

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY  
AUTHORITY

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

AT : PUNE

Complaint No. CC0050000000346

1. A) Aparna Laxman Gole, .. (Deleted)  
B) Laxman Amrut Gole. .. (Deleted)

Both R/at Gole Niwas, Dattawadi,  
Akurdi, Nigdi, Pune-411 014.

2. Mr.Laxman Rangnath Ghodake, .. (Deleted)  
R/at Type III/1, Staff Quarters,  
Kendriya Vidyalaya Diat, Girinagar,  
Sinhagad Road, Pune-411 025.

3. A) Vinod Mohan Salunkhe, .. (Deleted)  
B) Suvarna Vinod Salunkhe .. (Deleted)

Both R/at A/P Suravadi,  
Tal. Phaltan, District Satara.

4. Pallavi Harshal Karnavat, .. (Deleted)  
R/at 101, Diwanji Housing Society,  
Behind Ganesh Vishwa Building,  
Katraj-Kondhwa Road, Gokul Nagar,  
Katraj, Pune-411 048.

5. Narayan Ganpatrao Bhandare  
R/at L-32, Ganraj Estate, Vaidwadi,  
Pune-Solapur Road, Hadapsar,  
Pune-411 013.

6. Dilip Vishnu Khadatare, .. (Deleted)  
R/at Room No.2, 'B' Wing,  
CH-4, Colombo Society,  
Ever shine City, Gokhiware Road,  
Vasai (E), Tal. Vasai, Dist.Palghar.

.. Complainants

Versus

6-9-2019

1. M/s. Shivtara Meredian Associates,  
Through its Partner  
Mr. Ravindra Laxman Dhumal,  
Office at 114-115, Connought Place,  
Bund Garden Road, Pune-411 001.
2. Shivtara Properties Pvt.Ltd.  
(A Company incorporated under  
Companies Act, 1956  
Through its Director  
Mr. Nilesh S/o Shivaji Singh,  
R/at C-904, Sicilaa, Sr.No.70/A/5/1,  
B.T. Kawade Road, Pune-411 001.
3. Mr. Sadashiv Keshav Jadhav,  
R/at Gat No. 1030/2, Kunjirwadi,  
Tal. Haveli, District Pune.
4. Mr. Murlidhar Keshav Jadhav,  
R/at Gat No. 1039/1, Kunjirwadi,  
Tal. Haveli, District Pune.
5. Smt. Muktabai Dhondiba Jadhav, .. (Deleted)  
R/at Gat No. 1029, Kunjirwadi,  
Tal. Haveli, District Pune.
6. Muktabai Murlidhar Jadhav .. (Deleted)  
R/at Gat No.1029, Kunjirwadi,  
Tal. Haveli, District Pune. .. Respondents

**APPEARANCE :-**

Complainant : Adv. Mamidwar.  
Respondent Nos.1 & 2 : Adv. Tapkir Akshay.  
Respondent Nos.3 & 4 : In person.

**JUDGMENT**

(Delivered on 06.09.2018)

- 1) Initially this complaint was filed by Complainant Nos.1 to 6 jointly in respect of their respective flats booked with Respondents. However, Adv. A.M. Mamidwar, learned counsel

6-9-2018



on behalf of Complainants submitted an application and prayed for allowing Complainant Nos.1 to 4 and 6 to withdraw from the complaint and sought permission to file fresh complaint. Accordingly, by order, dated 16.01.2018, the Hon'ble Member of MahaRERA, Mumbai dismissed the Complaint of Complainant Nos.1 to 4 and 6 and complaint of Complainant No.5 has proceeded.

- 2) In view of such circumstances, the Complaint of Complainant No.5 as is mentioned in the joint complaint is that on 14.04.2013 he had booked Flat No. 901"E" with the Respondents in their project "Tara Alicia" at Kunjirwadi, Tal. Haveli, District Pune and <sup>born</sup> executed an Agreement, dated 11.12.2013. The total consideration of the flat was agreed to be paid of Rs. 19,82,000/-. The Complainant has paid Rs. 20,24,000/- to the Respondents. The Respondents agreed to deliver possession within two years from the date of agreement. However, they have failed to deliver possession, as agreed. The Respondents agreed to pay rent of Rs. 7,000/- p.m. for 1 BHK and Rs. 9,000/- for 2 BHK on account of delayed possession and issued undertaking on 12.11.2016 and promised to hand over possession before the end of March, 2017, which was also not acted upon. The Complainant therefore, seeks relief of interest and compensation.

