

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

**Complaint No. CC005000000010800**

**Mrs. Swati Ashok Mulay**

**.. Complainant**

**Versus**

**1. Deepak Sakharam Kulkarni,  
2. Shirish Deepak Kulkarni.**

**.. Respondents**

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

**FINAL ORDER**

**22<sup>nd</sup> MAY, 2018**

1. It is the case of the Complainant that he had booked Flat No. 405 F Wing of the Anandghan Project of the Respondent located at village Dhyari, Sinhagadh Road, at Pune under the Agreement, dated 21.01.2014. In view of the terms of the Agreement, the date of possession of the booked flat agreed by the Respondents was December, 2016. The total cost of the booked flat was Rs. 31,90,000/-. It is further contended that till date he has paid total amount of Rs. 32,00,000/- on time to time to the Respondents towards the cost of booked flat. It is the case of the Complainant that as the Respondents failed to hand over possession of the booked flat as agreed, in view of the terms of the agreement, he do not want to remain with the project. Therefore, he has claimed the relief of refund of amount paid by him to the Respondents on time to time till the date along with compensation under the provisions of Real Estate

*22/5/18*

*33*

(Regulation and Development) Act, 2016 ( hereinafter referred to as the **RERA**).

2. It is to be noted that the Respondents remained absent though served with the notice. Therefore, complaint is proceeded exparte against them.
3. In the above 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 entire amount paid by him on time to time to the Respondent with interest and compensation, If any, from the Respondents, as prayed ? .. .. | .. In the Affirmative  |
| (2) | What order ? .. ..   | .. As per final order. |

#### **REASONS**

4. Heard the Complainant in person. Perused the documents on record.
5. **POINT No.1** :- On perusal of the Agreement, dated 21.01.2014, it becomes clear that the Respondents were to hand over possession of the booked flat to the Complainant on or before December, 2016. Despite that, the Respondents have failed to hand over possession of the booked flat within time limit prescribed and in terms of the

*22.5.16*



Agreement, dated 21.01.2014. Therefore, I can say that the claim of the Complainant to refund of the amount paid by him to the Respondents on time to time with interest, is justified.

6. In order to prove the actual payment, the Complainant has filed on record the payment receipts and submitted that he has paid the entire amount of Rs. 32,00,000/- on time to time to the Respondents till the date inclusive of stamp duty and all other charges. As he want to withdraw from the project, I can say that he is entitled to receive the amount paid by him to the Respondents on time to time. On perusal of the papers, it seems that the amount of Rs. 1,59,500/- is included in the aforesaid amount of Rs. 32,00,000/-. Here it is to be noted that the Complainant is entitled to reimburse the stamp duty by claiming the same. However, he will not receive the entire claim what he expended towards the stamp duty. Therefore, I can say that the Complainant will receive the amount of not more than Rs. 1,00,000/- in proportionate towards the reimbursement. On this assumption, I can say that he is suffering the loss of roughly Rs. 60,000/- towards the reimbursement of the claim of stamp duty. Therefore, the loss of Rs. 60,000/- likely to be suffered to the Complainant will have to be compensate by directing the Respondents to pay Rs. 65,000/- towards the compensation. The amount of Rs. 1,59,500/- towards the stamp duty is minused from the amount paid by the Complainant to the Respondents on time to time i.e. Rs. 32,00,000/-, the amount which actually paid by the Complainant to the Respondents will be of Rs. 30,40,500/-. Thus the amount due and payable to the Complainant by the

Respondent which they received on time to time will be Rs. Rs 3297737 30,40,500/- + compensation awarded Rs. 65,000/- = Rs. 31,05,500/-. Accordingly, I held that the Complainant is

entitled to receive an amount of Rs. 31,05,500/- with interest which is due and payable by the Respondents to him from the date of receipt of same to them on time to time. 32977

8. In view of the prescribed rules and the provisions of Section 18 of the RERA, the rate of interest payable by the promoters i.e. Respondents to the allottee shall be the State Bank of India's highest marginal cost of Lending Rate + 2%. In case the State Bank of India's marginal cost of Lending Rate is not in use, it would be replaced by such bench mark Lending Rate which the State Bank of India may fix from time to time for lending to the general public. Further in view of the rules framed under the RERA Act, the rate of interest at the rate of MCLR of State Bank of India which is currently 8.05% and it will be added by 2%. Thus the

3297737 Complainant is entitled to receive the entire amount of Rs. 31,05,500/- with simple interest @ 10.05% p.a. since the date received to the Respondent on time to time till the recovery of the entire amount. The Respondents are also liable to refund the aforesaid amount, which is due and payable with interest at the rate stated above till realization of the same. In addition to that, the Complainant is also entitled to receive the cost of Rs. 10,000/- towards this litigation from the Respondent. 283 203 22.5.16

9. For these reasons and the express provisions of RERA, I recorded my findings on Point No.1 in the affirmative. Hence the order.



**ORDER**

1. The Respondents are directed to pay amount of Rs. 32,97,737/- (31,05,500/-) to the Complainant with simple interest @10.05% p.a. within 30 days from the date of this order till realisation of the entire amount as is mentioned in para (8) above.
2. The Respondents are also directed to pay the amount of Rs. 10,000/- to the Complainant towards the cost of this litigation.
3. The charge of the aforesaid amount shall be kept on the Flat booked by the Complainant under the agreement, dated 21.01.2014.
4. On realisation of entire claim, the Complainant shall execute the Deed of Cancellation of Agreement in favour of the Respondents at the Respondents' cost.

