

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

Complaint No. CC005000000010806

- 1) Mrs. Pushpa Saini
  - 2) Mr. Jordan Fantaay
  - 3) Ms. Seena Saini
- R/at CO Adv Rahul Kothari,  
Office No.114B, 1<sup>st</sup> Floor,  
Town Square, New Airport Road,  
Viman Nagar, Pune-411 014. .. Complainants

Versus

- 1) Marvel Landmarks Pvt.Ltd.
- 2) Mr. Vishwajeet Jhavar.
- 3) Mahesh Laddha

Having Registered Office at  
A/10-6, Mira Nagar,  
Koregaon Park, Pune-411 001.

- 4) Mr. Subhash S. Goel
- 5) Mr. Rajendra S. Goel
- 6) Mr. Anuj Umesh Goel.

Nos.4 to 6 R/at  
"San-Mahu Commercial Complex",  
5, Bund Garden Road, Pune-411 001. .. Respondents

**Coram : Shri S.B.Bhale**

**Hon'ble Adjudicating Officer**

**FINAL ORDER**

11<sup>th</sup> September, 2018

1. The Complainants have filed this complaint against the Respondents claiming the relief of interest and compensation on the amount paid

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by them to the Respondents against the booked flat under the agreement, dated 16<sup>th</sup> July, 2011. It is contended that under the agreement stated above, they have booked Flat No. 302, Building No."G" in the project of Respondents named "Marvel Ganga Sangria", Mohammedwadi, Pune, which is also registered with the Real Estate Regulatory Authority. Further it is contended that in terms of the Agreement, the Respondents have agreed to hand over possession of booked flat on or before 31.12.2014. Against the booked flat, they have paid the amount of Rs. 2,56,71,926/- to the Respondents out of total consideration amount of Rs. 2,58,91,000/-. Despite of persuasion, the Respondents failed to hand over possession of the booked flat. The amount paid to the Respondents is obtained from the bank on loan. As they couldn't get possession of the booked flat within the time limit prescribed, they are facing hardship. Therefore, due to delay in handing over possession, the Complainants have claimed interest on the amount paid by them w.e.f. 31.12.2014 onwards as well as amount of Rs. 60,00,000/- towards damages. They also claimed that the Respondents be directed to deposit the amount of Rs. 1,00,00,000/- during pendency of this complaint with the RERA Authority.

2. Plea of the Respondents was recorded through their representative on 25.05.2018, to which they denied the contents of the complaint.

3. The Respondent Nos.1 to 3 have filed their reply to resist the complaint. It is their case that the complaint is not maintainable under the provisions of the Real Estate (Regulation and Development) Act, 2016 ( hereinafter referred to as the **RERA**) as the flat was booked by the complainants under the agreement dated 16.07.2011 i.e. prior to the commencement of the RERA. Further it is contended that the agreement in question was registered under the provisions of MOFA and MOFA is still in force. Further, the terms and conditions of said agreement are binding on the parties concerned. Further it is denied that there is no outstanding demand

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against the booked flat. The Respondents are entitled to get the benefit of provisions of Section 32 of the RERA. So they can extend the date of possession after registering the project with the RERA Authority. Therefore, the complaint is liable to be dismissed.

4. The Respondent Nos.4 to 6 also opposed the complaint of Complainants vide their say, dated 28.08.2018. It is their contention that the Complainants cannot claim any relief against these Respondents in view of the terms and conditions of the joint venture agreement, dated 02.09.2009. These Respondents are formal parties to the agreement, dated 16.07.2011. It is contended that the Complainants have claimed all the reliefs against the Respondent Nos.1 to 3. The project called "Marvel Ganga Sangria" is being developed by virtue of the joint venture agreement, dated 02.09.2009. That agreement was between the owners of the land i.e., these Respondents on one hand and the Respondent No.1 to 3 on the other hand. The responsibilities and liabilities of all the Respondents have been specifically defined in the said joint venture agreement. The complaint of the Complainants have been very mischievously filed, claiming relief against all the Respondents. In terms of clause No. 4(A)(vi) of the said joint venture agreement, dated 02.09.2009, the sole responsibility of these respondents is to transfer the clean and clear marketable title of the land to the ultimate body of all the unit purchasers of all the units to be constructed on the said land. The entire responsibility of the construction, possession and all other related incidental acts is upon the Respondent No.1 in view of clause No.4(B)(ix) of the above referred joint venture agreement. Further as per clause 4(C) of the said agreement, only responsibility of these Respondents is to get the land demarcated and measured, which act has already been performed by them. The said facts have been reiterated in clause No.38 of the agreement, dated 16.07.2011, by which the Complainants have booked the flat in the project of Respondents. Pointing out all the terms and conditions, these Respondents have

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written a letter dated 12.06.2016 to the Respondent No. 1 that he is completely responsible for all the costs and consequences and litigations filed by the Complainants. In view of the above facts and circumstances of the case and in terms of clause No. 38 of the agreement, dated 16.07.2011 and joint venture agreement, dated 02.09.2009, the complaint is liable to be dismissed against these Respondents.

