

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY  
AUTHORITY

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

AT : PUNE

Complaint No. CC005000000011072

1. Mrs. Vaishali C. Bhor  
R/at A/302, Hare Krishna CHS,  
Sector 4, Vashi, Navi Mumbai-400 703.
2. Mrs. Neeta S. Solanki,  
R/at 52C, First Floor, Flat No.1,  
Sindhi Society, Chembur Mumbai-400 071.
3. Mr. Janakraj Ramjidas Katyal  
Since deceased through his legal heirs.

- a) Smt. Veena Janakraj Katyal.
- b) Shri Vivek Janakraj Katyal.

R/at Dreamland Society,  
Bungalow No. 18, Mulund (W),  
Mumbai-400 082.

- c) Vikas Janakraj Katyal,  
R/at H. No.502, Adwalpalkar Shelter,  
Caranzalem Tiswadi, North Goa,  
Goa-403002.

.. Complainants

Versus

1. Shri Subhash Sitaram Goyal  
R/at San-Mahu Commercial Complex,  
5, Bund Garden Road, Pune-411 001.
2. Shri Rajendra Sitaram Goyal,  
R/at San-Mahu Commercial Complex,  
5, Bund Garden Road, Pune-411 001.
3. Shri Umesh Sitaram Goyal  
Since deceased through Legal Heirs

- a) Shri Annuj Umesh Goel,

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- b) Shri Ankit Umesh Goel,
- c) Sou. Seema Anshul Garg,
- d) Smt. Meena Umesh Goel.

All R/at San-Mahu Commercial Complex,  
5, Bund Garden Road, Pune-411 001.

- 4. Marvel Landmarks Pvt. Ltd.  
Office at A/10/6, Meera Nagar,  
Koregaon Park, Pne-411 001.
- 5. Shri Ratanlal Gulabchand Gundesha
- 6. Shri Mulchand Kasturchand Oswal.
- 7. Bablibai Mulchand Oswal.

Nos. 5 to 7 being represented through  
Authorized attorney  
Shri Vishwajeet Subhash Jhavar,  
Office at A/10/6, Meera Nagar,  
Koregaon Park, Pune-411 001.

.. Respondents

#### APPEARANCES :-

Complainant : Adv. Anil Mahalle  
Respondent No.4 : Adv. Amit Patil  
Respondent No.1, 2,3(a) to 3(d), 5,6 & 7 : Exparte

#### FINAL ORDER

(Delivered on 07.09.2018)

1. Out of the 3 persons, who had booked single flat with the Respondents/builder, one person died and his heirs have joined the other two, in claiming withdrawal from the project and refund of the amount, as the Respondents failed to deliver possession of the flat as per terms of the agreement.
2. The Complainants have averred that they booked Flat No. 1401 in "J" Wing on 14<sup>th</sup> floor, admeasuring 159.37 sq. Mtrs.

7.9.2018



carpet area and inclusive of balconies 206.98 sq. Mtrs. area in the project "Marvel Ganga Sangria" at Mohammedwadi, in Pune vide Agreement. The price agreed to be paid was Rs. 1,37,50,000/-. Vide Articles of Agreement executed on 14.08.2012 registered with the Sub-Registrar, Haveli, the Respondents had undertaken to deliver possession of the flat on or before 31<sup>st</sup> December, 2013. The Complainants have made payments as per clause 22 and 23 of the agreement and never made any default. On 31<sup>st</sup> December 2013 and thereafter the Complainants requested the Respondents to hand over possession, but the Respondents have given false promises. The Complainants paid due instalments with accrued interest @ 18% p.a. till 25<sup>h</sup> April, 2014. The Respondents have failed to deliver possession. The Complainants have made total payment of Rs. 1,30,83,629/-. The Complainants want to back out from the transaction and refund of their entire amount with interest and compensatory damages.

3. The complaint proceeded exparte against Respondent Nos.1, 2, 3A to 3D, 5, 6 and 7, as they failed to appear despite service of notice.
4. The Respondent No.4 has resisted the complaint by filing say on 29.06.2018. It is alleged that RERA does not have retrospective effect. Since the present agreement was executed before coming into force of RERA, the provisions of RERA are not attracted. Complainants and Respondents entered into agreement and terms are binding on both parties. Respondent is ready to deliver possession as per date communicated to RERA. Service tax, VAT, stamp duty were

29.06.2018

not pocketed by Respondent and therefore, Respondent is not liable to repay them. Though the original date for possession was 31.12.2013, further extension was stipulated under the agreement. The delay is occurred due to the reason beyond control of the Respondent. The Respondent has clear and good intention of completing the project and delivering possession by 31.12.2018. If majority of allottees like Complainants withdraw from the project, the Respondents will have to shut down the project and it will harm the other buyers. Section 32 of RERA requires the authority to facilitate the growth and promotion of real estate sector. If Complainants are allowed to withdraw from the project, the basic purpose of Section 32 of the RERA would not be met with. The Respondent Nos.1 to 3 and 5 to 7, the co-promoters alternatively will be jointly and severally liable. Since no cause of action arose for filing of the complaint, it deserves to be dismissed.

