

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY  
AUTHORITY

CORUM : Shri M.V. KULKARNI, ADJUDICATING OFFICER, PUNE

AT : PUNE

Complaint No. CC005000000011445

1. Mr. Pravin Laxman Alibgakar.
2. Mr. Shivaji Arjun Kurund
3. Mr. Prasad Shankar Parchure
4. Mrs. Chhaya Vishwanath More
5. Mr. Sanjay Achyutrao Changun

Address : Survey No.80, Siddhivinayak Colony-4,  
Pune-Alandi Road, Dighi, Pune-411 015. .. Complainants

Versus

Sudhir Darode/Anant Jog  
Darode Jog House,  
Apte Road, Near Santosh Bakery,  
Deccan Gymkhana,  
Pune-411 004.

.. Respondents

Appearances :-

Complainants : In person.  
Respondent : Adv. Mr. Mane Deshmukh

**JUDGMENT**

(Delivered on 10.12.2018)

1. In all 5 complainants have filed this complaint seeking withdrawal from the project and refund of the money paid with interest, as the Respondent/Builder failed to deliver possession of the flats booked as per agreement.
2. The Respondent had challenged the common complaint filed by number of persons who had booked separate flats in the

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same project by filing application. By my order, dated 5<sup>th</sup> October, 2018, I have held that such a complaint is maintainable subject to payment of court fees as per rules.

3. Though the complaint is filed by five complainants, the particulars and the documents pertaining to the flat booked by the complainant No.5 Mr. Sanjay Achyutrao Changun are not filed on record. The contentions of complainant Nos.1 to 4 are that they have booked separate flats in the project "Padmanabh" situated at village Dudulgaon in Pune District. The Respondent however, failed to deliver possession of the respective flats as per the respective agreements. The particulars are given below.

Name of Complainant	Flat booked	Date of Agreement	Cost of the Flat (Rs.)	Amount paid by the complainant. (Rs.)	Agreed date of delivery of possession.
Pravin Laxman Alibagkar	B-2/206	18.09.2014	26,35,625/-	23,86,772/-	14.09.2017
Shivaji Arjun Kurund	B-2/407	10.12.2014	28,69,550/-	25,98,524/-	10.12.2017
Prasad Shankar Parchure	B-2/805	20.02.2015	20,42,525/-	18,69,615/-	19.02.2018
Chhaya Vishwanath More	B-2/706	20.02.2015	27,76,250/-	25,14,070/-	19.05.2017

4. The Respondents have resisted the complaint by filing say on 04.10.2018. It is alleged that the Complainants have suppressed material facts. The respondents had given entire information to the complainants. In the year 2014 there was world wide recession. Therefore, Respondents were unable to sell remaining flats and to raise funds for completing the project. Construction work is already 85 to 90% completed. As

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per term of the agreement, the Respondents have to pay to the complainants Rs. 5,000/- p.m. from Jan. 2017 till actual possession is delivered. The Complainants have received the said compensation and waived right to cancel agreement and refund of their money. As per term of the agreement, complainants are entitled for refund of all the money with 12% interest on the execution of deed of cancellation. Complainants have not executed such a deed of cancellation. If the complaint is allowed, the Respondents will suffer huge monetary loss. The complaint therefore, deserves to be dismissed.

5. On the rival contentions of the parties, following Points arise for my determination. I have noted my findings against them for the reasons stated below.

#### **POINTS**

#### **FINDINGS**

- |   |  |
|---|--|
| 1) Have the Respondents failed to deliver possession of the flat to the Complainants as per terms of Agreement without there being reasons beyond their control ? | .. In the Affirmative in respect of complainant Nos.1 to 4 and in the negative in respect of complainant No.5. |
| 2) Are the Complainants entitled to reliefs claimed ?   | .. In the Affirmative in respect of Complainant Nos.1 to 4 and in negative in respect of Complainant No.5.     |
| 3) What order ?   | .. As per final order.   |

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### **REASONS**

5. **POINT Nos.1 and 2** :- The Complainant Nos.1 to 4 have placed the respective agreements on record. Clause 13 of agreement of each complainant shows the date of delivery of possession or within 2.5 years from the date of the agreement or the date mentioned in it, whichever is later with a grace period of six months. The date of delivery of possession of each complainant with a grace period comes as follows.

