

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI.  
COMPLAINT NO: CC006000000044255.

Money Anchor Financial Services Pvt. Limited  
Joy Homecreation Limited  
Joy Realty Limited  
Joy Builders ... Complainants.

**Versus**

Manthan Development Corporation  
Abhijeet B Rane  
Aditi Abhijeet Rane ... Respondents.  
(Manthan Plaza)

COMPLAINT NO: CC006000000044265.

Joy Homecreation Limited  
Bhavin Jayant Soni  
Joy Builders ... Complainants.

**Versus**

Manthan Development Corporation  
Abhijeet B Rane  
Aditi Abhijeet Rane ... Respondents.  
(Manthan Plaza)

MahaRERA Regn: P51800005360

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

**Appearance:**  
Complainant: Adv. Mr. S.G. Dedhia.  
Respondents: R.S. Prabhu & Associates.

**FINAL ORDER**  
21<sup>st</sup> September 2018.



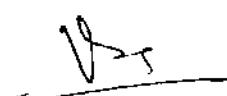
The complainants of the complaint no. 44255 booked office premises no. 4,5,9 & 10 and the complainants of complaint no. 44265 booked office premises nos. 1, 2, 3, 6, 7, 8 & 11 in respondents' registered project Manthan Plaza situated at Nehru Road, Santacruz (East). I have culled out the following grievances of the complainants with the help of learned advocate of the complainants from the lengthy drafted complaints and reproduce them as under along with the explanations of the respondents.

**Grievance:** 1. The complainants allege that the respondents falsely represented them that the possession of the flats shall be handed over on 11.04.2011 because of this false statement they sustained loss and claim compensation and interest on their investment.

**Explanation:** The respondents contend that they handed over the possession of the offices on 2<sup>nd</sup> December 2010 i.e. much before the scheduled dated 11.04.2011.

**Grievance:** 2. The complainants allege that the respondents falsely represented to them that the building shall consist of only five floors, because of this false statement they sustained loss and claim compensation and interest on their investment.

**Explanation:** The respondents contend that they have constructed the building having the structural provision for foundation as well as superstructure for full consumption of FSI 4 as per the directions of M.C.G.M. They have obtained the part occupation certificate of rehab portion i.e. up to 3<sup>rd</sup> floor. They could not get the occupation certificate for 4<sup>th</sup> and 5<sup>th</sup> floor where the offices of the complainants are situated because though complainants undertook to make internal/finishing construction, they failed to do so. They also altered the plan. Therefore, they could not blame the respondents for not obtaining the occupation certificate.

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**Grievance: 3.** The complainants allege that respondents failed to hand over the possession of the flats on the agreed date i.e. on 11.04.2011 and therefore, respondents are liable to pay them interest on their investment.

**Explanation:** The respondents submit that on 02/12/2010 the possession of the offices has been handed over by completing the 4<sup>th</sup> & 5<sup>th</sup> floors of the building. The complainants took the responsibility of completing the internal work at their cost and they also gave Indemnity Bond to M.C.G.M. to that effect. Therefore, the complainants cannot blame the respondents and claim interest under Section 18 of RERA.

**Grievance:4.** The respondents failed to mention Writ Petition No. 3591 of 2016 and other pending criminal proceedings in the column of pending litigation while registering their project.

**Explanation:** The respondents contend that the Writ Petition No. 3591 of 2016 does not relate to the project. They have mentioned the litigations relating to the project correctly. According to them, Contempt Petition(Civil) No. 1826 - 1827 of 2017 filed in Supreme Court of India has been disposed off on 8<sup>th</sup> January 2018. Writ Petition No. (L) 1796 of 2017 has also been disposed off by Bombay High Court on 17<sup>th</sup> July 2017. Hence, they have not contravened Section 4 of RERA.

**Grievance 5:** The respondents failed to give NOC for loan transfer of the complainants as per the terms and conditions of the agreement for sale.

