

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

**Complaint No.CC005000000011016**

1. Anukirti Shrimai,
  2. Prakash Sharma.
- Through their POA Holder  
Ms. Sunita Jain.

R/at 301, Rutugandh Society,  
Prathamesh Park, Balewadi Phata,  
Baner, Pune-411 045.

.. Complainants

Versus

NandGude Patil Developers Pvt.Ltd.,  
Through it's Director  
Mr. Vilas Eknath Nandgude,  
Above Chhatrapati Bank,  
Vishal Nagar, Pimple Nilakh,  
Pune-411 027.

.. Respondents

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

**FINAL ORDER  
17<sup>th</sup> JANUARY, 2019**

1. It is the complaint under Section 18(1)(a) of the Real Estate (Regulation and Development) Act, 2016 ( hereinafter referred to as the **RERA**). It will not be out of place to make it clear that the complaint is drafted in 11 pages and as such very much lengthy and consequently many repetitions are there. Same is the case of the written explanation of the Respondents being it is in parawise reply. However, I feel that it will be convenient to point out the material parts of

*San  
17.1.19*

the complaint and written explanation, which be convenient for adjudication.

2. It is alleged that the Complainants have booked flat bearing No. 601 in D Wing on 6<sup>th</sup> floor in the project of the Respondents named as "Sulochana City - Phase-I", located at Pimple-Nilakh, Tal. Havell, District Pune under the agreement, dated 24.12.2012. In terms of this agreement, the Respondents have agreed to hand over possession of the booked flat on 31<sup>st</sup> October, 2013. It is further contended that the total consideration of the booked flat was Rs. 49,30,375/-. Out of the total consideration, the Complainants have paid amount of Rs.46,93,559/- + Rs. 4,65,638/- towards stamp duty, registration, service tax, etc. to the Respondents, but they failed to hand over possession of the booked flat in terms of the agreement. Therefore, the Complainants have filed this complaint and claimed the relief of refund of entire amount with interest and compensation under the provisions of RERA.
3. Plea of the Respondents was recorded through Shri Vilas Eknath Nandgude, the director of the Respondents, to which he denied the allegations made in the complaint. The Respondents have also resisted the case of the Complainants vide their written explanation. The material part as averred in the same, is that the complaint is not tenable, the allegations made in the complaint are vague. It is also stated that no statement of account is filed on record to point out that the Respondents have actually received the amount of Rs. 46,93,559/- against the booked flat. Further it is contended that the project was delayed due to

2003  
12.1.19



administrative difficulties and difficulties arose on account of non-payment of the allottees those who failed to pay the amounts in time, as agreed, and even approached the media making allegations, so project was delayed. The complaint therefore, deserves to be dismissed.

4. In the above material contentions of the parties, following points arise for determination and I am going to record my findings thereon as under.

#### POINTS

#### FINDINGS

- |     |   |                     |
|-----|---|---------------------|
| (1) | Whether the Complainants are entitled to the refund of the amount paid by them to the Respondents under the agreement, dated 24.12.2012 against the booked flat, with interest and compensation ? .. .. . | In the Affirmative  |
| (2) | What order ? .. .. .  | As per final order. |

#### REASONS

5. Heard parties through their respective Advocates, Perused the papers filed on record.

6. POINT No.1 :- It is submitted on behalf of the Complainants that the complaint is liable to be allowed under the provisions of Section 18 of the RERA as the Respondents failed to comply with the terms of agreement. Further rough statement of account is also filed on record pointing out the payments made on time to time. The statement is marked as "Exhibit-A" for the sake of convenience. As against this, Mr. Gandhi, Advocate for Respondents argued at length and

774  
17.1.19

by taking me to the various paragraphs of the written explanation, more particularly; it was his contentions that the project is delayed due to administrative difficulties. After launching the project wherein Complainants have booked the flat, the Respondents have obtained all the necessary legal permissions and sanctions from the competent authorities such as Pimpri-Chinchwad Municipal Corporation and complied all the formalities required to complete the project. However, the Irrigation Department of the Government of Maharashtra raised the objection vide official letter, dated 18.03.2009 pointed out that the State Government has published the flood line and red line for plots abutting Mula river. The plot of land on which the project was to be developed was abutting Mula river. Thereafter one adjacent plot owner also raised the objection about the area, so the project was delayed. The Respondents have not intentionally delayed the project. The project is now ready and about to complete. About 85 to 90% construction is completed. The project of the Respondents will be hampered if everyone is allowed to withdraw from the same. These facts may kindly be considered while passing the final order. Mr. Gandhi also disputed the receipt of amount of Rs. 46,93,559/- as alleged by the Complainants.