5. On the basis of rival contentions, 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 Complainants without there being reasons beyond their control ? .. In the Affirmative.
2. Are the Complainants entitled to reliefs claimed ? .. In the Affirmative.

*W  
7-12-2018*



3. What order ?

.. As per final order.

### REASONS

6. **POINT Nos.1 and 2** :- The Complainants have alleged that the Respondents firstly executed agreement inter-se and obtained commencement certificate from PCMC on 1<sup>st</sup> of October, 2010 for their project "Marvel Ganga Sangria" building 'J' Wing. It was in the year 2012, that the Complainants approached the Respondents for purchase of the said flat. Articles of Agreement are said to have been executed on 14<sup>th</sup> August, 2012. Copy of the agreement is placed on record. Flat agreed to be sold to the Complainants was No. 1401, area 206.98 sq. Mtrs. in the project "Marvel Ganga Sangria" in "J" building. The price fixed was Rs. 1,37,50,000/- . As per clause 5(b), date of deliver of possession was on or before 31<sup>st</sup> December, 2013. It may <sup>noted</sup> that possession was expected within 1¼ years since execution of agreement. Perhaps the project was in advanced stage because generally more than two years period is given by the builder for delivering possession since execution of the agreement. The contingencies under which period for delivery of possession was to be extended are given in clause 14 of the agreement. Respondents do not dispute that they have still not delivered possession of the flat to the Complainants.
7. A feeble attempt was made by the Respondents in defending the delay by relying on clause 22 and 23 of the agreement. What is provided under those clauses is that purchaser had to make payments towards share money, entrance fee, society formation, electric supply, membership of club, etc. The

*7-11-2018*

purchasers had also to deposit Rs. 5,40,000/- with the promoter before taking possession to facilitate the builder to deposit that money along with other amounts lying with him in the account of the society that was going to be formed. Had the Respondent been completing the construction and undertaking electric supply, start of club, formed society, he was justified in demanding the amounts mentioned in clauses 22 and 23. Admittedly, the construction is not yet over. The Respondents claim that it will be over by 31<sup>st</sup> December, 2018 and they will be delivering possession by that date. It is clear that there are no justifiable reasons for not delivering possession by 31<sup>st</sup> December, 2013. Consequently, the Respondents are not entitled to seek extension of time for delivering possession. They have clearly committed breach of the term in the agreement.

8. The Complainants claim that they went on making payments till the year 2014. They have made a total payment of Rs.1,30,83,629/- out of the agreed consideration of Rs.1,37,50,000/-. May be that in the year 2014 they had hopes of receiving possession at the earliest. Perhaps thereafter they lost the hopes and failed to make payment of the balance amount. The Respondents had registered this project with RERA as ongoing project. They have also given the date for completion as 31<sup>st</sup> December, 2018 at that time. However, such extension is unilateral on the part of the Respondents and not binding on the Complainants. Consequently, it will have to be held that the Respondents have committed breach of the terms of agreement. Therefore, under Section 18 of the RERA, the Complainants are entitled

7.7.2018



to withdraw from the project and refund of the amount paid to the Respondents.

9. The Respondent No.4 appears to be the builder. Other respondents appear to be directors of Company or owners of the land. There is no dispute that all the Respondents had undertaken development of the land and construction in the project. Consequently, all the Respondents will be liable to repay amount to the Complainants. The Complainants have placed on record receipts in respect of payment made to the Respondents. The Respondents are not denying the payments made by the Complainants. Consequently, the Complainants are entitled to refund of Rs. 1,30,83,629/- except the stamp duty, which can be refunded to the Complainants. I therefore, answer Point Nos.1 and 2 in the affirmative and proceed to pass following order.


### **ORDER**

- (1) The Complainants are entitled to withdraw from the project. The Respondents shall jointly and severally refund amount of Rs. 1,30,83,629/- to the Complainants except the stamp duty, which can be refunded to the Complainants, together with 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. from the date of payment.
- (2) The Respondents shall pay Rs. 50,000/- to the Complainants as cost of this complaint.

*7 Jan 2018*

- (3) The Complainants shall execute cancellation deed at the cost of the Respondents.
- (4) The charge of the aforesaid amount shall be kept on the flat in question.
- (5) The Respondents shall pay the aforesaid amounts within 30 days from the date of this order.

Pune  
Dated :- 07/09/ 2018

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