

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

Complaint No.CC005000000011393

1. Nagraj Chandanmal Gundesha,
2. Sukhibai Gundesha,
Both R/at 560, Centre Street,
Camp, Pune-411 001. .. Complainants

Versus

**M/s. Pacific Orient Genesis Associates,
Pacific House, Moledina Road,
Pune-411 001. .. Respondent**

**Coram : Shri W.K. Kanbarkar
Hon'ble Adjudicating Officer**

Appearance :-

**Complainant : C.A. Mr. Vardhaman Jain.
Respondent : Adv. Shilpa Pratap**

FINAL ORDER

(29.01.2019)

1. Present complaint is moved by the Complainants/Allottees for recovery of Interest @ 18% p.a. from the agreed date of possession i.e. 31.12.2012 till the actual date of possession and further claim of Rs. 10,00,000/- as cost and damages towards mental agony, trauma and harassment caused due to timely

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possession not being provided and for costs and legal fees as set out in the complaint under the provisions of the Real Estate (Regulation And Development) Act, 2016 (hereinafter referred to as "RERA Act").

2. Present complaint reflects that both the Complainants have jointly agreed to purchase Flat No. 701 and 704 in the project named "Engracia" situate at Building No. F.S. No. 27/5, 37/1, 37/2, Mohammedwadi, Pune in pursuance of two registered agreements executed on 18.05.2012 and registered on 21.05.2012. In pursuance of aforesaid registered agreements, Complainants have paid total consideration of Rs. 60,75,000/- for both the flats. The Respondent/Developer in pursuance of said agreements has agreed to deliver actual possession of booked flats to the Complainants/Allottees on or before 31.12.2012. In spite of said position, the Respondent/Promoter has failed to deliver the actual possession of the booked flats, with repeated requests, but the Promoters have revised the completion of project to year 2022 under the RERA Act. Therefore, the Complainants/Allottees due to delayed possession of the booked flats, have suffered loss as set out in the complaint. Thus the present complaint for recovery of claim of interest @ 18% p.a. from the agreed date of possession till the actual date of possession together with further claim of Rs. 10,00,000/- as costs and damages towards mental

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agony, trauma and harassment and for recovery of legal charges and costs of the present proceedings.

3. Appropriate plea of Respondent is recorded. Respondent vide written explanation, resisted the present complaint claimed on various grounds as set out therein. Respondent is an association of persons constituted under the provisions of the Indian Contract Act. M/s. Orient Properties and M/s. Genesis Properties and Infrastructure are the members of this A.O.P. as on date. In the year 2005 or thereabout, M/s. Orient Properties was having development rights in respect of the land bearing Survey No. 37, Hissa No.2 and M/s. Genesis Properties and Infrastructure was having development rights in respect of land bearing Survey Nos. 27, Hissa No.5 and Survey No. 37, Hissa No.1 of village Mohammedwadi, Pune. Mr. Vilas Kantilal Parmar and Mr. Dinesh Inderchand Gandhi being the developers, with an intention to develop the said properties, had approached the said partnership firm M/s. Orient Properties and M/s. Genesis Properties and Infrastructure and they have represented to the partners of the above mentioned firms, that they are experienced in the said field of development and construction and they have necessary infrastructure and resources to develop the land. Relying on the assurances and representations made by them, the said two partnership firms and the said Mr. Dinesh

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Inderchand Gandhi and Mr. Vilas Kantilal Parmar formed an Association of Persons (AOP) under the name and style as M/s. Parmar Orient Gandhi Associates and entered into Joint Venture Agreement for development of immovable properties, dated 25th Jan. 2005 and 10th Oct. 2005, wherein the said partnership firms introduced the land bearing Survey No. 37, Hissa No.2 and adjoining lands bearing Survey No.27, Hissa No.5 and Survey No.37, Hissa No.1 of village Mohammedwadi, Pune as their capital in the said AOP and said Mr. Dinesh Gandhi and Vilas Parmar had inter-alia undertaken the responsibilities to carry out the construction. As per the said agreements, Survey No.37/2 and adjoining lands bearing Survey No.27/5 and 37/1 which were introduced as capital in the said AOP, were to be developed together. However, despite handing over possession of the lands bearing Survey No.37/1, 37/2 and 27/5, Mohammedwadi, Pune, the said Mr. Vilas Parmar and Mr. Dinesh Gandhi thereafter obtained commencement certificate from the Municipal Corporation of Pune for construction activities on the land bearing Survey No.37/2 after more than one year after execution of the Joint Venture Agreement, even though the land bearing Survey No.27/5 and 37/1 were to be developed along with Survey No. 37/2, the said Mr. Vilas Parmar and Mr. Dinesh Gandhi did not obtain commencement certificate in respect of the land bearing Survey No.27/5 and 37/1 of Mohammedwadi,