**Explanation:** The respondents contend on this point that they have already given NOCs' on 02/12/2010 and 27/07/2012 to the complainants. The first investor did not pay MVAT amounting to

Rs. 64,71,070/- till June 2018. The complainants failed to inform them about transfer of eight units to third parties. They were required to transfer the units with their previous consent as is set out in Clause-35 of the agreement for sale. The balance work undertaken before MCGM has not been completed. The NOC of the respective bank or the new bank which is planning to give loan is not produced. According to them, clearance of earlier NOC is not submitted. They are ready to give the NOC after completing the balance work and performing the aforesaid formalities.

**Grievance 6.** The complainants contend that for completion of incomplete work only two months are required but the respondents have mentioned 31<sup>st</sup> December 2025 as the date of completion of the project. This time period should be commensurate with the completion of incomplete work. It be reduced to two months.

**Explanation:** The respondents contend that they have constructed the building assuming that FSI 4 would be granted and this was done under the directions of M.C.G.M. The purchasers, in Clause-3 of the agreement for sale have given their consent to the respondents to make variation, alterations, amendments or modifications in the plan, layout and specification of the building required by the Competent Authority or Statutory Bodies. They expected to get additional FSI as per DCPR 2034 and propose to use it for making further construction on the same building which they intend to complete by 31.12.2025. The complainants have failed to complete the interior work of the 4<sup>th</sup> & 5<sup>th</sup> and hence, they submit that the period of construction cannot be reduced.

**Grievance 7.:** The respondents suppressed the loan taken from Greater Bank and information of Co-promoters.



**Explanation:** The litigation with Greater Bank Co-operative Bank Ltd. has also been shown as the pending litigation on the website of MahaRERA and that matter has also been closed on submission of no dues certificate issued by the said bank. The loans referred to above in fact, did not relate to the offices of the complainants.

**Grievance-8:** The respondents diverted the funds of the project to other project and thus, involved in unfair practice contemplated by Section 7 of RERA.

**Explanation:** The respondents contend that the saleable component consists of 4<sup>th</sup> & 5<sup>th</sup> floors and by selling the same they were required to construct the building up to the 5<sup>th</sup> floor. They have obtained part occupation certificate up to 3<sup>rd</sup> floor. 4<sup>th</sup> and 5<sup>th</sup> floors have also been constructed and the bank loans are cleared. Therefore, they deny that they have diverted the funds.

**Grievance-9** The respondents changed the name of the project Manthan Plaza while registering it.

**Explanation:** The respondents contend that the project is registered in the name Manthan Plaza only.

**Grievance-10:** The complainants allege that the respondents have failed to discharge their responsibility and functions as per the provisions of RERA. They failed to obtain commencement certificate or occupation certificate, lease certificate.

**Explanation:** The respondents contend that the possession of the offices has been taken on 02.12.2010 itself and therefore, this allegation does not survive. The purchasers have given Indemnity Bond to the Municipal Corporation of Greater Mumbai that they shall not make any complaint of incomplete work. The

commencement certificate of the further construction is withheld due to the approval of new development plan under DCPR 2034. They contend that lease certificate is to be transferred in the name of Association of the allottees only on completion of entire project.

**Grievance-11:** The complainants allege that the respondents have failed to form society of the allottees and to clear legal dues/taxes.

**Explanation:** The project is of redevelopment of existing municipal market. Vokola Mandai Galedharak Sangh (Reg.) is the association of its allottees where the complainants can be admitted as the members and hence, there is no necessity of formation of any other society. On the point of non-payment of municipal taxes, the respondents contend that excess municipal taxes have been levied and the matter is being taken to MCGM.

The respondents contend that the complaints may be dismissed because this Authority has no jurisdiction as the possession has already been given.

2. Following points arise for my determination and my findings thereon as under:

POINTS

1. Whether the respondents made the false statement that the possession of the offices shall be handed over on 11.04.2011 and thereby made themselves liable under Section 12 of RERA?
2. Whether the respondents made the false statement that building shall be consisting of only five floors and thereby made themselves liable under Section 12 of RERA?