- 3) The Respondent Nos.1 and 2 appeared and filed their written explanation on 08.12.2017. It has been contended that the complaint is baseless, frivolous and vexatious and deserves to be dismissed as prescribed u/S. 7(2)(d) of the Maharashtra Real Estate (Regulation and Development)

W  
1-4-2018

(Recovery of Interest, Penalty, Compensation, Fine Payable Forms of Complaints and Appeals, etc.) Rules, 2017. The complaint is counterblast to the notice issued to the Complainants for default in payment. The Complainants are defaulters and contravened the provisions of Section 19(6) of RERA. The agreement was executed with the Complainants prior to coming into force the RERA. In paragraph 12 of the Agreement, it has been specifically mentioned that the project is revised and the new planned project will require additional compliance, which will take more than two years. The complaint discloses no cause of action against the Respondent Nos.1 and 2 and the alleged cause of action is before enforcement of the RERA and therefore, this authority has no jurisdiction to hear the present complaint. The construction of building E and D is on the verge of completion and shall be completed by the end of July, 2018. The Respondents pray for dismissal of the complaint with exemplary cost and direction to complainants to pay the default amount with interest @ 18% p.a.

- 4) The complaint thereafter was transferred to this office. Respondent Nos.3 and 4 filed their written explanation on 15.06.2018. It has been averred on behalf of Respondent Nos.3 and 4 that they being owners of the land where the project is going on, have executed a Development Agreement and Power of attorney, dated 20.04.2013 in favour of the Respondent No. 1 partnership firm through partners Nilesh Shivji Singh and Ravindra Laxman Dhumal for consideration of 40% of the construction along with all amenities within three years and in default, it was agreed by the Respondent No.1 to pay Rs. 50,000/- p.m. to the land owners i.e. the

✓  
6.9.2018



Respondent Nos.3 and 4. However, the Respondent No.1 failed to act upon the terms and conditions of the development agreement. Therefore, the Respondent Nos.3 and 4 filed Civil Suit No. 562/2017 in the Civil Court, Sr. Division, Pune. The Complainant No.5 has booked the flat, which is from and out of the 60% share in the construction of the Respondent No.1 firm and the transaction of said flat is between the Complainant and Respondent No.1 and the Respondent Nos.3 and 4 have no any concern with the said transaction. The Complainant was well aware of these facts. Therefore, the Respondent Nos.3 and 4 prayed to delete them from this complaint.

- 5) On 15.06.2018, the Complainants filed purshis and prayed for deletion of names of Respondent Nos.5 and 6.
- 6) On 11.07.2018 plea of the Respondent Nos.1 and 2 came to be recorded through their representative.
- 7) Arguments were heard on 25.07.2018. As I am working with Mumbai Office and Pune Office in the alternative weeks and as the stenographer was on medical leave, this judgment is being delivered now.
- 8) Following Points arise for my determination. I have recorded my findings against them for the reasons stated below.

### **POINTS**

### **FINDINGS**

1. Have the Respondents failed to deliver possession of the flat to the

  
6.9.2018

- Complainant as per terms of Agreement without there being reasons beyond their control ? .. In the Affirmative.
2. Is the Complainant entitled to reliefs claimed ? .. In the Affirmative.
3. What order ? .. As per final order.

### **REASONS**

- 9) **POINT Nos.1 and 2** :- The defence of Respondent Nos.3 and 4 is that they are the owners of the land and therefore, not developers. It is contended by them that they were entitled for 40% of the construction being done by the Respondent Nos.1 and 2. They have filed a civil suit against Respondent Nos.1 and 2 as they failed to act upon the terms and conditions of the development agreement. The flat booked by the present Complainant No.5 is out of 60% share of the Respondent No.1. Pendency of civil suit inter-se between the Respondents cannot have any bearing on the claim of the Complainant. Likewise, Respondent Nos.3 and 4 claimed to have 40% share in the project and Respondent Nos.1 and 2 remaining 60%. That is an arrangement between the Respondents and it cannot have bearing on the claim of the Complainant. Respondent Nos.3 and 4 are equally liable, who are sharers in the development project and therefore, very much within the definition of "promoter" under the Real Estate (Regulation & Development) Act, 2016 ( hereinafter referred to as "RERA"), if the Complainant is entitled to the reliefs claimed.
- 10) Respondent Nos.1 and 2 do not dispute execution of agreement in favour of the Complainant No.5 on 11.12.2013. The Complainant has claimed that the total consideration

✓  
6-5-2018



under the agreement was Rs. 19,82,000/- and he has paid Rs.20,24,000/- to the Respondents. The agreement, dated 11.12.2013 is placed on record by Complainant No.5. It is in respect of Flat No. 901 in the project "TARA ALICIA". Total consideration mentioned is Rs.19,82,000/-. As per clause 12 of the agreement, promoter undertook to hand over possession on or after two years from the date of agreement. The clause of reasonable extension of time under certain contingency is also inserted. Thus in ordinary circumstances, the Respondent was expected to deliver possession of the flat to the Complainant No.5 by 11.12.2015.

