

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI.**

**COMPLAINT NO: CC005000000022033**

Mrs.Natasha Lal  
Mr. SQN. LDR. Raunaq Sahay ... Complainants.

**Versus**

Tupe Developers  
Leisure Town ... Respondents.  
Bhansali Infotech LLP  
(Leisure Town)

**COMPLAINT NO: CC005000000022035**

Capt. Asha Alagappa ... Complainant.

**Versus**

Tupe Developer  
Leisure Town ... Respondents.  
Bhansali Infotech LLP  
(Leisure Town)

**COMPLAINT NO: CC005000000022047**


Mr. Amul Vora ... Complainant.

**Versus**

Tupe Developer  
Leisure Town ... Respondents.  
Bhansali Infotech LLP  
(Leisure Town)

**MahaRERA Regn: P52100001401.**

**Coram: Shri B.D. Kapadnis,  
Hon'ble Member & Adjudicating Officer.**

  
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**Appearance:**

Complainants: Adv. Sachin Bhosale.

Respondent No.1: Adv.Salunkhe.

Respondent No.2: Adv. Jairam.

Respondent No.3: Adv. Nasreen Shaikh.

**FINAL ORDER**

**29<sup>th</sup> March 2019.**

Captain Asha has booked flat no. 104, Mrs. Natasha & Mr. Raunaq Sahay have booked flat no. 108, Mr. Amul has booked flat no. 807 in J-2 building of the respondent no. 1 & 3's registered project 'Leisure Town' situated at village Hadapsar. They promised to hand over the possession of the flats by the end of December 2018. However, the respondent no. 1 gave a letter to City Engineer, Pune Municipal Corporation on 18.07.2018 complaining that the respondent no. 3 have not provided the infrastructure like underground tanks, sewerage treatment plant, internal roads, club house, garden, drainage lines, parking, fire tanks etc. and the premium for making paid FSI area into FSI has not been paid for J-2 building. It is the grievance of the complainants that the respondent no. 1 and 2 are causing obstructions in their way of getting the possession of their respective flats with occupancy certificate and therefore, they have prayed for injunction to restrain them from doing so by alleging that the provisions of Section 11(4)(b) and Section 19(3) of RERA have been contravened.

2. The respondent nos. 1 & 2 have filed their separate replies. The sum and substance thereof is, the respondent no. 1 are the land owners of land bearing City Survey nos. 202/A, 202/B/1/1 to 202/B/1/7, 202/B/2 to 202/B/4 situated at Village Hadapsar measuring 8 hectares 93.62 Are. The respondent no.1 gave development rights of these lands to the respondent no. 2 by way of development agreement dated 09.09.2011. Out of these lands 40,858 sq.mtrs. have been given to respondent no. 3 by the



respondent no. 1 for development under the development agreement dated 04.07.2014. The respondent no. 3 are required to bear the cost and expenses for procuring the permissible paid FSI for constructing J-2 building. The respondent no. 1 & 3 are to share the revenue. There is dispute between the respondent no. 1 & 3 in respect of revenue sharing which is pending before the Arbitrator.

3. The respondent no. 2 contends that as per development agreement dated 12.11.2011, they were required to develop internal roads, amenity space to provide drainage water, sewerage and garden and other infrastructures within the 40858 sq.mtrs. of land and the owner i.e. respondent no. 1 shall compensate and reimburse them expenses incurred on actual on pro-rata share basis. As agreed on 01.07.2014, respondent no. 3 took the responsibility to plan/construct and develop all infrastructures including internal roads, club house, garden relating to J2 building. According to respondent no. 2 on 16.06.2017 when they issued the letter to the respondent no. 1 to reimburse them the infrastructure expenses amounting of Rs. 3,10,20,000/- for drainage lines, parkings, water tanks and all other amenities on the project of the said land, the respondent no. 1 neglected to reimburse them. The respondent no. 3 instead of developing the infrastructure for J-2 building is calling upon the respondent no. 2 by their letter dated 21.11.2017 to complete the infrastructure development of J-2 building.

4. Both the respondent nos. 1 & 2 contend that they have not obstructed the complainants from taking the possession of their booked flats. According to them the O.C. has been issued on 18.08.2018 and therefore, there was no question of obstructing the complainants from taking possession prior thereto because they were not entitled to take the possession without O.C. They further contend that the advocate who represents the complainants in these cases also represents the respondent no. 3 before the learned Arbitrator and there is collusion between the



complainants and the respondent no. 3. Hence, they request to dismiss the complaints.


5. The respondent no. 3 has not filed any reply.

6. Following points arise for determination and my findings thereon as under:

| POINTS   | FINDINGS                  |
|--|---------------------------|
| 1. Are the respondent nos. 1 & 3 liable to hand over the possession of the booked flats to the complainants with O.C.? | Affirmative.              |
| 2. Whether the respondent nos. 1 & 2 obstructed the complainants to take possession of their respective flats?         | Negative.                 |
| 3. What order?   | Complaints are dismissed. |

#### REASONS

7. The complainants have relied upon the letter given by the respondent no. 1 to the City Engineer, Pune Municipal Corporation dated 16<sup>th</sup> July 2018 whereby the respondent no. 1 attempted to bring to the notice of the City Engineer of Pune Municipal Corporation that the premium for making paid FSI into FSI has not been paid by the respondent no. 3 and the infrastructure like water tank, sewerage treatment plant, fire tank etc. have not been provided. They requested that they be heard in the matter. It is also brought to my notice that after hearing the parties the Corporation has issued the completion certificate on 18.08.2018. It becomes clear that respondent no. 1 were discharging their legal and contractual duty by giving the letter to the City Engineer for providing the agreed infrastructure of J-2 building which in fact, was in the interest of the complainants. Therefore, this legal act of respondent no. 1 cannot be

  
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termed as illegal obstruction in the complainants' way of taking the possession of their respective flats.

8. Both the respondent nos. 1 & 2 have made the statement before me that they have no objection if the respondent no. 3 puts the complainants in the possession of their respective booked flats. Therefore, there is no necessity of injunctions prayed by the complainants. It is true that as per the provisions of Section 11(4)(b) and 19(3) of RERA, it is the duty of the promoter to give possession with O.C. to the allottees and respondent nos. 1&2 have not been causing any obstruction to respondent no.3 in giving possession and to complainants from taking the possession of the flats.

9. The complainants have referred to the earlier order dated 27.11.2017 passed in No. CC005/149 and other matters. The penalty on respondent no.1 has been imposed under Section 63 of RERA and the penalty has also been recovered from them for non-compliance of the order. Moreover, the said order is challenged by the respondent no. 1 before the Appellate Tribunal in AT005/10674 and others. Therefore, the complainants have not pressed this issue.


10. In facts and circumstances, it is necessary to dismiss all complaints with no order as to the cost. Hence, the order.

#### ORDER

The complaints are dismissed. No order as to the cost.

Mumbai.

Date: 29.03.2019.

  
29-3-19  
(B. D. Kapadnis)  
Member & Adjudicating Officer,  
MahaRERA, Mumbai.