at the time of booking of the said flat, the complainants had informed that they intend to avail loan facility for purchase of said flat and hence complainants were informed that respondents have tie up with HDFC Bank and they can also avail their assistance in loan process. But in spite of such position and the loan was sanctioned by the HDFC Bank before foundation stage, but still then complainants wanted to obtain loan from S.B.I. and APF for the project for sanction of loan was approved by the bank initially till 15.03.2018 and further that extended till 16.08.2019 and sanctioned plan and other details were available on the project uploaded on the RERA website. Thus taking into consideration the aforesaid position on record, the present complaint for refund of interest amount of Rs. 60,000/- paid by the complainant to the developer is not permissible under law. Moreover, the compensation sought in the context of mental agony and harassment is not substantiated appropriately and hence such claim is also not maintainable under law.

WKK

Under such circumstances, present complaint is liable to be dismissed. Hence Point No.1 and 2 are answered in the negative. In the result, I proceed to pass the following order.

ORDER

- (1) Complaint hereby stands dismissed.
- (2) No order as to costs.

Pune
Dated :- 31/10/2019

WKK
31-10-2019
(W.K.Kanbarkar)
Adjudicating Officer,
MahaRERA, Pune