BEFORE THE MAHARASHTRA

REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Virtual Hearing held through video conference as per
MahaRERA Circular No.: 27/2020

1. COMPLAINT NO. CC004000000030372

Kunal Prashant Dashottar
(*Power of Attorney holder*
for MADHUSUDAN NAGAR) …COMPLAINANT/S

a/w

2. COMPLAINT NO. CC004000000030403

Kunal Prashant Dashottar
(*Power of Attorney holder*
for MADHUSUDAN NAGAR & MINAKSHI NAGAR) …COMPLAINANTS

VS

1. M/s. SHRI JALARAM DUGDHA KENDRA
   (A Partnership firm) through its 12 partners
2. Shri Dharmendra Katari
3. Smt. Chhaya Dharmendra Katari
4. Shri Vinal Dharmendra Kataria
5. Shri Manharlal Narbheram Kataria
6. Shri Vasumati Manharlal Kataria
7. Shri Ketankumar Manharlal Kataria
8. Shri Bharat Manharlal Kataria
9. Shri Kantilal Narbheram Kataria
10. Shri Nilesh Kantilal Kataria
11. 1.Shri Sanjay Kantilal Kataria
12. Shri Yogesh Kantilal Kataria
13. GOLECHHA HOUSING & INFRASTRUCTURE
    PVT. LTD. *(Real Estate Agent & Contractor)* …RESPONDENT/S

MAHARERA PROJECT REGISTRATION NO. P50500009887

Order

March 12, 2024

(*Last Date of hearing – 10.10.2023 the matter was reserved for order*)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA

Complainants present In-person
Ashwin Golechha for the Respondents

1. the Respondent No. 1 is the Promoter/Developer within the meaning of Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "**said Act**") of Real Estate Regulatory Authority (hereinafter referred to as the "**RERA**"). The Respondent No. 1 is registered as the Promoter of the Project namely "JALARAM MANGALAM" under section 5 of the said Act bearing **MAHARERA Project Registration No. P50500009887** (hereinafter referred to as the "**said Project**").

2. The Complainants have impleaded total 13 parties as Respondents in both the captioned complaints. The Respondent No. 1 is the Promoter firm, and the Respondent Nos. 2 to 12 are the partners of the Promoter firm. The Respondent No. 13 is the real estate agent having registered MahaRERA No.A50500019795. The Respondent No. 13 is also the contractor of the said Project. In the order below Respondent shall mean Respondent No. 1 unless specifically mentioned.

3. On the MahaRERA Project registration webpage the proposed completion date is 31.12.2020, the revised proposed completion date is 31.12.2021, and the extended date of Completion is 30.12.2022. The Respondent has uploaded Part Occupancy Certificate (OC) issued by Nagpur Metropolitan Region Development Authority dated 08.04.2021, 10.08.2021 & 31.03.2022.

4. The Complainants are seeking the following reliefs:

SR. NO.	COMPLAINT NO.	RELIEFS SOUGHT
1.	CC004000000030372	*a) "direct the Respondents no. 1 to 13 to **execute the sale deed** & hand over the **possession** in respect to Shop No. 1 situated in the Project namely "Jalaram Manglam" at the initially agreed amount as well as to;* *b) Award to the tune of Rs. 10,00,000/- in favour of the **compensation** Complainant and against the Respondents towards harassment and **mental agony** suffered by the Complainant due to unethical, improper and unfair malpractices adopted by the Respondent Firm & Company;* *c) also award the compensation amount towards loss of proposed rent regarding the shop no. 1 as per prevalent market rate Rs. 120/- per sq ft in favour of the complainant and against the Respondents;*

