

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

**Corum :- Shri S.B. Bhale, Adjudicating Officer, Pune.**

**Complaint No.CC005000000011279**

Swapnil Ramchandra Kasare  
R/at Gondhalli Galli, Near Marimata Mandir,  
Nav Hind Housing Society, Nandurbar,  
Tal. Nandurbar, District Nashik. .. Complainant

**Versus**

1. Narendra Narayan Patel.  
2. SureshbhaiMavajibhai Patel.  
3. DilipRatibhai Patel.  
And other partners.  
Address Tulips Homes,  
Gat No. 93, 198, 199, Medankarwadi,  
Shikrapur Road, Chakan, Tal. Khed,  
District Pune-415 501. .. Respondents

**FINAL ORDER**

14<sup>th</sup> SEPT. 2018

1. It is the case of complainant that he has booked flat No. C-403 in the project of Respondents named "Tulip Homes" located over Gat No. 93, 198 and 199 of village Medankarwadi, Chakan, Tal. Khed, District Pune along with adjacent terrace and car parking space under the Agreement, dated 23.06.2015. The total cost of that flat as per the agreement was Rs.19,90,000/- excluding stamp duty and other charges, taxes, cesses, etc. In terms of the agreement, the Respondents had agreed to hand over possession of booked flat within 21 months from the date of

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agreement. However, the Respondents failed to complete the project and hand over the possession of booked flat in spite of receiving amount of Rs. 16,70,000/- inclusive of stamp duty, taxes, etc.. The Respondents also never responded the Complainant when he tried to approach to them individually and even by letters on time to time. The construction work of the project is also not in progress. Having regard to all the aforesaid facts, the Complainant intends to withdraw from the project. Hence by this complaint, he has claimed refund of amount paid by him to the Respondents with interest and compensation under the provisions of Section 18 of the Real Estate (Regulation and Development) Act, 2016 ( hereinafter referred to as the **RERA**).

2. It seems that the Respondents were served with the notices, dated 19.08.2018, and even the simultaneous notice was served by the Complainant on them by affixing the copy of the notice on the conspicuous place of the address of the office of the Respondents and filing the proof of the same along with report and photographs. In view of these facts, the complaint is proceeded exparte against the Respondents by order, in the Roznama, dated 30.08.2018.
3. As the Complainant is proceeded exparte, no plea of the Respondents came to be recorded nor reply is on record by or on behalf of Respondents.
4. 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.

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**POINTS****FINDINGS**

- (1) Whether the Complainant is entitled to claim refund of money paid by him to the Respondents in terms of agreement dated 23.06.2015 with interest and compensation? .. .. . In the Affirmative
- (2) What order ? .. .. . As per final order.

**REASONS**

5. Heard the Complainant. Respondents could not be heard being absent and as the complaint is proceeded ex parte against the Respondents. Perused the papers filed on record.
6. **POINT No.1** :- On perusal of the terms of agreement, dated 23.06.2015, it is seen that the Respondents had agreed to hand over possession of the booked flat within 21 months. However, it is fact that they failed to comply with the terms of the said agreement. On account of failure of Respondents to hand over possession of the booked flat to the Complainant, I can say that the claim of the Complainant for refund of entire amount paid by him to the Respondents in terms of the agreement with interest and compensation as per the provisions of RERA, is justified. Moreover, it is specifically mentioned by the Complainant that the Respondents are not responding him when he approached to them by letters or tried to approach them personally. Not only that, but the construction work of the progress is also not in progress.

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7. Now the question is what will be the amount of refund with interest and compensation to which the Complainant is entitled from the Respondents. In support of his claim, Complainant has filed on record xerox copies of payment receipts and even statement of amount paid till date to the Respondents in terms of agreement. On perusal of the receipts and statement, it is seen that the Complainant has paid the entire amount of Rs. 16,70,000/- inclusive of stamp duty, taxes and cesses. Further on perusal of copy of the Index No.II, it is seen that the Complainant has spent an amount of Rs. 99,500/- towards the stamp duty. As Complainant is intending to withdraw from the project and cancel the agreement in question, he will receive the refund of stamp duty amount from the competent authority. However, that refund will be in proportionate, and at the most, the complainant will not receive the amount more than Rs. 62,000/- towards refund of stamp duty. Thus, he will suffer loss of Rs.37,500/- towards the refund. That loss can be compensated by directing the Respondents to pay the amount of Rs. 45,000/- towards compensation. Thus on deducting the amount of stamp duty from the amount paid by the Complainant to the Respondents i.e. Rs. 16,70,000/-, it will come to the sum of Rs. 15,70,500/-. Further in the amount of Rs. 15,70,500/-, the amount of compensation of Rs. 45,000/- is included, it will come to the sum of Rs. 16,15,500/-. Thus, this will be the amount which the Complainant is entitled to receive from the Respondents with interest. The amount stated about can be stated as due and payable by the Respondents to the Complainant as per the provisions of RERA. As defined in Section 2 (za) (ii), the

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allottee shall receive the interest on the amount paid by him to the promoters from the date of amount he paid on time to time till the realization of the same.

10. 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 8.65% and it will be added by 2%. Thus the Complainant is entitled to receive the simple interest @ 10.65% p.a. on the amount of Rs. 16,15,500/- which is due and payable. In addition to that, the Complainant is also entitled to receive the cost of Rs. 25,000/- towards this litigation from the Respondents.

10. For these reasons stated above and in view of the 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 of Rs. 16,15,000/- which is due and payable with simple interest @10.65% p.a. since the date of amount received by them

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on time to time from the Complainant till realization of same.

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.
3. The charge of the due and payable amount with interest, as ordered, be kept on the booked flat under the agreement, dated 23.06.2015.
4. The Complainant is directed to execute the deed of cancellation of agreement, dated 23.06.2015 in favour of the Respondents at their cost after realization of the entire amount, as ordered.
5. The Respondents are also directed to pay the amount of Rs. 25,000/- to the Complainant towards the cost of this litigation.

Pune  
Date :- 14.09.2018

*S. B. Bhale*  
14.9.18  
( S. B. Bhale )  
Adjudicating Officer,  
MahaRERA, Pune