Name of Complainant	Date of delivery of possession with grace period of six months as per agreement.
Pravin Laxman Alibagkar	14.09.2017
Shivaji Arjun Kurund	10.12.2017
Prasad Shankar Parchure	19.02.2018
Chhaya Vishwanath More	19.05.2017

Clause 11 provides for recovery of interest on overdue amount and administrative expenses of minimum Rs.1,00,000/- from the purchaser. Clause 13 further provides that in the event of failure to deliver possession of the flat on agreed date, the promoter was to pay simple interest @ 12% p.a. on the sum received at the time of purchaser executing deed of cancellation. If the purchaser agreed to continue, he was entitled to damages @ Rs.5000/- p.m. for the period of delay in construction work. There are also usual conditions under which the promoter was to get extension of time for delivering possession.

6. The defence of the Respondents is that due to recession of the year 2014, they were unable to sell ready flats and raise funds for completing the project. This argument cannot hold water.

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A builder demands price in instalments after completion of each stage. Construction does not start unless there is substantial booking. Also financial institutions are approached to make finances available. A builder is not supposed to depend on finances raised by selling flats which were not booked. Raising of finances is a skill of builder and the alleged constraint in raising finances pleaded by the Respondents is not acceptable. Even after grace period was over, the Respondents have not delivered possession as per agreement. There are many other builders who are keeping their promises and delivering possession as per agreement. When there are favourable market conditions, the builders make huge profits. They are required to sustain when market conditions are unfavourable, but they cannot ignore the commitments under the agreements under which they receive money from the flat purchasers.

7. Since the Respondents have failed to deliver possession as per agreement, without their being circumstances beyond their control, I answer Point No.1 in the affirmative in respect of Complainant Nos.1 to 4. Since the Complainant No.5 has not filed any documents and particulars on record to show that he has booked a flat with the Respondent and paid money against the purchase price, his complaint cannot be entertained and is required to be dismissed. Hence I answer Point No.1 in negative in respect of Complainant No.5.
8. The Complainant Nos.1 to 4 have paid the following respective amounts to the Respondent and that is admitted by the Respondent.

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Name of Complainant	Amount paid by the complainant to the Respondent. (Rs.)
Pravin Laxman Alibagkar	23,86,772/-
Shivaji Arjun Kurund	25,98,524/-
Prasad Shankar Parchure	18,69,615/-
Chhaya Vishwanath More	25,14,070/-

As per clause 13 of the agreement, on the purchaser executing cancellation deed on failure of the promoter, he was entitled to claim interest @ 12% p.a. on the amount paid to the promoter. The prayer of the complainants is for refund of all these amounts, with interest. Under Rule 18 of MahaRERA Rules, the interest to be received from the promoter is @ State Bank of India's highest MCLR + 2% as on the prevailing date. The Complainant Nos.1 to 4 in the present case have not executed cancellation deeds. Therefore, they will be entitled to interest at the same rate i.e. 8.70% + 2% = 10.70% p.a. till they execute cancellation deeds in favour of the Respondents. I therefore, answer Point No.2 in the affirmative in respect of complainant Nos.1 to 4 and in negative in respect of complainant No.5 and proceed to pass following order.

### **ORDER**

- (1) The Complainant Nos.1 to 4 are allowed to withdraw from the project.
- (2) The Respondent to pay the following amounts to the complainant Nos.1 to 4 except the stamp duty, which is refundable, together with interest @ 10.70% p.a. from the date of payments till realisation and @ 12% p.a. on

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the execution of cancellation deed by the Complainant if it occurs earlier.

Name of Complainant	Amount to be paid by the Respondent with interest@ 10.70% p.a. (Rs.)
Pravin Laxman Alibagkar	23,86,772/-
Shivaji Arjun Kurund	25,98,524/-
Prasad Shankar Parchure	18,69,615/-
Chhaya Vishwanath More	25,14,070/-

- (3) The Respondent to pay Rs. 10,000/- each to the Complainant Nos.1 to 4 as costs of this Complaint.
- (4) The Respondents to pay above amounts within 30 days from the date of this order.
- (5) The complaint of complainant No.5 Sanjay Achyutrao Changun is dismissed with no order as to costs..

Pune  
Dated :-10/12/2018

*M.V. Kulkarni*  
(M.V.Kulkarni)  
Adjudicating Officer,  
MahaRERA, Pune