		d) Award the cost of the proceedings in favour of the Complainant; Pass such other or further order(s) as this Hon'ble Regulatory Authority deem fit and proper under the facts and circumstances of the case in favour of the Complainants
2.	CC004000000030403	*a) "direct the Respondent No. 1 to 13 to **refund** the deposited amount of Rs. 5.00 Lac along **with interest** at the rate of prevalent Marginal Cost of Lending Rate for a retention period;* *b) direct the Respondent No. 1 to 13 to **compensate the loss of Rs. 1.50 Lac** of stamp duty, parking and other charge Respondents has bare in settlement with Rajani Pande and Harish Tiwari along with **interest** at the rate of prevalent Marginal Cost of Lending Rate; direct the Respondent No. 1 to 13 to pay the interest upon the amount of Rs. 10.00 Lac for a retention period at the rate of prevalent Marginal Cost of Lending Rate;* *c) direct the Respondent No. 1 to 13 to pay the **interest upon the amount of Rs. 10.00 Lac** for a retention period at the rate of prevalent Marginal Cost of Lending Rate;* *d) direct the Respondent No. 1 to 13 to pay the **interest upon the amount of Rs. 2.04 Lac** which was paid by the Complainants under the head of Stamp Duty for flat no. 604-A at the rate of prevalent Marginal Cost of Lending Rate;* *e) direct the Respondents to pay the difference between then (Oct 2020) and current charges of stamp duty, GST and registration charges which were relaxed by the Govt. when the flat no. 604-A was booked and fraud happened to the Complainants on total sales consideration of the flat.* *f) Award **compensation to the tune of Rs. 10,00,000/-** in favour of the Complainants and against the Respondents towards harassment and mental agony suffered by the Complainants due to unethical, improper and unfair malpractices adopted by the Respondent Firm & Company and mental agony, financial and emotional distress caused during legal battle of misappropriation of fund;* *g) Award the cost of the proceedings in favour of the Complainants;* *h) Pass such other or further order(s) as this Hon'ble Regulatory Authority deem fit and proper under the facts and circumstances of the case in favour of the Complainants.*

5. The captioned complaints were heard on 10.10.2023 wherein the following Roznama was recorded by this Authority:

SR. NOS.	COMPLAINT NO.	ROZNAMA RECORDED
1.	CC004000000030372	*1. "The Complainant states that has executed an agreement for Sale dated 14.07.2020. The total consideration for the same was Rs 28 lakhs which they have paid including the GST Amounts. The Complainant now seeks directions for the execution of the sale deed.*

		2. *The Respondent states that the Complainant has not paid the full amount and GST still remains to be paid. Further the Respondent states that he has carried some works at the request of the Complainant and the Complainant is also not paying for the same. The Respondent has filed a written argument which he request to be taken on record.* 3. *Parties are at liberty to file written submissions, if any, on or before 23.10.2023, Subsequent to which, the matter will be reserved for orders."*
2.	CC004000000030403	1. *"The Complainant states that he has paid an amount of Rs 5 lakhs to the Respondent for a flat for which he has a receipt. The Complainant seeks refund of the same.* 2. *The Respondent states that there are certain amounts to be paid by him and hence they were holding back on these payments.* 3. *Parties are at liberty to file written submissions, if any, on or before 23.10.2023 Subsequent to which, the matter will be reserved for orders."*

6. The brief facts in the complaints are as follows:

SR. NO.	COMPLAINT NOS. / DATE OF FILING	SHOP NO. / FLAT NO.	DATE OF AFS[1]	POSSESION AS PER AFS	TOTAL CONSIDERATION (INR)	TOTAL AMOUNT PAID (INR)
1.	CC004000000030372 10.10.2023	1	14.07.2020	30.09.2021	28,00,000	28,00,000
2.	CC004000000030403 10.10.2023	604	Not executed	Not executed	No details provided	5,00,000

7. The brief submissions of the Complainants are as follows:

A. **<u>Submissions in complaint at Sr. No. 1</u>**

(i) That as per clause No.6 of the agreement for sale (hereinafter referred to as "**AFS**") it was agreed that the Respondent would deliver the possession on or before 30.09.2021.

(ii) That the Respondent has not issued any notice for taking possession which had to be done as per the terms of AFS clause No. 7.1 despite that the Complainant had paid the entire sale consideration.