- 11) Adv. Tapkir for the Respondent Nos.1 and 2 placing reliance of clause 12 of the agreement, has tried to submit that there is no delay on the part of Respondents to deliver possession. According to him, the clause provides for delivery of possession on or after two years from the date of agreement and therefore, the Respondents are at liberty to hand over possession after due completion of the project.. The Respondents have given December, 2018 as the date for completion of project. Even though the wording in the agreement is a bit strange, the meaning that can be drawn is that the Respondents had undertaken to deliver possession within two years after execution of the agreement on 11.12.2013. If no time limit was put up in the agreement there would <sup>not</sup> have been mention of two years. Again there cannot be any agreement where the builder has given no time limit for completion of the project. An allottee parts with his precious money with a hope to get shelter for him in near future. Nobody will part with his money when there is no certainty of getting accommodation in foreseen future. Therefore, interpretation tried to be made by Adv. Tapkir

6.9.2018

cannot be accepted. On the other hand, the submission of Adv. Mamidwar that the date of possession was 11.12.2015 deserves to be accepted. There is no dispute that the Respondents have not yet delivered possession of flat to the Complainant No.5. Consequently, under Section 18 of the RERA, the Complainant No.5 is entitled for interest on the amount paid by him to the Respondents.

12) Complainant has further alleged that on 12.11.2016 the Respondents executed an undertaking to pay monthly rent to the Complainant No.5 till possession is delivered to him. The rent agreed to be paid for 1 BHK and 2 BHK flat are said to be @ Rs.7000/- and Rs. 9000/- p.m. respectively. The flat booked by the Complainant No.5 appears to be 2 BHK flat. No such undertaking is placed on record by the Complainant No.5. Moreover, he has claimed rent @ Rs.15,000/- p.m. in the relief clause. The Complainant will be entitled to claim rent that he has paid as a compensation only if he lost his present accommodation and failed to get possession of the flat booked from the builder. There is no evidence adduced in that respect by the present Complainant. Hence the prayer for recovery of rent cannot be considered.

13) The Complainant No.5 has placed on record receipts in respect of payments made by him, issued by the Respondent. The Receipts for (1) Rs. 2,00,000/- dated 06.04.2017; (2) Rs.3,00,000/-, dated 11.07.2014; (3) Rs. 3,12,400, dated 03.04.2014; (4) Rs. 3,60,000/-, dated 22.02.2014; (5) Rs.4,00,000/-, dated 31.12.2013, (6) Rs. 65,000/-, dated 21.05.2013, (7) Rs. 1,50,000/-, dated 16.05.2015 and (8) Rs. 1,00,000/- dated 14.04.2013 are placed on record. The total comes to Rs. 20,22,000/-. Thus

6-9-2018




the Complainant No.5 has paid the total consideration. He will be entitled to recover interest on the cost of the flat at the State Bank of India's Highest Marginal Cost of Lending Rate + 2% p.a. prevailing as on date i.e. 8.65% + 2% = 10.65% p.a. from 11.12.2015 till the Respondent delivers possession of the flat or gives notice to Complainant about obtaining occupancy certificate. I therefore, answer Point Nos.1 and 2 in affirmative and proceed to pass the following order.

### **ORDER**

- (1) The Respondent shall pay interest at State Bank of India's Highest Marginal Cost of Lending Rate + 2% p.a. prevailing as on date i.e. 8.65% + 2% = 10.65% p.a. to the Complainant on the actual amounts paid by the Complainant towards price of the flat, for each month of default in handing over possession since 11.12.2015 till Respondent delivers possession of flat or gives notice to Complainant about obtaining occupancy certificate.
- (2) The Respondent shall pay Rs. 25,000/- to the Complainant as cost of this complaint.
- (3) The Respondent shall pay the aforesaid amounts within 30 days from the date of this order.

Pune  
Dated :- 06/09/2018

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