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

**Complaint No.CC005000000022142**

1. Mrs.Archana Mohit Mathur,
2. Mr. Mohit Mathur.  
Both r/at C-1/1098, Vasant Kunj,  
New Delhi 110 070.
  
3. Mr. Vinayak Gopichand Suryawanshi,
4. Mrs. Jaylaxmi Vinayak Suryawanshi.  
Both r/at C/o. Ishiri Nilya, 37/38.  
A Wing, 7<sup>th</sup> Cross, Opp. To Eat N Drunk Hotel,
  
5. Mr. Shravan N. Sikcho  
R/at RH No.48, Chrsalis,  
behind Wagheshwar Temple, Wagholl,  
Pune-412207. .. (Deleted)
  
6. Mr. Umesh Subhash Kolapkar,
7. Mrs. Pooja Umesh Kolapkar.  
  
Both R/at 78/1B, Samarth Nagar,  
New Sanghvi, Pune-411027.
  
8. Mr. Shriram D. Pharate .. (Deleted)
9. Mrs. Vidya S.Pharate .. (Deleted)  
Both R/at A/P Varwand, Daund  
Pune.
  
10. Mr.Parag Arora
11. Smt. Asha Arora
12. Mr. Anurag Aroa,  
Nos.11 to 13 R/at 13, New Akashwani Colony,  
Rajendra Vihar, Kota (Raj) 324001.

20m  
17/12/18

13. Shiv Kumar,
14. Meeru Gupta  
Both R/at Flat No.603, Ascent Building,  
Behind Maruti Suzuki Showroom,  
Baner, Pune-411045.
15. Mr. Anuj Datre  
R/at Fat No. B-804, Rose-e-Maher Society,  
Rahatani, Pune-411017.
16. Mrs.Priti Nilesh Patil
17. Mr. Nilesh Haribhau Patil.  
Both R/at B1-103, Ganga Constella,  
Kharadi, Pune.
18. Mr. Vishal Ramrao Nerkar
19. Mrs. Sheetal Vishal Nerkar.  
Both R/at Flat No.10, Bldg. E4,  
Nirmal Township, Kale Padal Road,  
Sasane Nagar, Hadapsar, Pune-411 028.
20. Prabhjot Singh hatia  
R/at 84/2, Labour Colony, Govind Nagar,  
Kanpur 208006.

.. Complainants

*19/12/19*  
Versus

**Ashdan Developers Pvt. Ltd.**  
Regd. Office at Solitaire World,  
Level 8, S.No.36/1/1,  
Opp. Regency Classic,  
Mumbai-Banglore Highway,  
Baner, Pune-411045.

.. Respondent

**PR No.P52100007401**

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

**Appearance :-**

**Complainants** : **Adv. Godbole**  
**Respondent** : **Adv. Uttarwar**

**FINAL ORDER**  
**17.12.2019**

1. It is the case of the complainants that the respondents had misled the complainants by publishing false advertisement and also cheated to them by accepting the amount against the booked flats in the project of "Kul Nation" located at Manjari Khurd, Awahawadi, Tal.Haveli, District Pune.
2. Therefore, the complainants intend to withdraw from the project claiming refund of the amount paid by each of the complainants with interest and compensation under the provisions of Real Estate (Regulation And Development) Act, 2016 ( hereinafter referred as "RERA").
3. During the pendency of complaint, the complainants have moved an application for amendment. The amendment application was allowed being some of the complainants withdrawn from the complaint and as such they came to be deleted. The another amendment was in respect of showing the date of agreements and exact amount paid by each of complainants respectively to the respondent. The another amendment sought was claiming the relief of refund under Section 18 of the RERA.
4. Plea of the respondents was recorded through Mr. Rafik Shaikh, the A.R. of the respondents on 15.05.2019.

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17.12.19

5. It seems that the respondents have filed written submission on the original complaint as well as on the amended complaint. It was submitted that the averments of the complainants in respect of misleading, cheating are totally false. Complaint is not tenable in the present form. Further it is must to the complainants to file the complaint in terms of agreement alleged to have executed by them respectively with the respondents. Complaint is liable to be dismissed.
6. On perusal the entire allegations averred in the online complaint, what it seems that the complain was under Section 15 of the RERA. Further on going through the averments made in the amended complaint, it becomes clear that the complaint is under the provisions of Section 18 of RERA.
7. In the above facts and circumstances of the case, following points arise for my determination and I am going to record my findings thereon for the reasons given below.

#### **POINTS**

#### **FINDINGS**

- |  |  |
|--|--|
| <p>(1) Whether the complaint is tenable under Section 15 of RERA before this Authority (Adjudicating Officer)?</p>   | <p>.. In the negative</p>              |
| <p>(2) Whether the complainants are entitled to claim the refund of entire amount alleged to have paid with interest and compensation under the provisions of RERA ?</p> | <p>.. .. In the Negative</p>           |
| <p>(3) What order ?</p>  | <p>.. .. .. .. As per final order.</p> |

#### **REASONS**

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8. **POINT No.1** :- Heard Mr. Godbole, Adv. for complainant whereas Mr. Uttarwar, Adv. for respondents. Perused papers filed on record.
9. In Section 2(a) of the RERA, It is defined that "Adjudicating Officer" means the Adjudicating Officer appointed under sub section (1) of Section 71; Section 71(1) states that for the purpose of adjudicating compensation under Section 12, 14, 18 and Section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officers as deemed necessary, who is or has been a District Judge to be as Adjudicating Officer for holding an inquiry in the prescribed manner, after giving any person concern a reasonable opportunity of being heard" (only relevant portion). In view of proviso of Section 71, the Adjudicating Officer is authorized to dispose off the complaints under Section 12, 14, 18 and 19 of the RERA. The online complaint as stated above falls within Section 15 of RERA and therefore, it is not tenable before the Adjudicating Officer.
10. Admittedly, on the date of online complainant, the claim of each of the complainants under Section 18 of RERA was not tenable. It was not tenable because each of the sale agreement of respective complainants, the agreed date of possession of the booked flat was within 5 years from the date of execution of agreement. The term for a period of 5 years was not completed by each of the complainants on the date of online complaint. Therefore, complaint was premature on that day to consider their respective claim of each of the complainants in view of the provisions of Section 18 of the RERA. The arguments advanced by both the learned Advocates of complainants and respondent was on this point only. On the date of amendment, the period of 5 years was already over and therefore, the efforts were made to bring the complaint of

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complainants within the scope of Section 18 of RERA. Keeping open the point of tenability, the arguments were heard finally.

11. In view of the aforesaid facts and circumstances, I am of the considered opinion that the online complaint is not tenable being it was filed within the scope of Section 15 of the RERA. Likewise, amended complaint is also not tenable in view of the provisions of Section 18 of the RERA being it was premature on the date of filing the online complaint. Considering all these facts and as the complaint is liable to be dismissed on technical ground, I feel just and proper to pass the following order in the interest of justice.

**ORDER**

- (1) The complaint stands dismissed being not tenable. However, complainants are at liberty to file a fresh complaint for the remedy which is available to them under the provisions of any prevalent law.
- (2) No order as to costs.

Pune  
Date : 17.12.2019

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