

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

**COMPLAINT NO: CC006000000012380**

Nihal Khan  
Gulam Nabi

... Complainants.

**Versus**

Nirman Realtors & Developers  
( Green Acres)

... Respondents.

MahaRERA Regn: **P51800010794**

**Coram:** Shri B.D. Kapadnis,  
Hon'ble Member & Adjudicating Officer.

**Appearance:**

Complainants: In person.

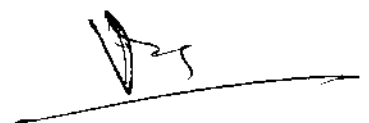
Respondents: Adv. Mr. Makarand V. Raut.

**Final Order.**

18<sup>th</sup> June 2018.

The complainants booked flat nos. 401, 410 & 508 each having carpet area of 419 sq.ft in respondents' Green Acres Project situated at Malad (East), Taluka Borivali District Mumbai. The complainants have restricted their claims to the following allegations.

1. The respondents made incorrect or false statement in the prospectus, agreement regarding their project and thereby contravened Section 12 of Real Estate (Regulation and Development) Act, 2016.
2. The respondents have failed to complete the apartments in accordance with the terms of the agreements for sale executed by them and thus, contravened Section 18 of RERA.



3. They do not adhere to sanctioned plans and project specifications and thereby contravened Section 14 of RERA.

So the complainants claim their amount with interest and/or compensation.

2. The respondents have pleaded not guilty and they filed their reply to contend that the complainants are not allottees and therefore MahaRERA has no jurisdiction to adjudicate upon their complaints. They contend that Azad Co-operative Housing Society is the owner of the project land bearing CTS No. 738 (P) of village Malad. The proposal was moved for slum rehabilitation scheme before the Slum Rehabilitation Authority(SRA) in the year 2005-2006 and accordingly it accepted the proposal. The Azad Co-operative Housing Society entered into the development agreement with respondents Nirman Realtors on 08.06.2006. The respondents entered into the joint venture agreement with Sidharth Housing Pvt. Ltd. on 18.01.2008 but Sidharth Housing Pvt. Ltd. could not go ahead with its undertaking. Therefore, Matey Builders and Developers approached the respondents for completing the redevelopment of the project land. Matey agreed to pay the respondents Rs. 5,50,00,000/- towards deposit for assuring the performance on the part of Matey and in lieu thereof the respondents offered the built-up area of 4400 sq. ft. to Matey. Rs. 50,00,000/- from the individual account of Mohd. Nishan Ansari and Rs. 40,00,000/- from the individual account of Mohd. Danish Ansari, Rs. 40,00,000/- from the individual account of Mohd. Zeeshan Ansari were transferred in the account of the respondents on 09.12.2013. Matey also transferred Rs. 45,00,000/- on 9.12.2013 and Rs. 25,00,000/- on 23.12.2013 in respondents' account. Thus, the amount of Rs. 2,00,00,000/- was deposited with the respondents towards the security amount. Therefore, the memorandum of understanding was entered between the Matey and the respondents on 04.02.2014. Matey thereafter paid the



respondents Rs. 25,00,000/-. Thus, Rs. 2,25,00,000/- had been paid by Matey to the respondents till 20<sup>th</sup> March 2014.

3. Matey failed to perform its obligation cast upon it by the agreements and therefore the respondents terminated their joint venture arrangement by the agreement dated 25.04.2014.

4. After termination / cancellation of the joint venture agreement of Matey, Mr. Mohd. Ataulla, one of the partners of Matey approached the respondents. He, the complainants and one Mustaqeem Khan agreed to redevelop the project land with the help of their partnership firm Mass Enclave. The arrangement with Matey was agreed to be continued by Mass Enclave and Mass Enclave agreed to pay respondents Rs. 1,85,90,000/- towards security deposit. Therefore, the tripartite agreement was entered into among the respondents, Mass Enclave and Siddharth on 08.07.2017, that agreement has been rectified by the society on 30.09.2015.

