

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

**Complaint No.CC005000000022431**

- 1. Shraddha Vipin Joshi,**
- 2. Vipin P. Joshi.**  
Both R/at D-501, Lalit,  
Nanded City, Sinhgad Road,  
Pune-411 041.

**.. Complainants**

**Versus**

- 1. M/s. MIA Properties**  
Through its Partner  
Sachin Ashok Agarwal,  
Office at 432, New Mangalwar Peth,  
Pune-411 011.
- 2. M/s. MIA Properties**  
Through its Partner  
Ashish Murlidhar Gaikwad,  
Office at 432, New Mangalwar Peth,  
Pune-411 011.
- 3. Sou. Jayashri Ashok Palande,**  
R/at Bungalow No.21, Gera Green Villa,  
S. No.64, Kharadi, Pune-411 014.
- 4. Shri Dilip Govin Devkar,**  
R/at Sr. No.29, Krupassagar,  
Devkar Sadan, Ramwadi,  
Pune-Nagar Road, Pune-411 014.
- 5. Sou. Nanda Shakarrao Devkar,**  
R/at Krupasagar, Devkar Sadan,  
Ramwadi, Nagar Road,  
Pune-411 014.

**.. Respondents**

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

**Appearance :-**

**Complainant : Adv. Y.S. Patil h/f Adv. A. M. Mamidwar**  
**Respondent : Mr. Upendra Sutar**

**FINAL ORDER**  
( 30.05.2019 )

1. The Complainants/Allottees filed the present complaint against the Respondents/Promoters seeking relief under Section 18 of the Real Estate (Regulation and Development) Act, 2016 ( hereinafter referred to as "RERA") and claimed refund of consideration amount of Rs. 29,31,297/- paid by them together with interest @ 18% and expenses, towards the flat No. B-501 in Building 'B' in the housing scheme known as "AAPLA GHAR LONIKAND" situated at Gat No.751 of village Lonikand, Tal. Havelli, District Pune, launched by the Respondents/Promoters on account of failure of Respondents/Promoters to hand over possession of the said flat as per the agreement, dated 21.06.2014.
2. The Complainants alleged that Respondent Nos.1 and 2 are the developers, whereas the Respondent Nos.3 to 5 are owners/consenting party of the property to their respective share in Gat No. 751, village Lonikand, Tal. Havelli, District Pune, wherein the Respondents have launched the housing scheme named above. After going through the brochure and amenities mentioned in

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the advertisement, Complainants agreed to purchase a flat in the scheme of Respondents for a total consideration of Rs. 30,83,810/- and accordingly entered into an agreement to sale, dated 21.06.2014, whereby the Respondents/Promoters agreed to hand over possession of the flat within a period of 30 months from the date of agreement, which expires on December, 2017. The Complainants further alleged that the progress in the construction work was very slow, and despite of requests made from time to time, the Respondents avoided to communicate the progress report of the construction. The Respondents suddenly intimated the Complainants that they are not going to construct the said building where the flat of the Complainants was to be given. Complainants were ready to abide their part of promise and ready to take the possession of flat with all amenities as per the registered agreement, but Respondents avoiding for giving possession and utilizing complainants' funds in different projects.

3. The Complainants have further alleged that after making dire follow-up with Respondents, the Promoters have agreed to pay very meager amount as rent of Rs.9,000/- p.m. on count of delayed possession, however, the said promise is false promise just to kill the time. Complainants have paid huge amount towards consideration of the booked flat and as the Respondents failed to give possession of the booked flat as per agreement, the Complainants are suffering a lot

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and mental agony. The Complainants have claimed refund of consideration amount of Rs. 29,31,297/- and expenses with 18% interest, and also claimed Rs. 1,00,000/- for harassment and mental agony, rent of Rs. 15,000/- p.m. from the agreed date of possession, Rs. 5059/- Court fees and travelling expenses along with advocate fees of Rs. 50,000/-.

4. Plea of Respondent Nos.1 and 2 is recorded through Mr. Upendra Sutar, the Authorized Representative on 22.04.2019. However, no written explanation is filed on behalf of the Respondents, except filing copy of part occupancy certificate obtained by the Respondents/Promoters from the competent authority. The Respondent Nos.3 to 5 failed to appear before this forum. It appears that Respondent Nos.3 to 5 are the land owners of the project in question and have signed the agreement as a consenting party and Respondent Nos. 4 and 5 signed the agreement through their power of attorney Mr.Sachin Ashok Agarwal or Mr. Ashish Murlidhar Galkwad, the partners of the Respondent No.1 firm. As such their appearance in the present matter can be said to be in the shoes of Respondent No.1.
5. On the above facts and circumstances on record, following points have arisen for my determination and findings thereon are as under :-

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**POINTS****FINDINGS**

- |     |  |                            |
|-----|--|----------------------------|
| (1) | Whether the Complainants/Allottees are entitled to withdraw from the project and refund of the amount paid by them to the Respondents towards consideration of the booked flat, along with interest, expenses and other reliefs, as sought ?.. | Partly in the Affirmative. |
| (2) | What order ?   | As per final order         |

**REASONS**

6. **POINT No. 1** :- Heard Adv. Mr. Y.S. Patil h/f. Adv. Mr. Anand M. Mamidwar on behalf of the Complainants. Perused the papers filed on record.
7. The Complainants/Allottees have filed on record copy of agreement dated 21.06.2014, copies of demand letters, receipts, ledger account of the Respondents/Promoters. On the other hand, the Respondents/Promoters have filed copy of part occupancy certificate, dated 01.01.2019 issued by the concerned planning authority.
8. It has been argued on behalf of the Complainants that the Complainants have booked Flat No. B-301 in Wing "B" of the housing project launched by the Respondents known as "AAPLA GHAR LONIKAND" and entered into an agreement, dated 21.06.2014, thereby agreed to purchase the said flat for a total consideration of Rs. 30,83,810/-excluding stamp duty, registration fees, VAT and Service Taxes, etc. The Complainants have

