

**THE MAHARASHTRA REAL ESTATE REGULATORY  
AUTHORITY, MUMBAI.**

**COMPLAINT NO: CC005000000023106.**

Deepa Sadanand Ghag  
Sadanand Shankar Ghag

... Complainants.

**Versus**

Ashdan Developers Private Limited.  
(Kul Nation R1 Tower 9 Manjari)

... Respondents.

MahaRERA Regn: P52100007401.

**Coram:** Shri B.D. Kapadnis,  
Hon'ble Member II.

**Appearance:**

Complainants: Adv. Mr. Swaroop Godbole.

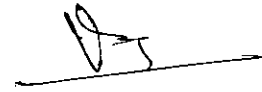
Respondents: Adv. Ms. Vaishali Mishra.

**FINAL ORDER**

**15<sup>th</sup> November 2019.**

The complainants have filed this complaint under Section 18 of RERA for claiming refund of their amount with interest as the respondents have failed to hand over the possession of their flat No. 908, Kul Nation Phase I situated at Manjari Khurd Dist. Pune on the agreed date 03.02.2019.

2. The respondents have pleaded not guilty and they have filed their reply to contend that Ashdan Developers Private Limited have assumed operational control by purchasing 100% shares of Kul Developers in March 2018. They contend that the agreement provides the date of possession would be five years from the date of execution of the



agreement and further extension of three years and therefore, the date of possession is not crossed.

3. Heard the learned advocates of the parties.

4. Clause 4.1.2 of the agreement executed in favour of the complainants provides that the possession of their flat would be handed over within five years of the agreement executed on 04.02.2014. Therefore, the agreed date comes to 03.02.2019. The learned Advocate for the respondents have brought to my notice Clause 7 of the agreement which provides that the possession shall be in accordance with Clause 4.1.2 of the agreement which provides for five years from the agreement. Then the learned Advocate brings to my notice that as per Clause 7.1.1, if there is delay upto three years, the compensation would be on the lump sum amount calculated at the rate of Rs. 3/- per sq.ft. of the carpet area of the said unit per year or part thereof. Clause 7.1.2 provides that if the delay is beyond three years, the rate of compensation would be Rs. 6 per sq.ft. on the carpet area of the said unit per year or part thereof. After perusing these clauses, I do not find that the agreement contemplates the grace period of three or six years as contended by the respondents. On the contrary, the date of possession mentioned in the Clause 4.1.2 is material date of possession which is five years of the agreement mentioned. Admittedly, the respondents have not given possession of the flat on the said date and hence, the complainants have acquired right to claim refund of their amount with interest.

5. The respondents have not disputed the receipt of the payment mentioned in the schedule of payment marked Exh. A. It shows that the complainants have paid respondents Rs. 16,48,037/- towards the consideration. They have paid Rs. 25,400/- towards registration fee and Rs. 76,200/- towards stamp duty on 04.02.2014. Since more than five years have lapsed from the execution of the agreement for sale, the

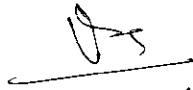


complainants will not be able to seek refund of the stamp duty as per sections 47 & 48 of Maharashtra Stamp Duty Act. Hence, the complainants are entitled to recover all the amount mentioned in the payment schedule Exh. A from the respondents with interest at prescribed rate as per Section 18 of RERA from the date of payment till refund. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 8.4%p.a. Complainants are also entitled to get Rs. 20,000/- towards the cost of the complaint.

6. To conclude, the respondents shall pay to the complainants the amount mentioned in the above para with the prescribed interest and the cost of the complaint.

Mumbai.

Date: 15.11.2019.

  
15.11.19  
(B. D. Kapadnis)  
Member II, MahaRERA,  
Mumbai.