FINDINGS

Negative.

Negative.

3. Whether the respondents failed to hand over the possession of the offices on agreed dated 11.04.2011 and thereby made themselves liable to pay interest on complainants' investment under Section 18 of RERA? Negative.

4. Whether the respondents failed to mention Writ Petition No. 3591 of 2016 & other pending criminal proceedings in the column of pending litigation while registering the project and thereby contravened Section 4 of RERA? Negative.

5. Whether the respondents failed to give NOC for loan transfer as per the terms of the agreement for sale and thus invited liability under Section 18(3) of RERA? Directions given.

6. Whether it is necessary to direct the respondents to complete the project within two months by reducing its completion period under Rule 4(2) of Maharashtra Real Estate (R & D) (Registration of Real Estate Project etc.) Rule, 2017? Directions given.

7. Whether the respondents suppressed the information of loan taken from Greater Bank and of co-promoters while registering the project & thereby contravened Section 4 of RERA? Negative.

8. Whether the respondents diverted the funds of the project to other project and thereby indulged in unfair practice contemplated by Section 7 of RERA? Negative.

9. Whether the respondents have changed the name of the project? Negative.

10. Whether the respondents have failed to obtain commencement certificate, occupation certificate, lease certificate? Direction given.



11. Whether the respondents have failed to form the society of the allottees and clear the legal taxes?

Direction given.

### R e a s o n s

#### Point nos. 1 &3-Possession on agreed date.

3. Before entering into the arena of controversy it is necessary to keep in mind that five floors have been constructed. Out of five, the first three floors are of rehab component and floor nos. 4 & 5 are sale component. Initially Joy Builders invested for entire 4<sup>th</sup> floor and one office premises on 5<sup>th</sup> floor and thereafter respondents agreed to sell them to the persons nominated by it. The offices booked by the complainants are on 4<sup>th</sup> and 5<sup>th</sup> floor of the building.

4. The respondents have not disputed the fact that they agreed to hand over the possession of the offices on 11.04.2011. They further contend that they have already handed over the possession of the offices on 02.12.2010 itself. The complainants have not disputed the fact that the possession of the offices has been given on the said date. It is also admitted fact that occupation certificate for 4<sup>th</sup> & 5<sup>th</sup> floor has not been issued by the local authority. Therefore, the complainants contend that they have received fit out possession at the most. They also contend that some finishing work had been done by them.

5. The respondents contend that after taking possession of the offices on 02.12.2010, the complainants took the responsibility of completing the internal work and they have given Indemnity Bond to the MCGM. Therefore, it is necessary to look at the documents marked Exh.'K-1 to K-2'. The complainants gave letter to the Executive Engineer of B.M.C. and informed him that the complainants will carry out the balance finishing work on their own with their choice of finishing material without causing nuisance to anybody and they shall indemnify the M.C.G.M. against any



nuisance, complains, dispute etc. regarding the unfinished work. Not only that, the undertaking to that effect has already been given by the purchasers. So these documents are sufficient to show the complainants took responsibility of completing the finishing work of their offices and therefore, I find that they cannot complain that the respondents have not completed the construction of their offices. Hence, the complainants are not entitled to get any relief under Section 12 or under Section 18 for non-completion of the construction of their offices and delivering their possession on agreed date.

**Point no. 2.**

6. The complainants contend that they booked the offices on the respondents' representation that the building shall consist of only five floors. On this point the respondents have contended that M.C.G.M. directed them to make structural provision for foundation and super structure capable of bearing the additional load if full consumption of 4 FSI would be consumed. The respondents propose to make further construction and they expect to get additional FSI as per DCPR-2034.

