

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY  
AUTHORITY, PUNE

Complaint No.CC003000000011944

**Dhananjay Jagdevrao Pawar .. Complainants**  
**Kisan Baburao Anpat**  
**Versus**

Venkateswaraa Developers .. Respondent  
Pvt Ltd

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

FINAL ORDER  
25-02-2019

1. Present complaint is moved for refund of amount paid for the booked plot, together with interest thereon in the light of Section-18 of The Real Estate (Regulation & Development) Act, 2016.
2. Complaint is reflecting that respondent Venkateswaraa Developers Pvt Ltd is a company. complainant No.1 Mr.Dhananjay Pawar through complainant No.2 Mr.Kisan Anpat, has booked plot

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No.140 admeasuring 3000 sq.ft. in the "SEVEN HILLS" Project situate at Gat No.466, at Dhavadi in district Satara, in the project of respondent company. Respondent company has received full and final payment of Rs.6,50,000/- including Rs.50,000/- towards registration and stamp duty vide cheque No.831606 of State Bank of India and the said cheque was cleared on 13-12-2014 in the bank account of the company. Complainant No.1 Mr.Dhananjay Pawar through respondent company's share holder, complainant No.2 Kisan Anpat, approached the respondent company and booked the said plot. However, respondent has failed to fulfill transaction and further to deliver possession of the booked plot to the complainants. Therefore, the present complaint for refund of the amount together with interest and cost of the proceeding.

3. Respondent has filed written explanation and denied claim of the complainant in toto. Complainant No.1 is relative of complainant No.2 and he is share holder of respondent company. All the Directors and share holders of the respondent company brought amounts in their individual capacity for up bringing of the company and to contribute in that regard. Accordingly complainant No.2 Kisan Anpat being share holder of respondent company, in his individual capacity has deposited the amount of

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Rs.6,50,000/- vide cheque No.831606 of State Bank of India dated 13-12-2014, in the name of respondent company. Therefore, there is no agreement, or contract between the complainants and the respondent regarding sale of said plot and therefore complainants are not allottees of any such plot.

4. Respondent company is not liable to allot any plot to the complainants. Complainant No.1 gave hand loan to his relative complainant No.2 Mr.Kisan Anpat who is share holder of the company and therefore, booking receipt of the said plot never issued to the complainants.
5. Complaint is barred by limitation according to the provisions of Limitation Act 1963 and hence on that count complaint is liable to dismiss.
6. Respondent company has not violated or contravened any of the provisions of the Real Estate (Regulation and Development) Act, 2016 or Rules and Regulations there under and therefore complaint is without jurisdiction and liable to dismiss.
7. There is a monetary money lending transaction in between both the complainants being relatives of each others and for them remedy is provided in the

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Civil Court and therefore this complaint is not covered under the RERA.

8. Complainants have not approached with clean hands and they have further approached without any cause of action for the present complaint but false complaint is filed by them and the same is liable to dismiss with heavy cost of Rs.50,000/-. Thus the complaint is not maintainable and liable to dismiss.
9. On the above controversial contentions the following have arisen for my determination and findings thereon are as under;

POINTS	FINDINGS
1. Whether the complainants are entitled to refund of amount paid by them to respondent together with interest thereon & cost as claimed?	In the affirmative
2. What order?	As per final order

### REASONS

10. Point Nos.1 & 2: According Section-2 (d) of the Real Estate (Regulation and Development) Act, 2016, term "allottee" in relation to a real estate project means to whom a plot, apartment or buildings as the case may

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be has been allotted, sold or otherwise transferred by the promoter. Obviously In view of Section-2(d) of the RERA person to whom plot is allotted or sold in the real estate project by the promoter is covered as "allottee" as aforesaid.

11. According to complainant respondent Venkateswaraa Developers Pvt Ltd is a company and complainant No.2 Kisan Anpat is one of the share holders of the said company. Complaint reflects that complainant No.1 Dhananjay Pawar through his relative, complainant No.2 Kisan Anpat who is share holder of respondent company has booked plot No.140 admeasuring 3000 sq.ft., in "SEVEN HILLS" project situate at Gat No.466, at Village Dhavadi in Satara District, for price of Rs.6,50,000/- including registration and stamp duty charges of Rs.50,000/-.
12. On the contrary respondent has denied that any such plot is booked by complainants for price of Rs.6,50,000/- being allottee in the "SEVEN HILLS" project of the respondent company. According to respondent all the Directors and share holders of the respondent company have decided to contribute some amounts for upbringing of the company and for that purpose they in their individual capacity have contributed amounts in the name of company and in that context complainant No.2 Kisan Anpat has

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deposited amount of Rs.6,50,000/- vide cheque No.831606 of State Bank of India dated 13-12-2014 and the said cheque cleared in the account of the company. Complainants never booked any such plot with the respondent and hence there is neither agreement nor contract or any booking receipt with the respondent company and thereby complainants are not allottees of any such plot. So also respondent has come with further stand as there is monetary transaction of hand loan between both the complainants being relatives of each other and therefore complainants are not allottees of any such plot. Respondent has not substantiated by any document on record that complainant No.2 Mr.Kisan Anpat for himself and or on behalf of complaint No.1 Mr.Dhananjay Pawar has deposited aforesaid cheque of amount of Rs.6,50,000/- by way of contribution for the purpose of up bringing of the company in the account of the company and not for allotment of any such plot to either of the complainants.