7/12/19

7. Apart from the arguments advanced, it is to be noted that the provisions of Section 18 of the RERA comes into force, when 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; further if the promoter fails to give possession of an apartment, plot or



building, duly completed by the date specified in the terms of agreement for sale; or if the promoter discontinues his business as a developer due to suspension or revocation of registration under the Act or for any other reason, the promoter shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project to return the amount received by him in respect of that apartment, plot or building. In this particular case, the date of agreement is admittedly 24.12.2012. In terms of the agreement, possession of the booked flat was to be given to the Complainants on 31.10.2013. No doubt, about it that it was ongoing project and still it is incomplete though we are now in 2019. The Respondents admit that the project is still incomplete and it is completed about 85 to 90%. Considering this very fact, I can say that the option of the Complainants to withdraw from the project on account of failure of Respondents to hand over possession of the booked flat even after 5 years is justified.

8. As stated earlier, the receipt of amount as alleged by the Complainants is disputed by Mr. Gandhi, Advocate for the Respondents. However, the statement of accounts filed on record by the Respondents themselves at page No.38 goes to show that the name of Complainants are shown at Serial No. 21, wherein the booked flat No. is given as 601, D Wing, agreement value is shown Rs49,30,375/-, date of agreement is also shown as 31.12.2012 and amount received is also pointed out as Rs. 45,15,818/-. Further balance amount against the Complainants is also shown as Rs. 4,14,557/-. On the aforesaid statement of accounts, I can say that Respondents have received the substantial amounts more

20/12/19

than 90%. Further in the said amounts, amount spent by the Complainants towards stamp duty is also not included. Having regard to this very fact, it is submitted on behalf of the Complainants that they have also already filed on record the statement of accounts at Ex. A even will ready and willing to reconcile the actual and factual payment made by them and received to the Respondents, at the time of refund, as ordered. On this very submissions, I feel it will be better to sort out the difference of marginal amount, which is not more than Rs. 1,40,000/- excluding the stamp duty amount and other taxes, etc.

9. As stated above, the claim of the Complainants to claim the refund of amount with interest and compensation is justified. Therefore, the question is, what will be the amount of refund which is due and payable? As argued by the Complainants, the amount of Rs. 46,93,359/- is paid to the Respondents and in addition to that, they have spent amount of Rs. 4,65,638/- towards stamp duty and other taxes, etc. The amount spent towards stamp duty is Rs. 2,46,600/-. It is necessary to point out that as the Complainants are intending to withdraw from the project, they can claim refund of the amount from the competent authority spent by them towards the stamp duty. However, the refund of stamp duty will be in proportionate and not in full. At the most, the Complainants will not receive the stamp duty amount more than RS 1,59,000/- out of Rs. 2,46,600/-. Thus on this count, the Complainants will suffer a loss of amount of Rs. 87,600/-. That loss can be compensated by directing the Respondents to pay the amount of Rs. 1,00,000/-.

2m  
12.11.17



10. As alleged by the Complainants, the total amount spent by them against the booked flat inclusive of payment of Rs.46,93,359/- and Rs. 4,65,638/- inclusive of stamp duty, it will come to the sum of Rs. 51,58,997/-. If the amount of stamp duty is minused from the aforesaid amount, it will come to the sum of Rs. 49,12,397/-. The amount of compensation of Rs. 1,00,000/- as referred earlier if included in this, it will come to the sum of Rs. 50,12,397/-, which will be treated as due and payable amount towards refund. However, as the amount alleged to be received by the Complainants is disputed by the Respondents, the parties are at liberty to reconcile the same at the time of actual refund.

11. 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 Complainants 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 8.70% and it will be added by 2%. Thus the Complainants are entitled to receive the simple interest @ 10.70% p.a. on the amount of Rs. 50,12,397/-. In addition to that, the Complainants are also entitled to receive the cost of Rs. 20,000/- towards this litigation from the Respondents.

24/12/19

12. 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 the amount which is due and payable of Rs. 50,12,397/- with simple interest @10.70% p.a. since the date of amount received by them on time to time from the Complainants. However, the parties are at liberty to reconcile the amount of refund at the time of actual refund.
2. The Respondents are directed to pay the amount, which is due and payable, as ordered, with interest within 30 days since the date of this order and continue to pay the same with interest till realization of the entire amount.
3. The charge of the due and payable amount with interest, as ordered, be kept on the booked flat.
4. The Complainants are directed to execute the deed of cancellation of agreement, dated 24.12.2012 in favour of the Respondents at the cost of the Respondents after realization of the entire amount, as ordered.
5. The Respondents are also directed to pay the amount of Rs. 20,000/- to the Complainants towards the cost of this litigation.

Pune  
Date :- 17.01.2019

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