7. The learned advocate of the respondents has placed reliance on the irrevocable consent of the complainants to contend that the complainants consented for erection of additional floors by consuming the FSI/TDR. However, the respondents have failed to produce the irrevocable consent signed by the complainants. The respondents have relied upon Clause -3 of the agreement for sale executed with the first purchaser. This Clause shows that the purchasers agreed that the promoter shall be entitled to make any variation or alteration/amendment or modification to the plan, layout and specifications in the building as required to meet any requisition/objection of any statutory body or authorities or land owning authority or competent authority. So it becomes clear that the purchasers permitted the promoter to make changes only when the same are required



by the statutory bodies. The respondents of their own want to make further construction by utilizing additional FSI, and therefore, this change has not been necessitated by the statutory authorities mentioned in the Clause 3. To conclude, I hold that the respondents have not proved that the complainants gave them consent for making additional construction.

8. The learned advocate of the complainants has relied upon Vidhi Builders Pvt. Ltd.-v/s-Arenbee Media Consultants Ltd. Appeal from Order No. 175 of 2012 ,in Notice of Motion No. 2380 of 2011 in B.C.C.C.S.C. Suit No. 2224 of 2011 with Civil Application No. 219 of 2012 decided by the Bombay High Court ( J.H. Bhatia, J) on 14.02.2012. In this case the Hon'ble High Court has relied upon Jayantilal Investments-v/s-Madhuvihar Co. op. Hsg. Society (2007) 9 SCC 220, wherein the Hon'ble Supreme Court has discussed the scope of Section 7(1) r/w Section 7A of Maharashtra (Amendment) Act 36 of 1986. The Hon'ble Bombay High Court has considered all the relevant provisions to conclude that the consent of purchasers of the flats or units in the existing building has to be obtained in respect of any alteration in the structure, in respect of flats which are agreed to be taken as well as for any other alterations or additions in the structure of the building. Even after the amendment of 1986, if any additional construction is to be made, it would be necessary to obtain the consent if that additional construction was not shown in the sanctioned plan, or the layout plan which was shown to the purchasers at the time of the agreement. According to the complainants, when they booked the offices there was proposal to construct only five floors and the plans are sanctioned for constructing five floors only. Now the respondents want to make further construction expecting to get additional FSI as per DCPR-2034. Thus, they cannot make further construction without the consent of the office purchasers. Therefore, if the respondents want to make the construction beyond fifth floor they will have to pay the compensation to the complainants and other flat purchasers/takers. I agree with them to



this extent. The respondents will have to take previous written consent of at-least 2/3<sup>rd</sup> of the allottees for such additional construction as required by section 14 (2) (ii) of RERA. However, there is no proof to show that respondents made any additional construction so far.

#### **Point no.4**

9. The complainants allege that the respondents have not furnished its true and correct information while registering their project with MahaRERA. According to them, the respondents have not mentioned Writ Petition No. 3591 of 2016 and other pending criminal cases in the column of pending litigation. However, the complainants have failed to produce material to show that the said Writ Petition relates to the project. They have not produced any proof of criminal proceedings for identifying them. On the contrary, the respondents have made it clear that the Contempt Petition filed in the Supreme Court and Writ Petition filed in High Court have been disposed of and the copies of the orders are also being placed on record. Therefore, I find no substance in complainants' allegation that the respondents have contravened Section 4.

#### **Point no.5**

10. The complainants contend that the respondents have not given them NOC for loan transfer as per the terms and conditions of the agreement for sale.

11. The respondents do not deny that they agreed to give NOC for loan transfer and they gave the same on 02.12.2010 and 27.07.2012. However, now they found it difficult to give NOC to the complainants for loan transfer because the first investor from whom the complainants have obtained the agreements for sale has not paid MVAT amounting to Rs. 64,71,070/-. Similarly, they have not brought the NOC from their earlier Bank for transfer of the loan. Hence, I find that the respondents are justified

in not issuing the NOC for loan transfer. If the complainants want the respondents' NOC for loan transfer, they have to comply with legal and contractual obligations referred to above.