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Pune for the reasons better known to them. However, application for environment clearance was moved up to two years after getting commencement certificate, revised commencement certificate was obtained on 1st Oct. 2008 in respect of Survey No. 37/2 and Survey No. 27/5. After 1st Oct. 2008, the project came to halt due to financial constraints of Mr. Dinesh Gandhi and Mr. Vilas Parmar as they failed to arrange the funds for completion of the project. Thereafter on 18th June, 2010 Mr. Vilas Parmar and Mr. Dinesh Gandhi being the assignors, exited from the project by executing Deed of Assignment of Rights in AOP registered with the Office of the Sub-Registrar, Haveli and thereby Mr. Vilas Parmar and Mr. Dinehs Gandhi ceased to be the partners of the said AOP. After exit of Mr. Dinesh Gandhi and Mr. Vilas Parmar, when this Respondent started construction on the strength of assurances and representations by Mr. Dinesh Gandhi and Mr. Vilas Parmar that all necessary approvals have been obtained, the Respondent has completed maximum construction of project. On 6th Jan. 2012 stop work notice came to be issued by the Pune Municipal Corporation and therefore, this Respondent could not complete the balance construction.

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4. As per aforesaid agreements, possession of the booked flats was to be handed over to the Complainants/Allottees on or before 31st December,

2012 however, the Respondent has revised the date of completion of the project to the year 2022 while registering the project under the RERA Act, 2016. Deed of Assignment reflecting that the erstwhile promoters had accepted payments from various owners however, did not execute agreements with them. Complainants had paid entire consideration against the said flats prior to 18th Sept. 2009. The Complainants are the regular investors in the project of Mr. Vilas Parmar and Mr. Dinesh Gandhi and as such they had invested such huge amounts in the said project as investors and never insisted to execute the agreements in their favour in respect of the said flats. It seems that they were aware about the pending status of the completion to be obtained and with fact.

5. Despite declaring inter-alia in the Deed of Assignment, dated 18.06.2010 that they have incurred no statutory liabilities on behalf of the AOP, Mr. Dinesh Gandhi and Mr. Vilas Parmar deliberately did not disclose the vital material facts to the Respondent that any various statutory permissions in fact obtained when they were responsible for the day to day conduct of the AOP is tantamount to suppression/concealment in order to overcome their own shortcomings which has affected the project considerably. Thus the present complaint is not maintainable as they are investors and the present Respondent is not liable for the claims made in the

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present complaint and thereby the present Complainants are not entitled to any claim inclusive of interest, compensation, legal fees, costs, etc. as set out therein.

6. On the above facts and circumstances on record, following points have arisen for my determination and findings thereon are as under :-

POINTS

FINDINGS

- | | | |
|-----|--|--------------------|
| (1) | Whether the Complainants/Allottees are entitled to interest and compensation for the delayed possession in spite of the agreement with Respondent/Developer?.. In the Affirmative. | |
| (2) | What order ? | As per final order |

REASONS

7. **POINT Nos. 1** :- Complainants/Allottees have jointly agreed to purchase Flat No.701 and 704 in the project "Engracia" situate at Mohammedwadi, Pune vide registered agreements, dated 21st May, 2012 and total consideration of Rs. 60,75,000/- was determined and out of such consideration amount, amount paid of Rs. 26,63,500/- towards Flat No. 701 and Rs.34,11,500/- towards Flat No. 704 inclusive of stamp duty of Rs. 2,29,750/- and Rs. 2,99,350/- respectively for the said

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flats borne by the Complainants/Allottees. In pursuance of said registered agreements, dated 21st May, 2012, possession of the booked flats was to be delivered to the complainants/Allottees on or before 31st December, 2012, but the Respondent/Developer has failed in that regard. Therefore, the present complaint seeking certain reliefs of interest together with compensation more particularly sought out in the complaint, as aforesaid.