5. The directors of the respondents noticed that Mr. Mohd. Hayat Ansari who is the friend of Ataullah Ansari (Partner of Matey and Mass Enclave) has various businesses in the name of Mass Enterprises, Mass Group etc. Mr. Ataullah Ansari was systematically manoeuvring to control the whole project in order to earn profits maliciously. He deliberately diverted the project funds which caused inordinate delay in completion of the project. They dragged respondents into various litigations and therefore respondents decided to forfeit his entire amount invested through various accounts namely the individual accounts of his family members and partnership firm.

6. In the month of August 2016 negotiations were held by the stake holders and Mr. Mohd. Ataullah Ansari undertook to take development work by taking over M/s Mass Enclave. As a result, thereof Mr. Mohd. Nihal Ansari and Mr. Haji Gulam executed retirement deed dated 01.12.2016 to retire from Mass Enclave partnership firm. Mr. Mohd. Ataullah Ansari agreed to take Rs. 57,50,000/- to exit from M/s. Mass



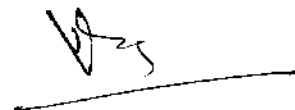
Enclave. Thereafter, dispute between Mohd. Hayat and erstwhile partners of M/s. Mass Enclave arose which resulted in filing of short cause suit no. 3636 of 2017 before the City Civil Court, Mumbai.

7. The respondents contend that the complainants have not paid any amount to them as the consideration for purchasing the flats. There was business relationship between the complainants and the respondents, therefore, the complainants are not allottees and this Authority has no jurisdiction to adjudicate the dispute of the promoters. The complainants have resorted unscrupulous tact to seek refund of the security deposit paid to the respondents without performing their contractual obligations under the provisions of RERA.

8. The respondents further contend that the complaints are not maintainable because the agreements for sale demonstrate that the possession of the flats is to be given within five years from the receipt of full commencement certificate. They have not received full commencement certificate yet. It is only up to the plinth, therefore, they request to dismiss the complaint.

9. Following points arise for determination and I record findings thereon as under.

Points.	Findings.
1. Whether the complainants are allottees?	Affirmative.
2. Whether the complaint is maintainable?	Affirmative.
3. Whether the respondents made incorrect or false statement regarding their Green Acres project through their prospectus, agreement?	Affirmative.
4. Whether the respondents failed to complete the apartment in accordance with the terms of agreement for sale executed by them in favour of the complainants?	Affirmative.



5. Whether the respondents have failed to adhere to sanctioned plans and project specifications? Negative.

### REASONS

10. There is no dispute between the parties that the respondents have entered into the agreements for sale in favour of the complainants in respect of the above numbered flats. The complainants have produced the copies of agreements for sale executed by respondents wherein the respondents have agreed to have received the entire consideration of the apartments. So on this backdrop it is necessary to look at the defence taken by the respondents that the complainants have not paid them any consideration of the flats and therefore, they are not the allottees. I have gone through all the documents produced by the Respondents. Briefly speaking, the documents produced by the respondents do show that it is SRA project. Siddharth Housing Pvt Ltd. agreed to develop the land in 2008 and when it could not develop it, Matey came forward and deposited Rs. 2,25,00,000/- with the respondents towards the security by transferring the amount from the account of the partnership firm and from the individual accounts of Nishad, Danish and Zeeshan. It appears that Matey's agreement has been cancelled by the respondents and thereafter Mass Enclave came into picture. Even thereafter there were some disputes leading to some litigations and thereafter the negotiations and the arrangements made by the stake holders to which I have referred to while narrating the facts of the case.

11. It is the contention of respondents that the money given to respondents towards the security of the performance of the agreement for redevelopment cannot be considered as the consideration for the flats mentioned in the agreements for sale upon which the complainants have been relying. The deed of cancellation dated 25.04.2014 executed between the respondents and Matey clearly shows in Para-5.b. that Matey paid Rs.




95,00,000/- to Nirman Realtors and Nirman Realtors(Respondents) have acknowledged the receipt of Rs. 95,00,000/- and have agreed to refund the same. Therefore, the deed of cancellation executed by the respondents shows that the respondents agreed to return Rs. 95,00,000/- out of Rs. 2,25,00,000/- given towards the security deposit. Deed of cancellation is silent on the remaining amount.