**Point no.6**

12. The complainants request to reduce the completion period of the project because the respondents propose to complete it by 2025. It is for the complainants to finish the incomplete work of finishing of floor nos.4 & 5, particularly of their offices, so that the completion certificate of those floors can also be obtained. So the complainants themselves must help to themselves for completing the construction of their offices. Moreover, if the respondents want to make further construction they have to obtain the consent of the required allottees and hence, their proposed date of completion of the project hardly matters for the complainants.

**Point no.7**

13. The complainants allege that the respondents have suppressed the fact from them that the respondents took loan from Greater Bank and they have also failed to inform the co-promoters. The respondents have brought to my notice that they have mentioned the litigation of Greater Bank on the website of the Authority. The loans taken by them from the Bank has been cleared. Respondents have mentioned the names Mr/s. Abhijit Balawant Rane and Purushottam Pandurang Kadam as the partners. Complainants have not laid any evidence to show that there are other partners also. Hence, I do not find that the complainants have substantiated this allegation.

**Point no.8**

14. The complainants allege that the respondents have diverted the funds of the project. It is necessary to note that the suit project relates to



redevelopment of the Municipal Market and the ground floor, podium and upper three floors have been constructed. They are rehab component and the part occupation certificate of these floors has been obtained. The undertakings given by the complainants to the Municipal Corporation referred to above show that even 4 & 5 floors have been constructed and some internal finishing work was incomplete which the complainants decided to complete. So for this construction the funds raised by selling the sale component appears to have been used by the respondents. The complainants have not proved that the respondents have diverted the funds of the project.

**Point no. 9**

15. The complainants allege that the respondents have changed the name of the project Manthan Plaza but I have verified from the web page of the Authority that it is registered in the same name. Hence, there is no force in the allegation.

**Point no.10**

16. The complainants allege that the respondents have failed to obtain commencement certificate, occupation certificate. They themselves have admitted the fact that the sanctioned plan of the building is of five floors and the occupancy certificate up to third floor has been obtained by the respondents. Therefore, I do not find any force in their allegation that the commencement certificate is not produced. The respondents have taken the responsibility to hand over the lease certificate on the completion of the entire project.

**Point no.11**

17. So far as the formation and non-registration of society of the allottees is concerned, the respondents have contended that the project is

redevelopment of existing Municipal Market and Vakola Mandai Galedharak Sangh(Reg.) is the association of the allottees. Therefore, there is no necessity of formation of separate association of the allottees. The complainants can be admitted as the member of the said society. It is necessary to direct the respondents to facilitate them for their admission in the said association of the allottees. If it is not possible that the respondents should form the separate association of allottees of sale component.

18. The complainants allege that the municipal taxes have not been paid by the respondents. The respondents admit that it's their responsibility to pay municipal taxes but they have been struggling with the M.C.G.M. to get them reduced because in their estimate the corporation charged the taxes in excess.

Hence the order.

#### ORDER.

1. The respondents shall issue their no objection certificate for loan transfer of the complainants on compliance of the legal and contractual obligations by the complainants.
2. On submitting the certificate of the architect regarding the completion of the internal/finishing work of the complainants' offices, the respondent shall apply for occupation certificate of the 4<sup>th</sup> and 5<sup>th</sup> floor within one month thereof.
3. On completion of the project the respondent shall hand over the necessary documents to the MCGM, the owner of the project and copies thereof to association of the allottees.
4. The respondent shall facilitate the allottees of the sale component to admit as the members of Vakola Mandai Galedharak Sangh(Reg.) and if it is not possible they shall form the society/association of the allottees of the sale component as the case may be within two months from this order.

5. The respondent shall not make the construction beyond 5<sup>th</sup> floor without complying with the provisions of Section 14(2)(ii) of RERA.
6. Complainant's to clear their arrears of the MVAT.
7. Respondents to clear the municipal taxes by resolving its issue at the earliest but not later than 4 months of this order.
8. Parties to bear their own cost.

*VS  
21.9.2018*

(B. D. Kapadnis)

Member & Adjudicating Officer,  
MahaRERA, Mumbai.

Mumbai.

Date: 21.09.2018.