

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

Complaint No.CC005000000022116

Garima Kushwaha

R/at Flat No.A1, S.No. 169, Gardenia Society,
Opp. Suzlon Company, Malwadi,
Hadapsar, Pune-411028.

.. Complainant

Versus

1. Mr. Dattatraya Sohan Shitole,
R/at Shindawane, Tal.Havell, Dist. Pune
2. Mr. Satish Ramdas Daundkar
R/at Uruli Kanchan, Tal. Havell, Dist.Pune.
3. Mr. Dattatray Rambhau Bhogil,
R/o.Sortapwadi, Tal.Haveli, Dist. Pune.
4. Mr. Vikas Digambar Mahadik,
R/at Shindwane, Tal. Haveli, Dist.Pune.
5. Mr. Balasaheb Diwanji Jagtap,
R/at Urull Kanchan, Tal. Haveli, Dist. Pune.
6. Mr. Santosh Shivaji Suryawanshi,
R/at Uruli Kanchan, Tal. Havell, Dist.Pune.
7. Mr. Sagar Bapurao Salunkhe.
R/at Nimgaon Khalhe, Tal. Shrigonda,
Dist. Ahmednagar.
8. Mr. Anand Arvind Joshi,
R/at Vivekanand Nagar, Tuljapur,
Dist. Osmanabad.
9. Mr. Vijay Sakharam Dange,
R/at Bldg. No.F3, Flat No.C2, Sector 9,
Washi, Navi Mumbai Thane.

.. Respondents

PR No.P52100012683

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

2020
16-1-20

Appearance :-

Complainant : In person

Respondent No.1: Mr. Daundkar, A.R.

Respondent Nos.2 to 9: Exparte

FINAL ORDER
(16.01.2020)

1. It is the case of the Complainant that she along with her husband has booked Plot Nos.78 and 79 from the project "Chintamani Paradise" located at village Shindwane, Tal. Haveli, District Pune and subsequently purchased the same under registered sale-deeds dated 07.03.2018 for the consideration of Rs. 33,30,938/- inclusive of stamp duty and registration charges from the respondents. The aforesaid plots are part and parcel of the project i.e. Chintamani Paradise which is registered partnership firm. The respondent Nos.1 to 9 are the partners of the aforesaid firm. In the agreement and even in the registered sale-deeds, the respondents have agreed to provide the amenities i.e. main entrance gate, club house, children play area, 24x7 security with CCTV, individual fencing for each plot with specifications 8 ft. outer wall compound, individual water connection, gazebo and senior citizen sit out, yoga meditation zone, landscape garden and construction FSI 1.43. However, the respondents failed to provide the aforesaid amenities and specifications. Not only that, but the amenity space is sold out to third person and deprived the complainant from use of the same. As the respondents failed to provide all the amenities stated above and specifications in accordance of the terms of agreement of sale, the complainant intends to withdraw from the project, claiming refund of entire amount with interest and compensation under the provisions of Real Estate (Regulation And Development) Act, 2016 (hereinafter referred to as "RERA").

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2. Initially, the respondent No.1 Dattatraya Sohan Shitole, one of the partners of the respondents was only included as respondents. Subsequently, the complainant included all the other partners i.e. respondent Nos.2 to 9 as party to this complaint. The notice was duly served to respondent No.1 and he appeared before this Authority through Adv. Amit Patil. The plea of respondent No.1 was also recorded on 26.06.2019 through A.R. Mr. Satish R. Daundkar i.e. respondent No.2. However, Adv. Amit Patil withdrawn from this case. Further the respondent No.1 also failed to file written explanation in his defence. Therefore, the complaint was proceeded without written explanation against him. After adding the respondent Nos.2 to 9 as party respondents, they all were served with the notice on time to time, but failed to appear on the dates so given. Hence the complaint is proceeded exparte against the respondent Nos.2 to 9.
3. In the aforesaid facts and circumstances of the case, following points arise for determination and I am going to record my findings thereon as under.

POINTS

FINDINGS

- (1) Whether the complainant is entitled to claim refund of the amount paid by her under the sale deeds, dated 07.03.2018 to the Respondents along with interest and compensation under the provisions of RERA ? In the Affirmative
- (2) What order ? As per final order.