5. In view of the above facts and circumstances of the case and the 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 Complainants are entitled to claim interest and compensation on the amount paid by them to the Respondents against the booked flat under the agreement, dated 16.07.2011 for delayed possession under the provisions of Section 18 of the RERA ? .. .. . In the Affirmative
- (2) Whether the Respondent Nos. 4 to 6 have established their case that the Respondents Nos.1 to 3 are sole responsible for the Consequences of litigation and cost and as such complaint is liable to be dismissed Against them ? .. .. . In the Affirmative.
- (3) What order ? .. .. . As per final order.

### REASONS

6. **POINT No.2** :- Heard parties through their respective Advocates. Perused the papers filed on record. On this point, Mr. Raul Kothari,



Advocate for the Complainants argued that the Complainants are entitled to claim the relief of interest and compensation on the amount paid by them to the Respondents. Further he submits that the Respondent Nos.4 to 6 are land owners. The actual payment is made by them to Respondent Nos.1 to 3 as they have undertaken the activities of development of the entire project, wherein the Complainants have booked the flat. Therefore, the Complainants are not having any grievance against Respondent Nos.4 to 6. As against this, Mr. Kutkar, the Advocate for Respondent Nos.1 to 3 submits that the say filed by these Respondent Nos.1 to 3 be treated as his arguments. It is to be noted that the say of Respondent Nos.1 to 3 is silent about the responsibility of Respondent Nos.4 to 6. Even after filing the say by Respondent Nos.4 to 6 and claiming that the entire responsibility is of Respondent Nos.1 to 3, no additional say or proof is filed on record to resist the contentions of Respondent Nos.4 to 6. As against this, Mr. Santosh Patil, Advocate for Respondent Nos.4 to 6 submits that the say filed by these Respondents be treated as his arguments.

7. On perusal of the say of Respondent Nos.4 to 6 and more particularly para No.9 of the same, it be seen that there is a separate joint venture agreement, dated 02.09.2009 between the Respondent Nos.1 to 3 and Respondent Nos.4 to 6. The agreement in question, dated 16.07.2011 is registered between the Complainants and Respondent Nos. 1 to 6. However, there is reference in the said agreement and for this purpose, the clause No.38 is incorporated in it. If clause No. 38 of this agreement is read along with joint venture agreement, dated 02.09.2009 with reference to clause No.4(A)(vi), 4(B)(ix) and 4(C), it be seen that though the Respondent Nos.4 to 6 are land owners, the entire responsibility of marketing and selling of the flats/units etc. is shifted on the Respondent Nos.1 to 3. No doubt about it that being land owners, the Respondent Nos.4 to 6 will be held liable for any

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consequences or litigation arising thereon, if their position is of the nature of sharing total revenue generated from the sale of apartment or sale of total area developed for sale in view of the definition of "promoter" as is defined under Section 2(zk). The copy of the joint venture agreement is filed on record. The Complainants have also filed on record, the copy of the agreement in question under which they have booked the flat in the project of Respondents. On perusal of the terms and conditions referred above from both the agreements, the entire activities are to be carried out by Respondent Nos.1 to 3 and even there is specific reference in the agreement in question, dated 16.07.2011 vide clause No.38. Considering this very fact, the Complainants have made it clear that they have no grievance against the Respondent Nos.4 to 6 nor claiming any relief against them as the entire amount is received by the Respondent Nos.1 to 3. The Respondent Nos.1 to 3 have also not seriously challenged the point in respect of liability of Respondent Nos.4 to 6. In accordance with the terms of joint venture agreement, the interest of Respondent Nos.1 to 3 and their liability as well as interest of Respondent Nos.4 to 6 and their liability is specifically defined. Therefore, I am of the opinion that the Respondent Nos.4 to 6 are formal parties being land owners to the agreement, dated 16.07.2011, by which the Complainants have booked the flat in the project of Respondents. Therefore, it cannot be said that the Respondent Nos.4 to 6 are also equally liable to share the responsibility along with Respondent Nos.1 to 3, being joint venture project. Thus the entire monetary transaction regarding payment of booked flat is in between the Complainants and Respondent Nos.1 to 3. Considering this very fact and for the reasons stated above, I am of the opinion that the Respondent Nos.1 to 3 can only be held responsible for the claim of Complainants and relief, if any granted in their favour.