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paid an amount of Rs. 29,31,297/- to the Respondents/Promoters including stamp duty of Rs.1,54,200/- + Registration fees and other charges of Rs. 31,260/-. The total of the Receipts placed on record comes to Rs. 21,86,414/-. The last demand letter, dated 05.02.2016 issued by the Respondents/Promoters shows the amount received till the date of said letter at Rs.22,08,812/- against the agreement value only. The ledger account maintained by the Respondents during the period from 1<sup>st</sup> April, 2010 to 31<sup>st</sup> March, 2019 shows the amount of Rs.27,47,097/- as credit. Though the said ledger account do not show as to in whose name the amounts shown in it are credited, but the cheque Nos. Mentioned in the same and that of in the receipts placed on record tallies and as such it can be safely said that the Respondents have received Rs. 27,47,097/- from the Complainants. The Index II produced on record shows the stamp duty amount of Rs.1,54,200/- whereas the Receipt for registration fees shows the amount of Rs. 31,260/-. Out of this, the amount of Rs.30,000/- for registration fees seems to be paid by eChallan and Rs. 1260/- by cash paid by the Complainants. Also Challan for Rs. 1,54,200/- seems to be paid in the name of Complainant No.1 Shraddha Vipin Joshi towards the stamp duty. Thus total amount of Rs.1,85,460/ seems to be paid by the Complainants. Therefore, it appears that the Complainants have paid total amount of Rs. 29,32,557/- to the Respondents inclusive of stamp duty, registration fees and other charges.

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Moreover, the Respondents have not resisted the contentions of the Complainants regarding payment made by them towards the booked flat.

9. The question remains as to whether the Complainants are entitled to withdraw from the project or not ? The copy of the agreement produced on record shows that the Respondents have agreed to hand over possession of the booked flat to the Complainants within the period of 30 months from the date of execution of the agreement i.e. on or before December, 2017. The Respondents have placed on record copy of part occupancy certificate, dated 01.01.2019, issued by the Pune Metropolitan Regional Development Authority which shows that the flat in question booked by the complainants is ready for occupation as on 01.01.2019. 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."*

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Admittedly, it is apparent from the face of record that the Respondents have failed to hand over possession of the flat as per agreement. Moreover, the Respondents have not placed on record to show that before filing the present complaint by the Complainants before this Authority, they have issued letter to the Complainants Informing them that the flat will be ready in the nearest days. In view of these facts and circumstances on record, I do not hesitate to hold that the Complainants are entitled to withdraw from the project of the Respondents and claim refund of the amount paid by them towards the booked flat.

10. Section 48 of the Maharashtra Stamp (Amendment) Act, 2015, provides that,  
*"Where an agreement to sale of immovable property on which stamp duty is paid is registered under the provisions of the Registration Act, 1908 and thereafter such agreement is cancelled by a registered cancellation deed for whatsoever reasons before taking the possession of the property which is the subject matter of such agreement, within a period of five years from the date of execution of the agreement to sale, then the application for relief may be made within a period of six months from the date of registration of cancellation deed."*

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In the instant case, the agreement is executed on 21.06.2014. Therefore, the period of five years from



the date of agreement will expire on 20.06.2019. If the Respondents would refund the amount of consideration paid to him by the complainant immediately after the passing of this order and if deed of cancellation of the agreement is executed immediately after the expiry of the five years' period from the date of execution of agreement, the complainants can claim the refund of stamp duty till 19.12.2019. Therefore, after deducting the amount of stamp duty of Rs. 1,54,200/- from the entire amount paid by the complainant Rs. 29,32,557/-, the Complainants are entitled to refund of Rs. 27,78,357/- from the Respondents. However, in case of default of the Respondents to comply with the order of refund within stipulated period, the complainants will be deprived of from claiming refund of stamp duty. In such circumstances, the Respondents are under obligation to refund the amount of stamp duty to the complainant.

11. The Complainants have claimed Rs.1,00,000/- for harassment and mental agony. However, this claim of the complainants is not substantiated at all under law. The further claim of the Complainants towards rent of Rs.15,000/- p.m. from December, 2017 is also not substantiated. No any document has been placed on record by the Complainants to show that due to failure on the part of the Respondents to hand over possession of the booked flat, they have obtained rental accommodation and have paid rent of Rs. 15,000/- p.m. towards such rental accommodation. Hence I am

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of the opinion that the Complainants are not entitled to claim any amount towards harassment, mental agony and/or rent, as sought in the complaint.

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. 27,78,357/- from the date of payments till realization of the entire amount.

13. 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. 27,78,357/- exclusive of stamp duty of Rs. 1,54,200/-, 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.

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- (3) The Respondents/Developers shall pay the aforesaid amounts within 30 days from the date of this order.
- (4) In default of Respondents' to comply with the order and execution and registration of deed of cancellation of the agreement to sale within the stipulated period i.e. before 19.12.2019, the Respondents shall pay to the Complainants the amount of stamp duty Rs. 1,54,220/- in addition to the amount of refund mentioned in para (1) of the operative order
- (5) The Complainants shall execute deed of cancellation of the agreement, dated 21.06.2014 after realization of the entire amount awarded by this order, at the cost of the Respondents.

Pune  
Dated :- 30/05/2019

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30-5-19  
(W.K.Kanbarkar)  
Adjudicating Officer,  
MahaRERA, Pune