13. Complainants have placed on record allotment letter dated 2-1-2015 issued by respondent company in the name of complainant No.1 Mr.Dhananjay Pawar, and the said letter speaks that plot No.140 in Venkateswaraa Developers Pvt Limited's, SEVEN HILL" Project situate at Gat No.466, at Village Dhavadi in district Satara, as cost of plot of

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Rs.6,50,000/- and area of the plot is 302.03 sq.mtrs. alongwith this allotment letter complainant has placed on record minutes of Resolution No.3 of meeting of respondent company which was held on dated 2-1-2015. This document of Resolution also clearly speaks that sale of plot No.140 from "SEVEN HILLS" Project situate at Gat No.466, at Village Dhavadi, Taluka Wai, in District Satara to Mr.Dhananjay Jagdevrao Pawar and company has received full and final payment against said plot No.140 as price of Rs.6,00,000/- and Rs.50,000/- towards registration and stamp duty by cheque No.831606 of State Bank of India and said deposited cheque cleared in company's bank account on 13-12-2014. Said document of resolution is also issued by the respondent company. Copy of lay out plan placed on record also describes plot No.140 area 302.03 sq.mtrs. Complaint speaks area of said plot 3000 sq.ft. whereas the allotment letter and resolution of the respondent company and the lay out plan of the respondent company as aforesaid are speaking that area of said plot is 302.03 sq.mtrs. Moreover, documents of Ministry of Corporate Affairs placed on record at the instance of the complainant speaking about the details of share holders and other secured loans etc., of the respondent company. Brochure issued by the respondent company towards "SEVEN HILLS" Project also speaks marking of different plots

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with numbers with other proposed project details and in which plot No.140 also shown. In addition affidavit of complainants dated 30-1-2019 speaks names of different allottee plot holders in the "SEVEN HILLS" Project of the respondent and in which towards Plot No.140 name of Dhananjay Jagdevrao Pawar and amount of Rs.6,50,000/- is shown. Such documentary evidence placed on record clearly speaking that plot No.140 in "SEVEN HILLS" Project of the respondent as aforesaid allotted to the complainant No.1 through complainant No.2 for price of Rs.6,50,000/- including Rs.50,000/- towards registration and stamp duty and said amount was received by the respondent company by way of cheque and the same cleared in the account of the company 13-12-2014. So to say the aforesaid position on record is sufficient to mention that complainants are the allottees of plot No.140 as aforesaid in "SEVEN HILLS" Project of respondent, as per the provisions of Section-2 of the RERA. On the contrary respondent has failed to substantiate its defence by any document appropriately that with a view to contribute some amount in the funds of the company they have contributed in individual capacity and there was monetary transactions in between both the complainants being relatives of each other and no such plot allotted to the complainants.

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- 14.** Respondent submits that claim of the complainants is time barred. Respondent has received payment of Rs.6,50,000/- on 13-12-2014 for allotment of aforesaid plot to the complainants, but has failed to execute any written agreement as such as contemplated in the RERA. However, there is continuous cause of action as contemplated in the RERA. Respondent in one hand received the full payment of Rs.6,50,000/- and by other hand denies the allotment of plot to the complainants and tries to run away from the responsibility of refund of the amount of the complainants as claimed in the complaint. When the respondent being promoter has received money from the allottee under contractual obligation then respondent cannot claim that he is entitled to utilise such money of the allottee as per his choice without responsibility of refund of any such amount to the allottee when promoter has failed to discharge its contractual obligation as contemplated in RERA. Apart from the aforesaid position in the instant case time is not the essence of contract. Therefore, the contention of respondent that the claim is time barred is not maintainable and the same is not acceptable. On the contrary there is continuous cause of action to the present transaction in the light of the RERA.

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15. Under the aforesaid circumstances complainants/ allottees are entitled to withdraw from "SEVEN HILLS" Project of the respondent as there are no chances of delivering possession of the allotted plot to the complainants. Thus, the complainants are entitled to refund of amount of Rs.6,50,000/- together with simple interest as per State Bank of India's highest marginal cost of lending prevailing rate as on date 8.70% plus 2% addition, in total 10.70% per annum from the date of payment till its realisation from the respondent. So also complainants are further entitled of Rs.20,000/- as cost of the present proceeding. Thus, point No.1 and 2 are answered accordingly. In the result pass the following order.

#### ORDER

1. Complainants are hereby entitled to withdraw from the booked plot in "SEVEN HILLS" Project situate at Dhavadi In Satara District and thereby respondent shall refund amount of Rs.6,50,000/- together simple interest thereon at State Bank of India's highest marginal cost of prevailing lending rate of 8.70% plus 2% in total 10.70% per annum, from the date the amount received till its realisation by the respondent.

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2. Respondent shall pay Rs.20,000/- as cost of this proceeding to the complainants.
3. Respondent shall further pay the aforesaid amount to the complainants within 30 days from the date of this order.
4. The charge of the aforesaid amounts shall be kept on the plot in dispute, till realisation of the aforesaid amounts by the complainants from the respondent.

Pune  
Date :- 25.02.2019

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(W.K.Kanbarkar)  
Adjudicating Officer  
MahaRERA