12. Complainants have filed their payment sheet marked Exh. A showing the payment of consideration the receipt of it is not disputed by respondents. Respondents have acknowledged the receipt of Rs.40,00,000/- towards the consideration for each flat. Aforesaid payments have been supported by bank statements. Therefore, in this context, it becomes necessary to look at Rule 10 of Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules, 2017, sub-clause 1 of Rule 10 provides that the agreements for sale shall be in conformity with the provisions of the Act, Rules and Regulations made thereunder. Sub Clause 2 thereof reads as under:

“any application letter, allotment letter or any other document signed by the allottee, in respect of apartment, plot or building, prior to the execution and registration of the agreement for sale for such apartment, plot or building, as the case may be, shall not be construed to limit the rights and interest of allottee under the agreement for sale under the Act or the Rules or the Regulations made thereunder.”


13. In view of this provision, I find that even if it is taken for granted that Matey paid some amount to the respondents towards security deposit, on cancellation of the joint venture agreement the respondents were liable to pay them Rs. 95,00,000/-. The complainants are the partners of Mass enclave. It appears from the various instances to which the respondents themselves have referred to, that at various stages the parties have

  
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negotiated and settled their claims. Considering all these developments and the fact that the respondents themselves have acknowledged the consideration of the flats in the agreements for sale coupled with bank statements produced by the complainants, I find that they are sufficient to show that the complainants have paid the consideration for purchasing the flats and the respondents have been estopped from denying their status as allottees. Hence I record my finding that the complainants are the allottees and the respondents are the promoters.

14. Section 31 of RERA empowers the Authority to adjudicate upon disputes between the aggrieved person on one hand and promoters, allottees, real estate agents on another, if any one of them contravenes or violates the provisions of RERA or Rules and Regulations framed thereunder. In view of this legal position, I record my finding that this Authority has jurisdiction to adjudicate upon these complaints filed by allottees against their promoter.

15. The complainants have mentioned in their complaints that the area of flats is 419 sq.ft. carpet area. They are one BHK flats. The information uploaded by the respondents on the official website of MahaRERA shows that the area of one BHK is 29.24 and 30.48 sq.mtrs. So these flats are much below the area agreed to be sold by the respondents. Therefore, these facts prove that the respondents made false and incorrect statement while accepting money that the flats would be of 419 sq.ft. They have failed to complete the apartments in accordance with the terms of the agreement as they are going to construct smaller flats. Hence, I find Section 12 and 18 (3) of RERA are attracted in these cases. These two provisions, therefore, entitle the complainants to get refund of their amount with interest as they want to withdraw from the prospective project. The prescribed rate of interest is 2% above the SBI's highest MCLR which is currently 8.05%. The complainants therefore are entitled to get back their amount with interest at this rate.



16. In addition to this, the complainants are entitled to get reimbursement of registration charges paid by them. Stamp duty is paid by complainants and on cancellation of those agreements they are entitled to get refund of stamp duty from the concerned authority. Hence they are not entitled to claim stamp duty from the respondents. Complainants are not entitled to get rent because interest which is compensatory in nature is being awarded.

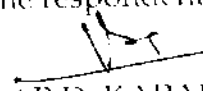
17. The complainants allege that the respondents have not adhered to the sanctioned plan and project specifications. It is fact that the complainants have not produced the evidence to show that the sanctioned plans and project specifications have been changed by the respondents that too without the consent of 2/3<sup>rd</sup> allottees. Hence for want of sufficient evidence, I answer point no. 5 in negative.

18. The complainants are entitled to get Rs. 20,000/- towards the cost of each complaint. Hence, following order.

#### ORDER

1. The respondents shall pay the amount mentioned in payment sheet marked Exh.A with simple interest at the rate of 10.05 % p.a. from the respective dates of receipt/ payment till they are refunded.
2. Exh.A shall part of the order.
3. Respondents shall pay the complainants Rs. 20,000/- towards the cost of complaint.
4. The charge of the aforesaid amount shall be on the respective flats booked by the complainants till satisfaction of their claim.
5. Complainants shall execute deeds of cancellation of their agreements for sale on satisfaction of their claims at the respondents' cost.

Date:18.06.2018.

  
(B.D. KAPADNIS) 18.6.18  
Member & Adjudicating Officer,  
MahaRERA, Mumbai.