8. The present complaint is resisted by the Respondent/Developer on some grounds that there were joint venture agreements, dated 25th Jan. 2005 and 10th Oct. 2005 and thereby Mr. Vilas Kantilal Parmar and Mr. Dinesh Inderchand Gandhi had taken responsibility of development rights, but they have not discharged their obligations and requisite commencement certificates and environmental clearance for the proposed buildings were not obtained by them and even though the Respondent having completed maximum construction of the project, on 6th of Jan. 2012 Stop Work Notice came to be issued by the Pune Municipal Corporation and therefore, this Respondent could not complete the balance construction. Therefore, the Respondent has one-way resisted the present claim as he could not be held responsible for the wrong doings of the erstwhile promoters, who were obliged to do and fulfil their

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responsibility as mentioned in the joint venture agreements as well as the deed of assignment, dated 18th June, 2010. Present Respondent/Developer is trying to run away from the responsibility taken on the shoulders for the development of the present project in pursuance of the registered agreements, dated 21st May, 2012 executed with the Complainants/Allottees taking stand that erstwhile promoters have not discharged their obligations in pursuance of the joint venture agreements, even though the present Respondent is fully aware that Mr. Vilas Parmar and Mr. Dinesh Gandhi being assignors exited from the project by executing registered deed of assignment on 18th June, 2010. The Respondent as a chronology of events from 2007 to 2010 are only an effort and attempt to run away from the responsibility of promoter even though after deed of assignment and in view of the present registered agreements, dated 21st May, 2012. The entire responsibility to complete the present project is on the shoulders of the Respondent on all respects and not on the shoulders of erstwhile promoters. * It is to be noted that present Respondent has executed registered agreement towards the booked flats in favour of the Complainants/Allottees and not by the erstwhile promoters.

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9. Under Section 2, clause (zk) of the RERA Act describes "Promoter" means,

"A person who constructs or causes to be constructed a building for the purpose of selling all or some of the apartments to other persons and includes his assignees; or a person, who develops the land into a project, whether or not, the person also constructs a structure on any of the plots for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structure thereon."

Therefore, in view of the aforesaid position of law and in the light of agreements executed between the Complainants/Allottees and the Respondent/Developer on 21st May, 2012, the role of the present Respondent is of the promoter as aforesaid under the RERA Act.

10. One more stand has been taken at the instance of Respondent that the Complainants/Allottees are regular investors in the project of Mr. Dinesh Gandhi and Mr. Vilas Parmar and as such they had invested such huge amount in the said project as investors and had never insisted to execute agreement in their favour in respect of the said flats and thereby even on that count, they cannot be termed as "Allottees" under the RERA Act. The Complainants/Allottees have executed aforesaid agreements, dated 21st May, 2012 with the Respondent and not with Mr. Parmar and Mr. Gandhi, the erstwhile promoters and the entire responsibility to develop the

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present project is with the Respondents and in the light of this agreement, the status of the Complainants is reflecting is that of "allottees" and not as "investors" as such. Section 2(d) of the RERA Act describes the term "Allottee" such as -

- "allottee" in respect of a real estate project means, the person to whom a plot, apartment or building, as the case may be, has been allotted or sold or otherwise transferred by promoter and includes the person, who subsequently acquires the said allotment through sell, transfer or otherwise."

So taking into consideration even the aforesaid term of allottee, status of the present Complainants clearly attracts is that of allottee and not as investors, as claimed by the Respondent.