(iii) That the Complainant visited the office of the Respondent and made various correspondences to execute sale deed. However, the Respondent did not show any interest to come forward.

(iv) That the Respondent has let out other shops of the project on rent, and that sale deed of some other shops have also been executed. However,

[1] **AFS – agreement for sale**

the Respondent is not honouring the AFS executed with the Complainant and is neither giving possession nor executing the sale deed.

(v) The Complainant thus prays that the Respondent be directed to execute sale deed as per the terms of AFS, to pay necessary payments towards GST, electricity meter, sales tax, cess, etc. and litigation expenses.

B. **Submissions in complaint at Sr. No. 2**

(i) That despite initial payment of Rs. 5,00,000/- and repeated requests, the Respondent did not execute the agreement.

(ii) That a subsequent demand of Rs. 10,00,000/- and was raised by the Respondent without executing the AFS, the amount was paid by the Complainants to one Rajni Pande, sales manager in the office of Respondent No. 2. Further, Rs. 2,50,000/- was also deposited in the Bank Account of Rajni Pande, sales manager towards stamp duty and other charges.

(iii) That FIR was registered on 12.08.2021 against the Miss Rajni Pande due to a discovery that she committed misappropriation and defalcation of the amounts deposited by Complainants in her bank account as payment of consideration.

(iv) Subsequently, a compromise was arrived, and an Order was passed by the Nagpur Bench of Hon'ble Bombay High Court in a Criminal Application 585/2021 and an amount of Rs. 11,00,000/- was refunded to the Complainants by the brother of Miss Rajni Pande.

(v) That the Complainants suffered a loss of Rs. 1,50,000/- on account of fraud committed by the employees of the Respondent.

(vi) That due to lackadaisical approach of the Respondent, the Complainants requested refund to which the Respondent agreed. However, till today the Respondent has not honoured his own commitment of refunding the amount to the Complainants despite several communications made.

(vii) That the Respondent indulged in unfair trade practice and committed breach of Section 13 of the said Act.

(viii) That the Respondent is under the obligation to refund the amount of Rs. 5,00,000/- along with penal interest.

(ix) Thus, the complainant prays for refund of Rs. 5,00,000/- along with appropriate interest till realization, Rs. 2,00,000/- towards damages and compensation on account of mental agony and Rs. 1,00,000/- towards litigation expenses.

8. The brief submissions of the **Respondent** are as follows:

A. **Submissions in complaint at Sr. No. 1**

(i) That the amount received till date from the Complainant is short of Rs. 1,02,000/-

(ii) That the Complainant orally requested for some extra works which were not covered in the AFS.

(iii) That the delay in delivering possession was caused due to Covid 19 Outbreak.

(iv) That the Respondent via e-mail dated 04.10.2021 committed to execute sale deed within 15 days of receipt of entire sale consideration. However, no reply was received from the Complainant.

(v) That the Complainant failed to pay the substantial outstanding amount.

(vi) Thus, the Respondent prays to squash the complaint.

B. **Submissions in complaint at Sr. No. 2**

(i) That it is undisputed that the amount of Rs. 5,00,000/- was received by the Respondent from the Complainants. However, it does not amount to 10% of total consideration as the proposed total consideration is Rs. 46,50,000/-

(ii) That to execute the AFS, stamp duty has to be paid by the person booking the Flat.

(iii) That after the initial payment of Rs. 5,00,000/- the payment of further amounts was made to the ex-employee of the firm by the Complainants for the reasons best known to him.

(iv) That on one hand the Complainants are accusing the Respondent for not coming forward to execute AFS and on the other hand the Complainants are stating second wave of covid as their inability to get the AFS registered. This paradox is irrefutable.

(v) That the Complainants have not made sufficient payments for the AFS to be executed.

