

Respondents (for Promoters): Represented by Mr. Sachin Bhosale a/w Ms.Vandana,Adv.

CORAM : Shri Gautam Chatterjee,Hon'ble Chairperson.

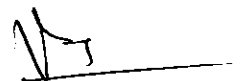
Dr. Vijay Satbir Singh, Hon'ble Member.

Shri B.D. Kapadnis, Member & Adjudicating Officer.

27th November 2017.

Common Final Order

Co-promoters M/s. Tupe Developers have filed complaint no. **CCOO50000000000033** under Section 7 of Real Estate (Regulation and Development) Act, 2016 (for short, RERA) against promoter. They contend that they are the owners of a contiguous chunk of land measuring 8 hectares 93.62 Ares bearing survey numbers 202/A, 202/B/1/1, 202/B/1/2, 202/B/1/3, 202/B/1/4, 202/B/1/5, 202/B/1/6, 202/B/1/7, 202/B/2, 202/B/3 and 202/B/4 situated at village Hadapsar, Tal. Haveli, Dist. Pune. Development rights of these lands were given to M/s. Wellwishers Homes by way of development agreement dated 09/09/2011. The area of these lands was 40858 sq. meters and FSI of 7088.27 sq.mtrs. has been given to promoter M/s. Bhansali Infotech LLP to develop by executing the development agreement on 04.07.2014 and also by executing a separate power of attorney. M/s. Bhansali Infotech LLP were required to bear the cost and expenses for procuring the permissible paid FSI. As per sanctioned plan, FSI of 7088.27 sq. mtrs. was to be consumed for a single building known as J-2 building. Its total built up area is 5509.00 sq. mtrs. excluding 3063.02 sq. mtrs, the area of enclosed balconies, terrace passage lift and staircase. Promoter M/s. Bhansali Infotech LLP were to pay for the necessary additional premium but they did not provide challan/receipts showing its payment. The promoter consumed the FSI of 1483.75 sq. mtrs. over and above the total permissible paid FSI of 7088.27 sq.mtrs. So this is illegal and "unfair practice" of the promoter. The co-promoter further contends that the promoter has sold more car parking lots than the number of sanctioned parking lots and committed a gross irregularity. Because of these reasons they



refused to sign the alleged illegal agreements of sale and submit their declaration for the registration of the project.

2. The co-promoters further complain that the promoters breached the terms and conditions of development agreement and power of attorney dated 4th July 2014. They misused the gross sale proceeds and executed illegal agreements with buyers without obtaining their signatures and without their consent. The respondents failed to open escrow bank account as agreed in development agreement. They did not inform the number of bookings taken by them. The infrastructure charges have not been paid. The quantity of FSI used is not given and extra FSI has been used by them. They transferred number of open parking illegally to buyers. They also granted facility for 0 % interest to the buyers without their consent. The revenue share period has been illegally extended and has been deviated from period mentioned in the development agreement. They repeatedly asked promoters to share accounts but they failed to do so.

3. Promoters M/s. Bhansali Infotech LLP have filed the complaint no. **CCOO5000000000119** wherein they contend that they entered into a development agreement with the respondents and the respondents also executed irrevocable power of attorney in their favour on 04.07. 2014. However, they did not sign the declaration at the time of registration of the project. Co-promoters are required to sign the agreements of sale executed by them in favour of buyers as per this agreement. They called co-promoters every time for signing the agreements of sale, of the customers of J-2 building but co-promoters have avoided to sign the same for one reason or the other. Not only that, co-promoters published a public notice in the Indian Express Newspaper, Pune Edition on 08.08.2017 and declared that the flat purchasers who entered into the agreements or will enter with such agreements with complainants without their consent and signatures would not be binding on them and their agreements shall not be legal and shall not be enforceable in law. In these circumstances, promoters request to take suitable action against the co-promoters.



4. The complainant/allottee of complaint no. CC005000000000149 Mr. Amul Vora contends that he booked a flat in J-2 building of the promoters and co-promoters and paid its consideration. The promoter executed the agreement for sale in his favour. However, on 08.08.2017 he came across the public notice published by the co-promoter in Indian Express Newspaper, Pune Edition stating that the flat purchasers who have entered into the agreements or will be entering into such agreements without their signatures are/will not bind the co-promoters and the said agreements shall not be legal, valid and enforceable in the eyes of law. He also received a notice of the co-promoter dated 11.08.2017 having the similar contents, hence, he requests to take action against the co-promoters under Section 19 of the RERA.

5. The complainant/allottee of complaint No. CC005000000010541 Smt. Natasha Lal has filed the complaint against the co-promoters contending that she purchased the flat No. 108 of J-2 building by paying Rs. 43,79,224/- to the promoter who executed registered agreement of sale. The co-promoters did not sign it as the confirming party on the agreement of sale. She also came across the public notice published by the co-promoters in Indian Express Newspaper and also received the notice from their advocate dated 11.08.2017 contending that her agreement of sale is illegal and is not binding on the co-promoters. Therefore, she seeks relief to restrain the co-promoters from disputing her legal claim relating to the flat purchased by her and restrained them from causing obstruction to her entry from the main entrance gate of J-2 building which has been obstructed by the co-promoters.

