

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

**Complaint No.CC005000000022366**

**Mr. Ashok Kumar Bhasin,**  
R/at Tower 59, Flat 1802,  
Future Towers, Amanora Park Town,  
Hadapsar, Pune-411 028.

**.. Complainant**

**Versus**

- 1. M/s. Eisha Goyal Agarwal Developers,**
- 2. Shri Bharat Mithalal Nagori,**
- 3. Shri Swaran Singh Sohal.**
- 4. Shri Hasmukh Babulal Jain.**
- 5. Miss Isha Babulal Jain.**

**Directors through Eisha Structures Ltd.  
(Referred as Eisha Group)**

- 6. Shri Anil Satyanarayan Mittal.**
- 7. Shri Akash Mohan Gupta.**
- 8. Shri Kailash Pannalal Gupta.**
- 9. Shri Mohit Rajendra Goyal**
- 10. Shri Rajendra Kishorilal Goyal**

**Registered Office at**  
**6<sup>th</sup> Floor, San-Mahu Commercial Complex,**  
**Opp. Poona Club, 5, Bund Garden Road,**  
**Pune-411 001.**

**.. Respondents**

*20/6/17*

**Coram : Shri S.B.Bhale**  
**Hon'ble Adjudicating Officer**

**Appearance :-**

**Complainant :- Mr. Uday Kasliwal, A.R.**

**Respondents :- Adv. Mr. Kabre**

**FINAL ORDER**

(17<sup>th</sup> June, 2019 )

- 2019/12.6.
1. It is the case of the Complainant that he was in need of new residential accommodation in the year 2013. Therefore, he approached to Eisha Goyal Agarwal , a partnership firm i.e. Eisha Properties & Developers wherein respondent Nos.2 to 4 are partners. In the alleged meeting, the respondents have agreed to spare new residential accommodation for him, which he deems fit. It is also alleged that prior to this, complainant had advanced the loan of R. 5,35,00,000/- to the respondents. On negotiation, the price of the flat which he intended to book, was determined Rs. 4,37,50,000/-. Accordingly, the respondents agreed to adjust the aforesaid consideration amount of Rs. 4,37,50,000/- against the booked flat. That flat was booked under the Articles of Agreement, dated 13.11.2013, It was executed on the stamp paper and notarized. The respondents had also avoided to execute a registered agreement though complainants persuaded them on time to time. The booked flat was as per agreement in the project named "Courtyard 77", which is described in the Articles of Agreement, dated 13.11.2013. In terms of that agreement, the respondents had agreed to hand over possession of booked flat on or

before June, 2016. It is contended that the construction of the aforesaid project was commenced. But later on, the same was stopped since 2015 and onwards. The complainant approached the respondents on time to time and inquired about the terms of agreement and handing over the possession of booked flat, but they spent time giving the promises. After stopping the construction of the project and on inquiry, the complainant came to know that the respondents have changed the project "Courtyard 77" and started construction of another project named as "Stellar Business Centre" on the same piece of land as described in the Articles of Agreement, dated 13.11.2013. He also came to know that the respondents have registered the aforesaid project with MahaRERA. Thus the respondents have converted the earlier project i.e. "Courtyard 77" into "Stellar Business Centre" on the same piece of land as stated above. On the aforesaid facts and as the respondents failed to hand over the possession of booked flat in spite of receiving the entire consideration amount, as stated above, he has filed this complaint claiming refund of amount paid by him to the respondents with interest, compensation and heavy cost.

2. Plea of the respondents is recorded through authorised representative Mr. Hasmukh Babulal Jain on 20.05.2019, wherein the respondents denied the claim of the complainant.
3. The respondents have also resisted the claim of complainants vide their reply, dated 23.03.2019. It is the case of the respondents that the complaint is false and



frivolous. The complainant has suppressed the material facts from this authority. The case made out by them is that the complainant has come with false and fictitious case stating that the respondents have changed the name of project from "Courtyard 77" to "Stellar Business Centre". The complainant is intending to enforce the agreement, dated 13.11.2013 in respect of project "Courtyard 77" against "Stellar Business Centre" project. "Stellar Business Centre" is a new project. Therefore, complainant has no legal right or interest in this new project. He is not the allottee of the said project therefore, complaint is not tenable. Complaint is also not tenable as the complainant has filed earlier complaint bearing No. SC1000601 of 2018 before the RERA Authority in the year 2018 however, it was withdrawn after filing the reply by these respondents. Not only that, but the complainant had also filed one another case bearing R.C.C. No. 683 of 2018 before the J.M.F.C. Cantonment Court under the provisions of the Maharashtra Ownership Flats Act (hereinafter called as "MOFA"). And the same is still pending. The cause of action for this criminal case and the present complaint is one and the same. The complainant has concealed this fact of pendency of said criminal case and filed this complaint. Therefore, the complaint is also liable to be dismissed.