Pune  
Date :- 22.05.2018

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

## ORDER

Dt. 6-6-18

Perused representation made by this Applicant. Further, gone through the final Order passed by this Forum in complaint No. 10800 dated 22-5-2018. Shreeram Mule the son and representative of Complainant himself argued before this Forum on 10-5-2018 that the Complainant has paid entire Amount of Rs. ~~3,20,000/-~~<sup>7825</sup> to the Respondents inclusive of Stamp Duty - on believing him the same figure is incorporated in the Order. Now he is claiming that entire amount paid by the Complainant to the Respondents till date is Rs. 33,92,237/-. When I heard Mr. Shreeram Mule on this point today at about 5 p.m. in chamber of Mr. Jadhav, Dy. Secretary, RERA, Pune in his presence he told that he forgot to point out the correct figure on verifying the entire receipts filed on record.

Another grievance about Stamp Duty is not pointed out in the Argument. It is fact that the Purchaser used to purchase the Stamp on his own name while entering into an Agreement to purchase the Flat, Apartment or any immovable property. The reimbursement claim of Stamp Duty will have to be received to the person in whose name stamp is purchased. The grievance raised above is after passing the final order and not prior to that. This is not the correction of Typographical error or clerical mishap. Therefore, the only remedy available to the Complainant<sup>and</sup> to this grievance to challenge the impugned Order in an appeal before the Hon'ble Appellate Tribunal established under R.E.R.A. Hence, the representation of complainant through her representative is rejected.

Date : 6.6.2018

( S.B. Bhale )

Adjudicating Officer,  
RERA Pune



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**Complaint No.CC005000000010800**

**Mrs Swati Ashok Mulay**

**... Complainant**

**Versus**

**1. Deepak Sakhrum Kulkarni, i.e. *DSK*  
2. DSKDL (D.S. Kulkarni Developers Ltd), *DSK*  
and others.**

**3. Shirish Deepak Kulkarni,**

**... Respondents**

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

**Final Order**

**22<sup>nd</sup> May 2018**

1. Vide application dated 19.07.2018, Mr Shreeram Mulay, the representative of complainant present before me today, i.e. 20.07.2018, by this application he has prayed for corrigendum to the final order dated 22.05.2018 passed in the aforesaid complaint no.10800.

2. Prior to this he had moved an application for the similar relief and claiming the entire amount spent by the complainant towards stamp duty. As the reliefs claimed by that application was clubbed with entire reimbursement of stamp duty the same was rejected vide order dated 06.06.2018.

3. Now, by this application the complainant has come with the relief of corrigendum about the amount alleged to have paid to the respondent before filing this complaint. In the final order dated 22.05.2018, the amount alleged to have paid is mentioned as Rs.32,00,000/- Instead of Rs.33,92,237/-. To point out the correctness of this figure he invited my attention towards the payment receipts filed on record total 18 in numbers and accordingly he prepared the statements by his own handwriting showing the payments under those receipts date wise with

numbers. On perusal all the aforesaid receipts filed on record and verifying the same with the chart prepared, the correct amount alleged to have paid to the respondent by this complainant comes to the sum of Rs.33,92,237/- .

4. By pointing out the aforesaid correct figure, Rs.33,92,237/- he prayed to amend the earlier order dated 22.05.2018 passed in the complaint, deducting the amount spent by the complainant towards stamp duty, on which she can claim reimbursement. After deducting the amount spent towards stamp duty Rs.1,59,500/- from Rs.33,92,237/- it will come to the sum of Rs.32,32,737/-. In the final order referred above, the compensation of amount Rs.65,000/- awarded to the complainant towards the loss of reimbursement of stamp duty as observed in para no. 6 of the said order. If the amount of compensation Rs.65,000/- is added to Rs.32,32,737/-, it will come to the sum of Rs.32,97,737/-. This will be the correct amount which is due and payable by the respondent to the complainant with interest at such rate as may be prescribed under the proviso of Section 18 (1) of RERA. Accordingly the final order dated 22.05.2018 is corrected by pointing out the figures i.e. correct figures in red colours in Para No.1 (page No.1) para No. 6 (page 3) and para No. 8 (page 4) and even in para no. 8 as well as the first part of the operative part of the order. Accordingly, final order dated 22.05.2018 is corrected by this corrigendum. This corrigendum is the part and parcel of the final order dated 22.05.2018.

Pune  
Date :- 20.07.2018

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

(The aforesaid corrigendum is carried out under the provisions of Section 40 of RERA and circular issued by the Maharashtra Real Estate Regulatory Authority, bearing No.17/2018 dated 15-2018)



NOTE DATED 06-08-2018

The amendment after the name of 1<sup>st</sup> Respondent as D.S.K.D.L (D.S. Kulkarni Developers Ltd) and others is carried out on the Application of complainant dated 6-8-2018. The File of original complaint is with the Head Office, Mumbai. So the copy of the final order uploaded on the net is amended in view of order passed on the Application. The original file of complaint be called from the Head Office for carrying the amendment to original final order dated 22-05-2018.

Pune  
Date :- 06.08.2018

*S.B. Bhale*  
6.8.18  
(S.B. Bhale)  
Adjudicating Officer,  
MaharERA,