11. Respondent/Developer has executed agreements with the Complainants/Allottees on 21st May, 2012 suppressing the fact that Pune Municipal Corporation has issued stop work notice, dated 6th Jan. 2012 and therefore, the Respondent cannot take advantage that he is unable to complete the balance construction of the project due to such stop work notice, even though the Respondent claims that he completed maximum construction of the project. So also, erstwhile promoters are neither necessary nor proper parties to

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the present proceedings, as they are not parties to the agreement referred above. One more point raised at the instance of the Respondent that issue of forum shopping in view of the fact that suit is pending in the Civil Court, Pune and on that count the present complaint is not maintainable under the law. Present complaint is resisted on the ground that the Complainants have filed one Civil Suit no. 1523/2016 against the present Respondent for specific performance of contract of statutory obligation in relation to the aforesaid booked flats and therefore, when such suit is pending, the present complaint is not maintainable under law and liable to be dismissed. Under Section 79 of the RERA Act, no civil court have jurisdiction to entertain any suit or proceedings in respect of any matter with the authority or the adjudicating officer or the appellate tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. Said suit is instituted in the year 2016 whereas RERA Act came into force w.e.f. 01.05.2017 and therefore, merely because the said suit is pending between the parties regarding the same subject matter, that cannot be a ground not to invoke the provisions of RERA Act to the present proceedings. Obviously, the present proceedings is maintainable under the RERA

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Act and the same has to be dealt with in accordance with the RERA Act, even though the aforesaid suit is pending between the parties in the Civil Court at Pune.

12. The agreements executed between the parties on 21st May, 2012, whereas as per the said agreement, possession was to be delivered to the Complainants/Allottees on or before 31st December, 2012, but the said promise is not complied by the Respondent/Developer. On the contrary, Respondent/Developer has come with different stories that on account of stop work notice issued by the Pune Municipal Corporation, the Respondent could not complete the balance construction as well as on account of failure on the part of erstwhile developer to perform part of their contract could not complete the balance construction timely. On the contrary, Respondent/Developer in the RERA Website uploaded the delivery of possession of the premises by 2022. Just to say that as per agreements, dated 21.05.2012, possession has to be delivered to the Complainants/Allottees on or before 31st December, 2012 and said promise is not complied by the Respondent/Developer merely because on the RERA website uploaded delivery of possession by 2022 without concurrence or consent of the Complainants/Allottees, the Respondent/Developer cannot take advantage of his own wrong. Aforesaid

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circumstances brought on record clearly reflecting that there are no particular date of getting actual possession of the booked flats by the Complainants/Allottees. Therefore, in view of the provisions of Section 18 of the RERA Act, when the allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. Moreover, as per Section 2(z) of the RERA Act, "the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid." So in view of the prescribed rules and provisions of Section 18 of the RERA Act, the Respondent/Developer shall be liable to pay interest as per the State Bank of India's highest Marginal Cost of Lending Rate i.e. $8.70\% + 2\% = 10.70\%$ p.a. on amount of Rs. 52,92,244/- from 01.01.2013 onwards till handing over possession of the booked flat under the said agreements, dated 21st May, 2012.

13. On behalf of Complainants/Allottees, sought compensation to be paid for inter-alia mental trauma, deprivation of club and swimming pool facilities

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promised as also for a permanent incremental property taxability including no demand by Respondent/Developer of additional cost on account of GST and such other levy, etc. But on that count such compensation cannot be granted as well as not substantiated appropriately in the light of the agreements, dated 21st May, 2012 clause 10 that it is for the purchaser to make appropriate payments of all monies including deposits, taxes, etc. as referred therein. So the request of the Complainants/Allottees not to levy additional cost, if any on account of GST or such other levy is not maintainable under the law and same cannot be granted as such. Under such circumstances, Point No.1 is answered accordingly I proceed to pass the following order.

ORDER

- (1) The Respondents/Promoters shall pay interest to the Complainant on amount of Rs. 52,92,244/- at the State Bank of India's Highest Marginal Cost Lending Rate i.e. $8.70\% + 2\% = 10.70\%$ p.a. from 01.01.2013 till Respondent/Developer delivers actual possession of the booked flats in question or till intimating the Complainants/Allottees about obtaining appropriate occupancy certificate.

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- (2) The Respondent/Developer shall pay Rs.30,000/- to the Complainants/Allottees as cost of this complaint.
- (3) The Respondent/Developer shall pay the aforesaid amounts within 30 days from the date of this order.

Pune
Dated :- 29/01/2019

WKK-29-1-2019
(W.K.Kanbarkar)
Adjudicating Officer,
MahaRERA, Pune