REASONS

4. POINT No.1 :- Heard complainant in person and perused the documents filed on record.

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5. It is submitted by the complainant that the respondents failed to provide the amenity space, as agreed. On the contrary, respondents sold the amenity space to Swapnilseth Rajaram Kanchan. To support this argument, the complainant has filed on record the photograph to point out that the amenity space is sold out to said Swapnilseth Rajaram Kanchan vide document No. Havelli-7498-2017 and Havelli-7499-2017. On perusal of this photograph, it seems that the board is fixed on the amenity space pointing out that that space is purchased by Swapnilseth Rajaram Kanchan vide aforesaid registered documents. The photograph of open space, the copy of the plan of the project wherein the complainant has purchased plots along with her husband and in what way it is to be developed, as well as the copy of the amenities and specifications agreed to be provided by the respondents filed on record. It is a fact that the complaint is proceeded ex parte against respondent Nos. 2 to 9. Further, the respondent No. 1 failed and neglected to defend the case in spite of sufficient opportunity. Considering all the aforesaid facts and on relying on the aforesaid documents filed on record, I can say that the respondents failed to provide the amenities and specifications and thereby failed to abide in accordance with the terms of agreements and therefore, the claim of the complainant is justified under Section 18 of the RERA. I therefore, answered Point No. 1 in the affirmative.
6. It is to be noted that the complainant and her husband are entitled to claim the refund of amount spent by them towards stamp duty from the competent authority under the provisions of Maharashtra Stamp (Amendment) Act, 2015. However, that refund will be in proportionate and not in full. At the most, the complainant will not receive the amount of refund more than Rs. 98,800/-. Thus on this count, they will suffer the loss to the extent of Rs. 49,400/-. The loss which is likely to suffer to the complainant can be compensated

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by directing the respondents to pay the amount of Rs.50,000/- as compensation. If the amount of stamp duty Rs.1,48,200/- is deducted from the entire amount of Rs. 33,30,938/- alleged to have paid, it will come to the sum of Rs.31,82,738/-. This will be the amount of refund to which complainant is entitled along with amount of compensation Rs.50,000/-. Thus the total amount of refund will be Rs. 32,32,738/-, to which complainants are entitled to recover from the respondents together with interest under the provisions of RERA.

7. In view of Maharashtra Real Estate Rules, the interest payable by the promoter and the allottee, as the case may be, shall be the State Bank of India Highest Marginal Cost Lending Rate + 2%. In case the State Bank of India Highest Marginal Cost Lending Rate is not in use, it would be replaced by such bench mark lending rates, which the State Bank of India may fix from time to time for lending to the general public. Now the prevailing rate of interest i.e. Marginal Cost Lending Rate is 8.20%. Therefore, complainants can claim interest on the amount which is due and payable with simple interest @ 8.20% + 2% i.e. 10.20% p.a. The respondents are liable to refund the entire amount which is due and payable to the complainants together with interest stated above till realisation of the same.

8. In addition to this, complainant is entitled to receive the amount of Rs. 5,000/- towards the costs of this litigation. Hence the order.

ORDER

- (1) The Respondents are directed to pay the amount of Rs. 32,32,738/- to the complainant with simple interest @ 10.20% p.a. from the date of receipt of payments from time to time till realisation of the entire amount.

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- (2) The Respondents are also directed to pay cost of Rs.5,000/- of this litigation to the complainant.
- (3) Charge of the entire amount which is due and payable referred above, be kept on the purchased Plot Nos.78 and 79 in the project of Respondents "Chintamani Paradise", located at Shindawane, Tal. Haveli, District Pune which was booked under the sale-deeds, dated 07.03.2018 till the realisation of the entire amount.
- (4) The Respondents are directed to pay the aforesaid amount as ordered to the Complainant within 30 days since the date of this order.
- (5) On realisation of their entire claim of refund with interest, the Complainant shall execute the Deed of Cancellation of Sale Deeds, dated 07.03.2018 in favour of the Respondents at the Respondents' cost.

Pune
Date : 16.01.2020

S.B. Bhale
(S.B. Bhale) 16.1.2020
Adjudicating Officer,
MahaRERA, Pune