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8. **POINT No.1** :- It is not in dispute that the Complainants have booked flat No. 302, Building No. "G" in the project "Marvel Ganga Sangria", under the agreement, dated 16.07.2011. In terms of this agreement, the Respondents have agreed to hand over possession of the booked flat on or before 31.11.2014. It is fact that the Respondents failed to hand over possession of the booked flat to the Complainants till date. In other words, there is enormous delay and Complainants are not certain as to when they will get the actual and physical possession of the booked flat. In such circumstances, their claim for interest and compensation for delayed possession is justified in view of the provisions of Section 18 of the RERA. I can say so because though the agreement in question is of 16.07.2011 and as the project of Respondents is registered with RERA Authority, it can be treated as "ongoing project" in view of the provisions of Section 3 of the RERA. Hence I do not find any substance in the say of Respondent Nos.1 to 3 that the complaint is not tenable as the agreement in question is registered under MOFA and MOFA is still in force.
9. It is necessary to point out that the total cost of the booked flat was Rs. 2,58,91,000/- and the amount paid by the Complainants till the date is Rs. 2,56,71,926/-. The aforesaid fact is not denied by Respondent Nos.1 to 3, except opposing the say of Complainants that no amount is due and payable against them towards the payment of entire consideration.
10. In view of the facts stated above, the question remains as to what will be the amount on which the Complainants are entitled to receive the interest and compensation, if any ? Here, in this case, the Complainants are intending to remain with the project. Therefore, they cannot claim the interest on the amount spent by them towards the stamp duty. On perusal of the copy of Index No.2 filed

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on record, the amount of stamp duty is Rs. 12,77,150/-. If the aforesaid amount is deducted from the entire amount paid by the Complainants to Respondent Nos.1 to 3 i.e. Rs. 2,56,71,926/-, it will come to the sum of Rs. 2,43,94,746/-. Thus the Complainants are entitled to claim interest on the amount of Rs. 2,43,94,746/- from the Respondent Nos.1 to 3 in view of the findings recorded against Point No.2. As the Respondent Nos.1 to 3 failed to hand over possession on the agreed date i.e. 31.12.2014, then Complainants are entitled to receive interest on the amount stated above w.e.f. 01.01.2015 till the handing over of possession of the booked flat. In addition, the Complainants are also entitled to the cost of this litigation of Rs. 35,000/- from the Respondent Nos.1 to 3. The Complainants have claimed relief of compensation or damages of huge amount, but that claim cannot be entertained, as the rate of interest to which the Complainants are entitled to receive is much higher than the market rate. So also, the interest also includes the compensation. Here I would like to make it clear that the interest and compensation, if any is to be awarded to the Complainants if they are entitled as per the provisions of RERA, apart from their claim. Thus the complaint is allowed against Respondent Nos.1 to 3. At the same time, the Complainants themselves have not claimed any relief against Respondent Nos. 4 to 6. So the complaint stands dismissed against the Respondent Nos.4 to 6 for the reasons so recorded against Point No.2.

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11. In view of the prescribed rules and the provisions of Section 18 of the RERA, the rate of interest payable by the promoters i.e. Respondent Nos.1 to 3 to the Complainants 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



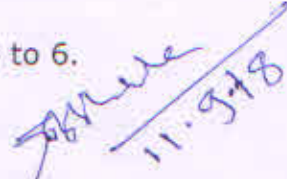
Act, the rate of interest at the rate of MCLR of State Bank of India which is currently 8.65% and it will be added by 2%. Thus the Complainants are entitled to receive the simple interest @ 10.65% p.a. on the amount of Rs. 2,43,94,746/-.

12. For these reasons and the express provisions of RERA, I recorded my findings on Point No.1 in the affirmative. Hence the following order.

### ORDER

1. The Respondent Nos.1 to 3 are directed to pay simple interest @ 10.65% on the amount of Rs. 2,43,94,746/- w.e.f. 01.01.2015 till handing over possession of the booked flat under the agreement, dated 16.07.2011.
2. The Respondent Nos.1 to 3 are directed to make the payment of interest as ordered to the Complainant within the period of one month since the date of this order and continue to pay the same till handing over possession of the booked flat.
3. The Respondent Nos.1 to 3 are also directed to pay the amount of Rs. 35,000/- to the Complainants towards the cost of this litigation.
4. The complaint is dismissed against Respondent Nos.4 to 6.

Pune  
Date :- 11.09.2018

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