Complaint No. CC006000000012380


*[Handwritten Signature]*

**PAYMENT FORMAT**

Sr. No.	Date	Amount (Rs)	Purpose	Reciept No./Cheque No. with Bank Name
1.	9.12.2013	45,00,000/-	Sale consideration towards Flats situated at "Green Acres", C. T. S. No. 738(pt), Survey No. 273, Hissa No. 1 (pt), Village Malad (E), Tal- Borivali, Dist Mumbai -400 097.	Cheque No. 412317, drawn on State Bank of Patiala, Malad Branch, Mumbai, Branch Code : 50811. Paid to Nirman Realtors and Developers Ltd by Mr. Nihal Khan and Mr. Gulam Nabi through Matey Builder and Developers.
2.	11.08.2014	16,00,056/-	Sale consideration towards Flats bearing No. 401, 410 and 508 situated at above mentioned address.	RTGS : SBINR52014081102043445 NIRMAL REALT, Cheque No. 915111, drawn on State Bank of India Bank, Dharavi Branch. Paid by Mr. Gulam Nabi to Nirman Realtors and Developers Ltd.
3.	12.08.2014	12,00,056/-	Sale consideration towards Flats bearing No. 401, 410 and 508 situated at above mentioned address.	RTGS : SBINR52014081202080700 NIRMAL REALT, Cheque No. 915113, drawn on State Bank of India Bank, Dharavi Branch. Paid by Mr. Gulam Nabi to Nirman Realtors and Developers Ltd.

<b>4.</b>	2.09.2014	12,00,000/-	Sale consideration towards Flats bearing No. 401, 410 and 508 situated at above mentioned address.	RTGS : ICIC 95269, drawn on ICICI Bank Limited, Andheri (W) Branch. Paid by Mr. Nihal Khan to Nirman Realtors and Developers Ltd.
<b>5.</b>	25.09.2014	5,00,031/-	Sale consideration towards Flats bearing No. 401, 410 and 508 situated at above mentioned address.	RTGS : SBINR52014092504004749 NIRMAN REALT, Cheque No. 915114, drawn on State Bank of India Bank, Dharavi Branch. Paid by Mr. Gulam Nabi to Nirman Realtors and Developers Ltd.
<b>6.</b>	25.09.2014	10,00,000/-	Sale consideration towards Flats bearing No. 401, 410 and 508 situated at above mentioned address.	RTGS : ICIC 95282, drawn on ICICI Bank Limited, Andheri Branch. Paid by Mr. Nihal Khan to Nirman Realtors and Developers Ltd.
<b>7.</b>	27.03.2015	5,00,000/-	Sale consideration towards Flats bearing No. 401, 410 and 508 situated at above mentioned address.	TRFR TO : NI 131261. Paid by Mr. Nihal Khan to Nirman Realtors and Developers Ltd.
<b>8.</b>	27.03.2015	5,00,031/-	Sale consideration towards Flats bearing No. 401, 410 and 508 situated at above mentioned address.	RTGS : SBINR52015032712594834 NIRMAN REALT. Paid by Mr. Gulam Nabi to Nirman Realtors and Developers Ltd.
<b>9.</b>	30.03.2015	5,90,000/-	Sale consideration towards Flats bearing No. 401, 410 and 508 situated at above mentioned address.	TRFR TO : NI 131263. Paid by Mr. Nihal Khan to Nirman Realtors and Developers Ltd.

10.	29.07.2015		Registration fees for Flat No 401 situated at above mentioned address.	Expenses towards registration of Agreement dtd. 29.07.2015 for flat No. 401 borne by the complainants.
		30,000/-		
11.	29.07.2015		Registration fees for Flat No 410 situated at above mentioned address.	Expenses towards Registration of Agreement dtd. 29.07.2015 for flat No. 410 borne by the complainants.
		30,000/-		
12.	29.07.2015		Registration fees for Flat No 508 situated at above mentioned address.	Expenses towards registration of Agreement dtd. 29.07.2015 for flat No. 508 borne by the complainants.
		30,000/-		

  
**Advocate For Complainant**  
**Rohit M. Bhise**

**Respondents name & Sign**

**Respondents Remark-**