- 206/18/6
4. It is further contended that the project "Courtyard 77" was to be constructed over Survey No. 209, Hissa No. 4, CTS No.2109 located at Yerwada, Pune as per the plan sanctioned by the competent authority. Accordingly, the commencement certificate was also obtained on 07.08.2012. The respondents commenced the construction and

development of said project. However, in or about the year 2014, they came to know that there is a problem of water leading to constant flooding. Despite all efforts, problem of flooding and water leakage, cannot be and stopped. Subsequently the contractor who has undertaken the construction of that project, also abandoned the construction work, for which dispute is pending between the respondents and contractor concerned in the court. Therefore, Pune Municipal Corporation also issued notices to the respondents that due to water leading to leakage is resulting to malaria and dengue, etc. For these reasons, the project "Courtyard 77" became unviable, so the construction was completely stopped since 2015. Thus the project "Courtyard 77" abandoned since Feb. 2015 onwards and much prior to commencement of RERA. This fact was informed to the complainant on whatsapp and offered alternate accommodation in Kalyananagar or any other project of the respondents and even in new project i.e. "Stellar Business Centre" of equal area as is agreed in the Articles of Agreement, dated 13.11.2013. This new project got sanctioned in or about Feb. 2018 on the same plot or piece of land i.e. Survey No.209, Hissa No.4, CTS No. 2109 located at Yerwada, Pune. As the complainant refused to accept the aforesaid offer given to him, even in the new project or any other project of the respondents, the complaint is not tenable.

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5. It is further contended that the respondents had availed financial assistance from the complainant on time to time. In security of that financial assistance, the agreement in question, dated 13.11.2013 was executed. In fact, the



complainant is an investor and not an allottee as per RERA. In other words, he is also co-partner with the respondents. Having regard to all the aforesaid facts, complaint is liable to be dismissed with costs.

6. In the above facts and circumstances and on rival contentions of the parties, following points arise for determination and I am going to record my findings thereon as under.

#### POINTS

#### FINDINGS

- (1) Whether the complaint is tenable under the provisions of RERA ? ..In the Affirmative.
- (2) Whether the complainant is entitled to claim refund of the entire amount paid by him to the respondents with interest and compensation under the provisions of RERA ? ..In the Affirmative.
- (3) What order ? .. .. .. As per final order.

#### REASONS

7. Heard complainant through his representative Mr. Uday Kasliwal, whereas Mr. Kambre, Advocate for respondents. Perused the documents filed on record.
8. **POINT No.1** :- On the averments of both the complainants and respondents, it becomes clear that the new project "Stellar Business Centre" is to be constructed or developed

by the respondents on the land Survey No. 209, Hissa No.4, CTS No. 2109, Yerwada, TP Scheme, Pune. The earlier project "Courtyard 77" wherein the complainant had booked the flat as described in the Articles of Agreement, dated 13.11.2013 was also to be constructed over the same piece and parcel of land. It is the contention of respondents that the project "Courtyard 77" was the residential project and it became unviable due to problem of water leading to continuous leakage, etc. therefore, construction or development of that project was stopped in the year 2015. It is further contended that the respondents have undertaken the new project on the same piece and parcel of land i.e. "Stellar Business Centre" with required permission of competent authority and this project is also registered with MahaRERA. On the aforesaid undisputed facts, can it be said that the earlier project "Courtyard 77" was abandoned in the year 2015 and much prior to commencement of the RERA and therefore, complaint is not tenable? It is to be noted that the provisions of Section 11 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the **RERA**), provides functions and duties of promoter. Sub-Section 4(a) and 4(b) of Section 11 provides that,

*"(4) The promoter shall -*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or till the conveyance of all the apartments, plots or*

*20/11/17*



*buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:*

*Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of Section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.*

*(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;"*

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Thus sub-section 4(a) and (b) of Section 11 of RERA caste the responsibility on the respondents all the obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees or the common areas to the association of allottees or the competent authority, as the case may be :

The proviso of this sub section further clarifies that in case of structural defect or any other defect for such period as is referred to in sub section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots



or buildings, as the case may be, to the allottees are executed.

Further sub-section 4(3) clarifies that it is the responsibility of the respondents to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws, or other laws for the time being in force and make it available to the allottees, individually or to the association of allottees, as the case may be.