(vi) That the Respondent regrets the fraud committed by the ex-employee with the Complainants. However, the loss of Rs. 1.5 lakh suffered by the Complainants was on account of severe negligence on the part of the Complainants.

(vii) That the booking date was 31.10.2020, the date on which the stamp duty was paid is 27.03.2021 and the intimation of cancellation of booking is dated 16.09.2021, as a result the Respondent got deprived of seeking any advance from other buyers as the Complainants held worth Rs. 50 lakh for one year.

(viii) That the relief sought by the Complainants is not tenable as the Respondent has already transferred the flat No. 604-A vide sale deed dt. 21.12.2022.

(ix) Thus, the Respondent prays to quash the complaint.

9. From the facts and the submissions, the issues that need to be considered is *whether the complaints at Sr. Nos. 1 & 2 are maintainable?*

10. **OBSERVATIONS:**

A. The Respondent No. 2 has filed/uploaded the written submissions on behalf of all the Respondent mentioned in the cause title hereinabove. However, there is nothing on record to show that the Respondent No. 1 has granted power to Respondent No. 2 to make submissions on behalf of the

Respondent No. 1. Thus, the written submission of Respondent No.1 in the captioned complaints are filed by Respondent No. 2.

B. With respect to complaint at Sr. No. 2 - the Complainant paid Rs. 5,00,000/- to the Respondent for which there is a receipt issued by the Respondent No. 1 dated 02.11.2020.

11. Moving ahead to examine the issue framed at **para No. 9** with respect to complaint at Sr. No 1 for direction to execute sale deed, possession, compensation for mental agony and loss of rent, costs. The Authority shall first move its attention towards section 13 of the said Act which is reproduced hereunder:

"13. No deposit or advance to be taken by promoter without first entering into agreement for sale.
(1) *A promoter shall not accept a sum more than ten per cent. of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.*
(2) *The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot, or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed."*

12. Thus, from the plain reading of section 13 it is crystal clear that the Promoter can accept payment above 10% of the total consideration only after execution of an AFS with the allottee. However, in complaint at Sr. No. 1 it is observed that the Respondent/Promoter has already entered into AFS with the Complainant. It is noted that the relief sought by the Complainant at Sr. No. 1 is to direct the Respondent to execute sale deed with the Complainant which is nothing but a confirmation of the AFS entered between the Parties. This requirement is additionally carried out in districts other than Mumbai in Maharashtra. Thus, the Respondent is directed to follow the norms as laid down and complete the

registration aspect with regard the AFS of the Complainant at Sr. No. 1 herein at the earliest. Further the Complainant at Sr. No. 1 is also required to pay all the amounts due and payable under the AFS forthwith.

13. With regard to the relief of possession with interest for delay, as sought by the Complainant at Sr. No 1, it is observed from the records that the said Project is completed as OCs are uploaded on the MahaERA said Project registration webpage in the year 2021 and early 2022 itself. Further the complaint is filed in October 2023 after the OC was received. Thus, the complaint was filed after the cause of action of delay was already over and on the date of filing the complaint at Sr. No. 1 there was no delay regarding the handover of possession with OC. Further the Complainant at Sr. No. 1is directed to take possession by paying all the balance amounts due under the AFS forthwith. In view of the above, the complaint at Sr. No. 1 is not maintainable for seeking reliefs under RERA. Therefore, the **issue at para No. 9** with respect to complaint at Sr. No. 1 is answered in **negative.**

14. To examine the issue framed at **para No. 9** with respect to complaint at Sr. No 2, the Authority shall examine section 18 of the said Act which is reproduced hereunder:

"***18. (1)*** *If the promoter* ***fails to complete or is unable to give possession*** *of an apartment, plot or building, –*
(a) in accordance with the ***terms of the agreement for sale*** *or, as the case may be, duly completed* ***by the date specified therein****; or*
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, ***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project****, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.
(2) *The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for*

compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) *If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."*

15. Thus, from the plain reading of section 18 the essentials to seek relief under Section 18 are:

(i) Failure of Promoter to give possession to the allottee in accordance with the terms of the contract between the Parties (*such as Booking Form, Allotment Letter, agreement for Sale, etc.*) and within the date specified in the contract between the Parties;

(ii) Inability of the Promoter to complete the said Project.