6. The complainant/allottee of complaint no. CC005000000010543 Smt. Asha Alagappa has filed complaint against co-promoters contending that she purchased the flat no. 104 of J-2 building and paid Rs. 29,77,000/- to the promoter and promoter executed registered agreement of sale. The co-promoter refused to sign as a confirming party. She has also the grievance against the co-promoters regarding the public notice and the advocate's notice contending that her agreement of sale is illegal and not binding on them. She also alleges that the co-promoters prevented her from entering J-2 building main entrance and seeks the



reliefs which are similar to the reliefs claimed by Smt. Natasha Lal.

7. Since these matters are interlinked, they have been taken by the full bench of the MahaRERA for hearing.

8. The parties and their advocates have been heard.

9. There is no dispute that co-promoters Tupe Developers are the land owners and promoters Bhansali Infotech LLP are constructing a project having J-2 building on their land. The agreement entered into by the parties shows that the land owners shall take 20% and the promoter shall take 80% of the sale proceeds. It is the grievance of the Tupe Developers that the promoter collected extra development charges from the buyers and did not give 20% thereof to them. The promoter also underestimated the price of units agreed to be sold while executing the agreements of sale in favour of buyers. There are certain issues regarding breach of development agreement which are to be addressed by the Civil Court. The matter has already been taken before the Arbitrator. In these circumstances MahaRERA does not get any jurisdiction to deal with these civil issues lying between the parties. All the reliefs claimed by these parties in their complaints based upon the said issues therefore, cannot be granted.

10. The role of MahaRERA is to regulate and promote the real estate sector, and to protect the interest of the consumers.

11. There is no dispute between the promoters and co-promoters that the co-promoters have given rights to the promoter to develop their land to the extent of FSI of 7088.27 sq. mtrs. and the promoter has been constructing a building known as J-2 building. So far as the status of M/s. Tupe Developers is concerned, they come under the definition of promoter defined by (zk) of Section 2 of the Real Estate (Regulation and Development) Act, 2016. The explanation appended to it makes it clear that the promoters shall be jointly liable to perform the functions and shoulder the responsibilities specified under the Act. It is the joint responsibility of the promoter and co-promoter to complete the project and to hand

over the possession of the units purchased by the allottees in time. If they have any differences / disputes it is necessary for them to get them decided / resolved amicably or by approaching the proper forum. The conflict of their interest should not be allowed to cloud the interest of the allottees. So the view of the authority is, since the allottees are the purchasers for valuable consideration it was not desirable on the part of the co-promoters to threaten them by issuing public and individual notices that their agreements executed by the promoter are ipso facto illegal. The co-promoters have agreed to withdraw the notices issued by them to the allottees. They are ready to give an undertaking that they shall not obstruct the allottees from using the main entrance of J-2 building to have an access to their respective flats. They have given the undertaking to that effect and the Authority accepts it.

12. Section 37 of the Act empowers the Authority to issue directions for the purpose of discharging its functions under the provisions of the Act. By exercising these powers, the Authority deems it fit to direct the co-promoters to extend its co-operation to the promoters to complete the project in time and give the undertaking regarding the withdrawal of the notices for which the learned advocate of the co-promoters seeks time of 7 days and it is being granted. Hence, the following order.

ORDER.

- a. The promoters and the co-promoters shall get their issues of civil nature resolved amicably or by approaching the proper forum.

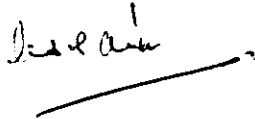
The co-promoters shall extend their co-operation to the promoter for completion of the project in time.

- b. The co-promoters have given the undertaking that they shall not obstruct the allottees of J-2 building from using the main entrance of the said building to have an access to their respective flats and the same is accepted.
- c. The co-promoters shall give undertaking within 7 days that they shall withdraw the public notice and the individual notices given to the complainants / allottees declaring that their agreements are illegal and are not binding on the co-promoters.

- d. The co-promoters shall remove the hoarding having contents or contents like ' J-2 building is unauthorized / it is illegal construction etc.'
- e. Co-promoters shall submit necessary declaration required for registration of the project.
- f. The matters are disposed off accordingly.

Mumbai.

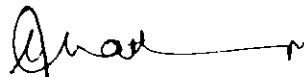
Date: 27.11.2017.



(Dr.Vijay Satbir Singh)
Member- I,
MahaRERA, Mumbai.



(B.D. Kapadnis)
Member II & Adjudicating Officer,
MahaRERA, Mumbai.



(Gautam Chatterjee)
Chairperson, MahaRERA.