Besides this, sub section 4 of Section 19 of RERA provides that, the allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner, as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

9. From the aforesaid provisions of RERA and the facts of this case noted above, it becomes clear that the respondents have failed to discharge their responsibilities. The construction of new project i.e. "Stellar Business Centre" is commenced on the same land on which the project "Courtyard 77" was to be constructed and developed. The development and construction of new project is commenced in the year 2018 and that too, after the commencement of

RERA. The respondents admit that they had given the offer of alternate accommodation in the new project, but the same is refused by the complainant. Though the agreement in question by which the complainant had booked the flat on 13.11.2013, it was continued and still in force being not cancelled. Therefore, changing the earlier project which was residential, into commercial project without the consent of the complainant is sufficient to bring his case within the provisions of RERA.

10. Another point which was raised by the respondents about the tenability of complaint is pendency of R.C.C. No. 683 of 2018 filed by this complainant before the J.M.F.C., Cantonment Court, Pune under the provisions of MOFA. No doubt about it, that for same cause of action, complainant cannot take legal action against the respondents before two different legal forums. Mr. Kabre insisted on this point and submitted that as the said criminal case is pending before the J.M.F.C. Court under the MOFA, this complaint is liable to be dismissed. On this point, it is submitted on behalf of the complainant that, that criminal case is pending before the J.M.F.C. Cantonment Court under the MOFA, but the complainant has already filed an application dated 10.01.2019 before the said court for withdrawal of that criminal case, and as there was summer vacations and for certain reasons on account of postponement of dates, withdrawal order was not passed. But he undertaken to withdraw the same. The aforesaid undertaking and pending application for withdrawal of said criminal case by the complainant, which is simply postponed for order of withdrawal from the court concerned is sufficient to sustain



the claim of complainant, I can say so because it will be unjust to dismiss this complaint on the aforesaid ground, when he has already paid the huge amount of more than Rs. 4 crores to the respondents in the year 2013 and still awaiting for refund of same. It will not be out of place to make it clear that against one cause of action, there may be two legal actions i.e. civil and another criminal, being both the actions are different in nature.

11. It was also contended on behalf of the respondents that the complainant was investor and not an allottee, but the set of facts of the case goes to show that by virtue of Articles of Agreement, dated 13.11.2013, the complainant became the allottee while booking the flat No.301 on 3<sup>rd</sup> floor in the project "Courtyard 77". By that agreement the amount alleged to have been invested by the complainant is merged in the construction of booked flat and as such he became an allottee under the provisions of RERA. Having regard to all the aforesaid facts and circumstances of the case and for the foregoing reasons, I am of the opinion that the complaint is tenable under the provisions of RERA.

12. **POINT No.2** :- In view of the affirmative findings recorded against Point No.1, Point No.2 is also to be answered in the affirmative.

13. It is to be noted that on behalf of complainant, interest on the amount alleged to have paid by the complainant against the booked flat is claimed @ 18% p.a. So also, claimed heavy cost with compensation. However, as per the provisions of Rule 18 of the Maharashtra Real Estate

(Regulation & Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest & Disclosure of Website) Rules, 2017 ( hereinafter referred to as "Rules"), 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 8.75% and it will be added by 2%. Thus the Complainant is entitled to receive the entire amount of Rs. 4,37,50,000/- with simple interest @ 10.75% p.a. since the date of payment till the recovery of the entire amount or realization of the same.

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14. The respondents have received huge amount of Rs. 4,37,50,000/- from the complainant and gained disproportionately and taken unfair advantage on account of his default in handing over possession of the booked flat to the complainant as per the terms and conditions of the Articles of Agreement, dated 13.11.2013. Hence, the complainant is also entitled for compensation of Rs.1,00,000/- from the respondents. In addition to that, the complainant is also entitled to receive the cost of Rs. 50,000/- towards this litigation from the respondents.

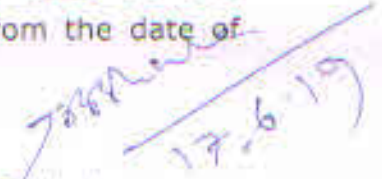
15. For these reasons and the express provisions of RERA referred above, I pass the following order.



**ORDER**

1. The respondents are directed to pay amount of Rs. 4,37,50,000/- to the complainant with simple interest @10.75% p.a. from the date of receipt of said amount till realization of entire amount.
2. The respondents are also directed to pay the amount of Rs. 1,00,000/-to the complainant as compensation.
3. The respondents are also directed to pay the amount of Rs. 50,000/-to the complainant towards the cost of this litigation.
4. The respondents shall pay the entire dues to the complainant within a period of 30 days from the date of this order.

Pune  
Date :- 17.06.2019

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