16. Hence, it is paramount to examine the document to discover the date of completion as was agreed between the Parties herein. In this regard it is pertinent to note that the Complainants at Sr. No. 2 do not have any AFS or allotment letter but only a receipt of payment dated 02.11.2020 for an amount of Rs. 5,00,000/- issued by the Respondent/Promoter to the Complainants. For the purpose of section 18 this Authority will not limit itself only to the date as set out in the agreements for sale, but would also look at any other document that determines the date of possession. The said section 18 does not bind the hands of the Authority as it is expansive and it goes beyond the terms of the agreements for sale to also allow examination of other documents by using the words "AS THE CASE MAY BE". In this case while there is no AFS or allotment letter in place, the Complainant at Sr. No. 2 has filed payment receipt dated 02.11.2020 issued by the Respondent/ Promoter which the Authority has examined. It is this payment receipt dated 02.11.2020 which is the only documents between the Respondent and the Complainants at Sr. No. 2, placed before the Authority.

17. Thus, the Authority shall examine payment receipt dated 02.11.2020 to conclude the date of possession agreed upon by the Parties. The Authority noted that a specific date of possession is not mentioned in this payment receipt dated

02.11.2020. However, with respect to the allotment of the subject apartment the Complainant at Sr. No. 2 in his written submission filed on 27.10.2023 before the Authority has specifically stated as under:

It is humbly submitted that, having shown his interest in purchasing the Flat, the complainants approached the respondent in the month of October 2020. Upon perusal of the Layout Plan as well as the Deed Of Declaration as shown by the respondent, the applicants/ complainants expressed their willingness to purchase Flat No. 604-A on the sixth floor of the project mentioned supra. However, the site officials of the respondent promised and assured the complainants that the allotment of the flat would be done within a period of 2 years and maybe by the end of September 2021.

18. From the perusal of the submission and the material placed on record by the of the Complainant at Sr. No. 2 so as to prove his claim, it can be easily concluded that the subject apartment was not allotted to him at the time of booking and till date he has not been allotted any apartment in the said Project by the Respondent, being so, the Complainants at Sr. No. 2 cannot be termed or considered as an allottee within the meaning of Section 2(d) of the said Act.

19. Therefore, after considering the aforementioned observations and provisions of the Act, the Authority concludes that the Complainants at Sr. No. 2 is not entitled to seek relief under section 18 for refund along with interest and compensation on account of delayed possession as the Complainants at Sr. No. 2 lacks locus standi for claiming relief under section 18 before Authority. Hence, the **issue in para No.9** with respect to complaint at Sr. No 2 is answered in **negative.**

20. With regard to the reliefs of compensation for loss of Rs.1.5 lakh in settlement, interest on amount of stamp duty, interest on amount of Rs. 10,00,000/- for retention period, sought by the Complainants herein in complaint at Sr. No. 2 the Authority finds that the Complainant has already settled the matter in Criminal Application No. 585 of 2021 filed before the Nagpur bench of Hon'ble Bombay High Court.

21. Lastly, all other reliefs claimed by all the Complainants at Sr. Nos. 1 & 2 save and except the reliefs sought under section 18 are rejected, as the Complainants

have failed to state in their complaints and has also failed to satisfy this Authority as to which provisions of the said Act gives right to the Complainants to claim such reliefs.

FINAL ORDER

Therefore, after considering the aforementioned observations and provisions of the Act, the materials placed on record, the facts of the case and submissions made by the Parties, the Authority passes the following order:

A. The complaints at Sr. Nos. 1 and 2 are **dismissed** as not maintainable.

B. No order as to costs.

AJOY MEHTA
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(Ajoy Mehta)
Chairperson, MahaRERA